

**CALIFORNIA COASTAL COMMISSION**

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



# F18b

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Staff: M. Vaughn-LB  
Staff Report: 10/4/2019  
Hearing Date: 10/18/2019

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-19-0067

**Applicants:** Jasen & Jennifer Grohs  
Trustees of the Jasen C. and Jennifer Grohs Family Trust

**Agent:** Elizabeth Hanna, Brandon Architects

**Location:** 16641 South Pacific Avenue, Sunset Beach  
Huntington Beach, Orange County  
APN: 178-523-06

**Project Description:** Request for after-the-fact approval for the demolition of a pre-existing three unit residential structure; proposed construction of a 4,476 square foot, three story, 35 foot high single family residence with an attached 462 square foot, two car garage; and removal of existing beach encroachments. Dune restoration in the area of the unpermitted deck encroachment is also proposed.

**Staff Recommendation:** Approval with conditions

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## SUMMARY OF STAFF RECOMMENDATION

The applicant is requesting approval for 1) after-the-fact demolition of a pre-existing three unit residential structure spanning two existing lots; 2) removal of all existing development that encroaches onto the public beach adjacent to both lots; 3) restoration of the area of public beach, including the area that will become exposed with removal of the unpermitted encroachments; and 4) the construction of a new beach-fronting single-family residence on one of the two lots (the second lot will remain vacant for now). No new encroachments are proposed to be placed onto the adjacent public sandy beach. As proposed, the new residence will be set back five feet from the seaward property line, consistent with recent Commission actions on beach-fronting lots in Sunset Beach. An additional concern with shorefront homes in Sunset Beach that is addressed in the staff report and through imposition of the special conditions is the potential

impact to the proposed beachfront development from erosion, flooding, and/or wave uprush during strong storm events and future sea level rise.

This application was rescheduled after being continued from the Commission's August hearing due to concerns regarding loss of residential density at the site. However, staff continues to recommend approval of the proposed development even though it would result in the loss of two units across the two lots (a net loss of two units when compared to the 3-unit structure formerly existing across both lots and the proposed construction of one unit on the subject Lot 4 and Lot 3 remaining vacant). Future development of Lot 3 will require a CDP subject to the Chapter 3 policies of the Coastal Act and the development standards of the Huntington Beach zoning code, which currently allows up to two units per lot.

Staff continues to make this recommendation based upon the fact that the subject site, indeed all of the Sunset Beach area, is more at risk from sea level rise impacts than almost anywhere else in the state. Higher densities are discouraged within areas subject to this elevated level of risk to both life and property. Lower risk areas within the City of Huntington Beach can support higher densities where residential development, and the occupants of that development, will not be subject to such high levels of risk. Staff recognizes the critical need to retain residential densities to address the extreme housing issues facing the State. However, those higher densities should not put residents at risk. Staff continues to work with the City in on-going efforts to retain and increase density in those areas able to accommodate it.

Staff is recommending APPROVAL of the proposed project with nine (9) special conditions regarding: 1) no future shoreline protection device and removal of development under specific circumstances if threatened; 2) compliance with project plans including removal of all development seaward of the property line (as proposed by the applicant); 3) implementation of the proposed Encroachment Removal and Dune Restoration Plan, prepared by Envicom Corporation, dated 9/19/2019 for the public beach area to be uncovered with removal of the unpermitted encroachments; 4) conformance with the submitted drainage plan, including that site drainage will be directed to sediment basins located at the landward side of each side yard; 5) appropriate storage of construction materials, mechanized equipment and removal of construction debris; 6) future development requires a permit amendment or new permit; 7) protection of any public rights that exist or may exist at the subject site; 8) assumption of risk; and 9) recordation of a deed restriction against the property referencing all of the special conditions imposed by the Commission.

The project site is in an uncertified area of the City of Huntington Beach. Therefore, the Commission is the permit-issuing entity for the proposed project and the standard of review is Chapter 3 of the Coastal Act. The City of Huntington Beach has reviewed the applicants' proposed plans and has approved the proposed project in concept.

The motion and resolution to carry out the staff recommendation is found on page 4.

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### Appendix A – Substantive File Documents

#### **EXHIBITS**

Exhibit 1 – Vicinity Map and Aerial Photo

Exhibit 2 – CoSMoS Map

Exhibit 3 – Project Plans

Exhibit 4 – City of Huntington Beach Approval in Concept/CEQA Status, 1/28/2019

Exhibit 5 – City of Huntington Beach Email Re Mello Act, 4/24/2019

Exhibit 6 – Email from Jasen Grohs, 4/25/2019

Exhibit 7 – Authorization from Joshua Grohs

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application 5-19-0067 subject to the conditions set forth in 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 this permit, the applicant agrees, on behalf of itself and all other successors and assigns, that no shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-19-0067 including, but not limited to, the residence, garage, foundations, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea level rise, or other natural hazards in the future. By acceptance of this permit, the applicant acknowledges that the project is new construction for which there is no right to construct shoreline protective devices, and 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 further agree, on behalf of themselves and all successors and assigns, that the landowner is required to remove the development authorized by the permit if the City or any other 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. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required. This permit does not authorize encroachment onto public trust lands and any future encroachment onto public trust lands 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.

**C.** In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. Prior to removal, the permittee shall submit two copies of a Removal Plan to the Executive Director for review and written approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, including the beach and Pacific Ocean.

**2. Permit Compliance.** Coastal Development Permit 5-19-0067 authorizes the demolition of a residential structure spanning two existing lots and associated deck(s) and construction of a 3-story, 35-foot high single-family residence with an attached 2-car garage on one of the two resultant vacant lots. As proposed by the applicant, all

development that encroaches beyond the property line onto public property located seaward of the two subject lots shall be removed, including an approximately 10 foot by 60 foot wood deck, as shown on the Topographic Survey prepared by Jones, Cahl & Associates, dated 8/29/18 included as Exhibit 3.1 of the staff report dated October 4, 2019. Other than the dune restoration outlined in Special Condition No. 3 of this permit, no new development is permitted beyond the seaward property line of the two subject lots. All development must occur in strict compliance with the proposal as set forth in the application, subject to the special conditions of this permit.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Any change to the approved final plans shall require an amendment to Permit No. 5-19-0067 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**3. Encroachment Removal and Dune Restoration Plan.**

A. The applicant shall carry out the proposed Encroachment Removal and Dune Restoration Plan (prepared by Envicom Corporation, dated 9/19/2019).

In addition, the applicant shall assume responsibility for the on-going removal-by-hand of all non-native plants within the restoration area for the life of the permitted development. As proposed, the Encroachment Removal and Dune Restoration Plan incorporates the measures described below:

1. Area: the plan shall include the area of the encroachment(s) proposed for removal (including but not limited to the 60 foot wide wood deck extending 10 feet seaward of the property line), as well as the area located 25 feet seaward of the deck from which non-native vegetation will be removed, herein after “restoration area”.
2. Removal: the plan shall provide for removal of the encroachments identified in Exhibit 3.1. Removal of all encroachments shall occur within sixty (60) days of issuance of the coastal development permit. Upon removal of the unpermitted deck, all non-native vegetation shall be removed from the restoration area.
3. Topography: the restoration area topography shall be restored to the topography that existed prior to installation of the unpermitted encroachments.
4. Planting: the restoration area shall be planted with native dune plantings. The types and location of the native dune plantings (both seed and container plantings) shall be depicted graphically. Plantings shall include:
  - a. Beach saltbush (*Atriplex leucophylla*);
  - b. Beach evening-primrose (*Camissoniopsis cheiranthifolia*);
  - c. Beach sand verbena (*Abronia umbellata*);
  - d. Bluff buckwheat (*Eriogonum parviflorum*);
  - e. Red sand verbena (*Abronia maritime*);
  - f. Beach bursage (*Ambrosia chamissonis*);
  - g. California poppy (*Eschscholzia californica*);
  - h. Salt grass (*Distichlis spicata*).

5. Irrigation: limited hand watering in a diffuse manner shall be allowed as needed for the success of the plantings. Care shall be taken to avoid hose-drag and trampling the plantings.
  6. Temporary wooden sand fencing (installed perpendicular to the prevailing wind direction) may be installed to slow wind-driven movement of sand through the site, reduce sand encroachment, and allow native hummock-forming dune plants to establish. The fencing shall remain in place only as long as needed, but in no case longer than three (3) years.
  7. Straw bundles (made from a weed-free straw material) may be employed to slow sand movement and provide sheltered planting locations.
  8. Future private encroachments shall be prohibited seaward of the private property, including within the entire restoration area.
  9. Dune Restoration Timing: the approved Encroachment and Dune Restoration Plan shall be implemented within sixty (60) days of completion of construction of the residence and shall be pursued in a diligent manner and completed in a reasonable period of time.
- B. The permittee shall implement the *Encroachment Removal and Dune Restoration Plan* within sixty (60) days of issuance of the coastal development permit and shall implement the plan in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.
4. **Drainage Plan.** By acceptance of this permit, the permittee agrees that development of the site shall conform with the drainage plan proposed by the applicant and attached to this staff report as Exhibit 3.3, indicating that site drainage will be directed to two bottomless sediment basins located in the two corners of the lot to be developed nearest the street. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.
  5. **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 on the beach or anywhere 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.
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- (n) During construction of the project, no runoff, site drainage or dewatering shall be directed from the site into any street, alley or storm drain, unless specifically authorized by the California Regional Water Quality Control Board.

**6. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-19-0067. Pursuant to Title 14 California Code of Regulations Section 13250(b)(1) through (6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-19-0067. Accordingly, any future improvements to the single-family residence 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 Permit No. 5-19-0067 from the Commission or shall require an additional



coastal development permit from the Commission or from the applicable certified local government.

7. **Public Rights.** The approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property now or in the future. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.
8. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards including, but not limited to, erosion, flooding, wave uprush, 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.
9. **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(s) 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

The applicant is requesting after-the-fact approval for the demolition of a three-unit residential structure that previously spanned two existing lots (Lots 3 and 4), and proposing to construct a 4,476 square foot, three story, 35-foot high single family residence with an attached 462 square foot, two car garage, at 16641 South Pacific Ave., in the Sunset Beach area of the City of Huntington Beach, Orange County. The proposed residence will be constructed on one of the two lots, the northwesternmost lot (Lot 4). The residence is proposed to be constructed on a

stiffened foundation system with cement grout columns extending below the building pad level at depths from 7 to 20 feet. The proposed structure will be built on a rectangular, approximately 2,579 square foot, ocean-facing, beachfront lot (Lot 4). Only minimal grading for site preparation is proposed.

All beach encroachments, including an approximately 60 foot wide wood deck built immediately seaward of both Lots 3 and 4 extending just over 10 feet beyond the property line onto the public sandy beach, will be removed. All of the proposed new residential development and any appurtenances are located within private property lines on the subject Lot 4. Other than removal of the encroaching deck and restoration of the encroachment area, no development beyond the private property lines is proposed under this coastal development permit application. Project plans are included as **Exhibit 3**. The proposed residence will be set back five feet from the seaward property line. An at-grade patio is proposed within the area between the seaward property line and the proposed residence. No other development, including upper level decks, is proposed within the seaward setback area.

The subject site is located at 16641 South Pacific Avenue in the Sunset Beach community of the City of Huntington Beach, Orange County (**Exhibit 1, Vicinity Map**). Sunset Beach is located on a low-lying, relatively narrow strip of land between two water bodies – with the ocean to the southwest side and Huntington Harbour to the northeast. The project is located within an existing urban residential area, between 18<sup>th</sup> and 19<sup>th</sup> Streets. The subject lot is located between the first public road (South Pacific Avenue) and the sea. The site fronts the wide sandy public beach (approximately 300 feet wide) known as Sunset Beach located between the subject property and the Pacific Ocean. The project was approved in concept by the City of Huntington Beach on 3/27/2019.

Sunset Beach is located in an area that was formerly unincorporated Orange County. Under the County's jurisdiction, Sunset Beach was subject to a certified Local Coastal Program (LCP). However, in August 2011, Sunset Beach was annexed by the City of Huntington Beach, resulting in the lapse of a certified LCP for Sunset Beach. The Sunset Beach area has not yet been incorporated into the City of Huntington Beach LCP. Therefore, the Commission is the permit-issuing entity for the proposed project and the Chapter 3 policies of the Coastal Act are the standard of review. The County's previously certified Sunset Beach LCP may be used as guidance; however, it should be noted that the previously certified LCP did not adequately address a number of issues of current concern including private development located seaward of beachfront property lines on public beach, appropriate development setbacks from the seaward property line of beachfronting lots, and sea level rise concerns, which are likely to be significant issues in the new LCP, given the high degree of sea level rise vulnerability in the area.

The City has adopted equivalent land use and zoning designations for the site as those set forth in the former Orange County LCP for Sunset Beach. However, the Commission has not yet certified land use designations or zoning for the Sunset Beach area since it was annexed into the City. Nevertheless, it is worth noting that the proposed project (a single-family residence) is consistent with many of the development standards that would have been applicable to the proposed project under the old Sunset Beach LCP. The old LCP designated the site *Sunset Beach Residential – High Density*. The proposed single-family residence is consistent with this

designation. The project meets the old LCP's height restriction of 35 feet for the *Sunset Beach Residential* zone, which is also the City's current height limit. In addition, the design of the proposed single-family residence project is consistent with existing surrounding residential development on South Pacific Avenue in Sunset Beach. Within the area of Sunset Beach where the subject site is located (beachfronting lots along South Pacific Avenue), the majority of lots are developed with single-family residences, similar to the proposed project, including similar heights and square footage.

The subject site was most recently developed with a three unit residential structure built across two existing lots. The two lots currently share a single address. The three-unit structure across the two lots was purchased in 2009 by JG-4<sup>th</sup> Street Investments, LLC. JG-4<sup>th</sup> Street Investments, LLC was created by Jasen Grohs and Joshua Grohs. In 2019, the LLC sold Lot 4 to the applicant, the Jasen C. and Jennifer Grohs Family Trust, and Lot 3 to the Joshua D and Tracy M Grohs Family Trust. The owner of Lot 3 was invited to join in the application as co-applicant, and responded: "*In reference to the above address, Jasen Grohs has my authorization to act on my behalf in the demolition of the existing structure, permit and application process as well as any coastal recommendations or remedies that may be necessary.*" (**Exhibit 7**).

The three unit residential structure was demolished with a permit approved by the City of Huntington Beach, but without approval of a coastal development permit. The applicant is requesting, on behalf of the owners of both lots, after-the-fact approval of the demolition of the three-unit residential structure formerly present on the subject lots (Lots 3 and 4). Evaluation of the demolition of the existing structure is based upon the development as if it had not occurred. More recently the Commission has been concerned with loss of density, which in this case amounts to the loss of 2 residential units (previously three units were present across two lots, and now, as proposed, one residence would be constructed on Lot 4 and residentially zoned Lot 3 will remain vacant). The capacity for Lot 3 to provide one or two units remains. In this case, the site and surrounding area are susceptible to sea level rise hazards, and the Commission does not encourage increased density in hazardous areas such as the subject vicinity.

Previously, the County had been issuing Encroachment Permits for development (i.e., decks) that encroached onto the public beach under a certified LCP regulation which states: "*Permanent above-ground structures on the beach and sand areas shall be prohibited, except for: a) Lifeguard Towers, b) Other facilities necessary for public safety, c) Temporary uses and structures accessory to residential development on contiguous Sunset Beach Residential properties subject to a Coastal Development Permit and a Public Property Encroachment Permit.*" No records have been discovered to show that the encroachments that exist on the beach in front of the project site were permitted by an encroachment permit or a County or Coastal Commission issued coastal development permit. In any case, the applicant is proposing to remove all beach encroachments, including the approximately 10' by 60' wood deck located seaward of the subject site (Lots 3 and 4). No new decks or other private appurtenances are proposed or permitted on the sandy public beach.

## **B. Hazards**

With regard to hazards, Coastal Act Section 30253 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.*

Due to its low-lying location between the oceanfront and the harbor, 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. In this geographic area, the main concerns raised by development are potential exposure of the proposed development to coastal flood and/or erosion hazards and whether future hazardous conditions (including the possibility of flooding from either the beach or harbor) might eventually lead to a request to build a shoreline protection device to protect the proposed development. Flooding from the harbor inland of the subject site may actually occur earlier than beach flooding and erosion from the ocean. This inland flooding could impact roadways and other infrastructure, limiting access to the residence and damaging necessary public services (such as roads and utilities). Sea level rise models suggest the site will likely become at risk prior to the end of the expected 75-year life of the proposed residence (**Exhibit 2**). To address questions raised by these issues, the applicant's coastal engineer provided a Coastal Hazard & Wave Runup Study (GeoSoils, Inc., 10/17/2018 and 3/8/2019).

The Sunset Beach community, where the subject site is located, has historically been subject to flooding and damage resulting from wave action during storm conditions, as well as flooding from the harbor area during high tides, which worsens under storm conditions. Past occurrences of ocean flooding and storms have resulted in public costs for public service (including the USACE led periodic beach replenishment program that is on-going for more than 50 years; annual construction of a seasonal berm across the beach, originally constructed by the County, and now by the City of Huntington Beach) in the millions of dollars. Specifically, the El Nino storms of 1982/83 caused significant damage in both Sunset Beach and neighboring Surfside, both from the ocean and from flooding from the harbor. Indeed, it was the damage resulting from this storm that resulted in annual construction (without benefit of a CDP) of the seasonal berm across Sunset Beach, and in the one-time construction of the "vegetated berm" (also without a CDP) located just seaward of the beachfront residential development in Sunset Beach. Moreover, flooding of areas along Pacific Coast Highway from Huntington Harbour occurs in Sunset Beach now with extreme high tides. This flooding is worsened when high tides occur together with storm activity. Moreover, USGS CoSMoS, the best available regional sea level rise modeling tool, shows that the subject site and surrounding area may be significantly impacted by future sea level rise (**see Exhibit 2**) and related flooding. Impacts due to expected future sea level rise flooding will be worse when storm activity is also factored in. Public costs are incurred with each incident, including for pumping flooded areas, clearing blocked storm drains, and clean up.

## Sea Level Rise

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.<sup>1</sup> Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, the best available science demonstrates 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. In April 2017, a working group of the Ocean Protection Council’s (OPC) Science Advisory Team released *Rising Seas in California: An Update on Sea-Level Rise Science*.<sup>2</sup> This report synthesizes recent evolving research on sea level rise science, notably including a discussion of probabilistic sea level rise projections as well as the potential for rapid ice loss leading to extreme sea level rise. This science synthesis was integrated into the OPC’s *State of California Sea-Level Rise Guidance 2018 Update*.<sup>3</sup> This Guidance document provides high-level, statewide recommendations for state agencies and other stakeholders to follow when analyzing sea level rise. Notably, it provides a set of projections that OPC recommends using when assessing potential sea level rise vulnerabilities for various projects. Taken together, the Rising Seas science report and updated State Guidance account for the current best available science on sea level rise for the State of California. The updated projections in the 2017 Rising Seas report and the 2018 OPC Guidance suggest sea levels could rise between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge<sup>4</sup>, depending on future greenhouse gas emissions.

The OPC Guidance recommends that development of only moderate adaptive capacity, including residential development, use the high end of this range, 6.7 feet, to inform decisions regarding development. The updated Rising Seas science report and OPC Guidance also include an extreme scenario (termed the “H++” scenario) of 9.9 feet of sea level rise by 2100 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss. These projections and recommendations are incorporated into the 2018 update of the Coastal Commission Sea Level Rise Policy Guidance<sup>5</sup>.

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available

<sup>1</sup> <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>

<sup>2</sup> Griggs, G, Arvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). *Rising Seas in California: An Update on Sea-Level Rise Science*. California Ocean Science Trust, April 2017.

<sup>3</sup> OPC State of California Sea-Level Rise Guidance, 2018 Update:

[http://www.opc.ca.gov/webmaster/ftp/pdf/agenda\\_items/20180314/Item3\\_Exhibit-A\\_OPC\\_SLR\\_Guidance-rd3.pdf](http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf)

<sup>4</sup> The OPC Guidance provides sea level rise projections for 12 California tide gauges, and recommends using the projections from the tide gauge closest to the project site. The projections for the LA tide gauge can be found on page 72 of the OPC Guidance.

<sup>5</sup> <https://www.coastal.ca.gov/climate/slrguidance.html>

science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, which will result in increased flooding, erosion, and storm impacts to coastal areas. On a relatively flat beach, with a slope of 40:1, a simple geometric model of the coast indicated that every centimeter of sea level rise will result in a 40 cm landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a seawall, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than is inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently. Accompanying this rise in sea level will be an increase in wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

Rising sea levels are exacerbating and will continue to intensify hazards along the shoreline, including inundation, storm flooding, erosion, saltwater intrusion into aquifers, and liquefaction. Some shoreline development will experience increasingly hazardous conditions over time; therefore, to ensure safety and structural integrity consistent with Section 30253 of the Coastal Act, development must be sited and designed in such a way that takes into account the anticipated impacts of sea level rise over the full time span of its economic life. Changing conditions could also alter the anticipated impacts of the development upon coastal resources. In particular, coastal resources such as beaches and wetlands that are located just inland of the sea could disappear if they are squeezed between rising sea levels and a fixed line of development on the shoreline, thus impacting public access, recreation, visual, and other coastal resources. Therefore, to be consistent with the Chapter 3 policies of the Coastal Act, proposed development must be sited, designed, and conditioned in such a way that considers the impact of the development upon coastal resources over its full economic life, avoiding and mitigating those impacts as appropriate.

### **Adverse Coastal Impacts Due to Shoreline Protection Devices**

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.<sup>6</sup> All of these impacts are likely to occur as a result of a shoreline protection device being constructed at this beach (Sunset Beach, which is immediately adjacent to the subject site). With expected sea level rise and related erosion and flooding, the beach area between the subject site and ocean waters is expected to narrow with time. Likewise, flooding from the harbor is expected to approach the subject site more and more in the future, raising the question of potential impacts to the subject site due to these coastal hazards, which in turn raises the question of a possible request for future shoreline protection at the site.

Shoreline protective devices, by their very nature, tend to conflict with various Commission approved LCP and Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could “...*create [or] 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.*”<sup>7</sup>

In order to ensure that new development is sited and designed to not create or contribute significantly to the destruction of the site or surrounding area through construction of protective devices, it is important to assure that new development (such as is being proposed here) not be permitted shoreline protection to the extent such shoreline protection would be inconsistent with Coastal Act Chapter 3 coastal resource policies. If it is known that the development requires shoreline protection, it would be unlikely that such development could be found to be consistent with Section 30253 of the Coastal Act which, as stated above, requires that new development not *create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area*, given the well-known coastal resource impacts that shoreline protection typically causes.

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<sup>6</sup> Summarized from <http://www.beachapedia.org/Seawalls>

<sup>7</sup> However, section 30235 of the Coastal Act recognizes that “existing” development may be protected by a shoreline protective device subject to certain conditions. Section 30235 does not apply here because the proposed project is new development (new construction of a single family residence). New development is not entitled to shoreline protection and would need to be designed in such a way as to not rely on shoreline protection. As such, the new structure must be conditioned for “no future shoreline protection”.

### **Public Costs/Loss of Public Beach/Impacts to Public Trust Lands**

Requests for shoreline protection devices are common when development is threatened by erosion, flooding, and storm activity. From a public access perspective, a major concern with shoreline protection is the threat of lost public beach area. As the beach erodes, the shoreline retreats landward toward developed areas. Shoreline protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the boundary between public and private lands. The impact of a shoreline protection device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of shoreline protection such as rock revetments and seawalls to protect private property would prevent any current or future migration of the shoreline landward, thus eliminating the distance between the high water mark and low water mark. As the distance between the high water mark and low water mark narrows or disappears, the seawall effectively eliminates lateral access opportunities along the beach as the entire area below the fixed high tideline becomes inundated. The ultimate result of a fixed tideline boundary (which would otherwise normally migrate and retreat landward, while maintaining a passable distance between the high water mark and low water mark overtime) is a reduction or elimination of the area of sandy beach available for public access and recreation.

Interference by shoreline protection devices can result in a number of adverse effects on the dynamic shoreline system and the public's ability to access the beach. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable beach area. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This narrows the beach area available for public access. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the nearshore sand bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This affects public access again through a loss of beach area. Third, shoreline protection devices such as revetments, seawalls, and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protection device on the subject site, then the beach would also accrete at a slower rate, if at all. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate wave energy. Moreover, even when shoreline protection is not present, the placement of structures along an eroding shoreline can impact beach areas and public trust lands. As the shoreline migrates inland, structures may become located on beach areas and/or public trust lands, occupying land that would otherwise be available for public access, ecosystem services and other coastal resource benefits. In this case, the subject site is currently located adjacent to the public sandy beach. With sea level rise the location of the beach may well move inland, towards the subject site.



Coastal hazards and shoreline protective devices also raise public trust concerns. The common law public trust doctrine protects the public's right to access tidelands, submerged lands, and navigable waters, which the State holds in trust for the public's use and enjoyment. This doctrine is enshrined in California's Constitution, which provides in Article X, section 4, that no individual may "exclude the right of way" to any "frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State." Cal. Const. Art. X, Sec. 4. The Constitution further directs the Legislature to enact laws that give the most "liberal construction" to Article X, section 4, so that access to navigable waters of the State "shall be always attainable for the people."

As discussed above, future sea level rise will cause the landward migration of the intersection of the ocean with the shore and, thus, the tidelands and submerged lands that are public trust resources. To the extent that shoreline protective devices contribute to erosion and blockage of the natural inland migration of the beach and shoreline, and thus result in the loss of natural beaches that allow the public to access tidelands and submerged lands, their construction is also inconsistent with the State's obligation to protect the public's right to access these areas. Knowing, as we do, that our understanding of how fast and how severe sea level rise will occur, and the precise impacts on particular coastal areas, is an evolving area of scientific inquiry, the Coastal Commission must act conservatively to manage public trust resources in a way that will protect them for future generations. For this additional reason, the Coastal Commission is unlikely to approve proposals for new development that require shoreline protective devices, as their construction threatens public trust resources managed by the Coastal Commission.

Moreover, private residential uses are not public trust uses and the existence of private residential uses, such as the proposed project, on future public trust lands likely would conflict with the public's right to use and enjoy such lands. In addition, private development on public beaches creates conflicts with the public access and recreation policies of the Coastal Act. Thus, the Commission's action on this project must consider the effects on loss of public beach, public trust lands, natural shoreline processes, loss of ecosystem services, and public access under current conditions, and under future conditions, when it is likely that the sandy beach adjacent to the subject site may erode and move inland, up to or past the subject site, and/or that flooding from the harbor, currently located approximately 500 feet inland, may result in inundation of the subject site. Rather than contemplate shoreline protection devices to protect new development in the future, current development proposals must consider adaptation measures that could be implemented should development become threatened.

### **Site-Specific Evaluation**

In order to evaluate whether the proposed development would be consistent with Coastal Act Section 30253's requirement to minimize hazards, the applicant has submitted a Coastal Hazard & Wave Runup Study (GeoSoils, Inc., 10/17/2018, 3/8/2019) (Study). The Study concludes:

*Based upon the CoSMoS modeling, the development is reasonably safe from SLR [4.1 feet] and 100-year wave flooding over the design life of the development [75 years] due to the proposed elevation of the finished floor above the area drainage.*

The Study finds that with sea level rise of 4.1 feet and a 100 year storm event, the subject site is likely, or probably, not going to be impacted by coastal hazards because the proposed elevation of the first floor is higher than the maximum wave runup calculated in the report under this SLR scenario (first floor = 13.96 feet NAVD88). 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. With 6 or 6.7 feet of sea level rise, the site would not be expected to be safe over its 75 year expected life.

Based on CoSMoS modeling, the site will begin to become threatened with about 4.1 feet of sea level rise and no storm 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.

In this case, because with future sea level rise and storm events, the subject site may be threatened from both the harbor side as well as the ocean side, consideration of impacts due to protecting the proposed development must be considered not just from the ocean, but from the harbor as well. If the site is threatened by coastal hazards from the harbor side of development, as exacerbated by expected future sea level rise, then impacts will have also occurred to Pacific Coast Highway and the surrounding streets. This will disrupt the ability of the site to be accessed by essential services such as access by public roads and the ability to be served by public infrastructure in the normal manner.

By 2100, much of the area surrounding Huntington Harbour may be inundated, affecting all of the properties along Pacific Coast Highway or accessed via Pacific Coast Highway. Moreover, depending upon the extent of future sea level rise, the subject site may no longer be located on private property due to the migration of the public trust boundary.

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**

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. Therefore, 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** is imposed to require the applicant to acknowledge that, as new development, the applicant has no right to a shoreline protective device for the project and, in fact, no future shoreline protective device will be constructed on site to protect the proposed development, including the entire redeveloped house.

### **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 new house may become unstable at some point, posing risks to property and even life, and a shoreline protective device would not be an option for protecting the structure from coastal hazards. If, however, the proposed development (i.e., the new single family residence) 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, the Commission imposes **Special Condition 1**, which requires the landowner to remove the development (consisting of a single family residence, garage, foundations, and any future improvements) if: (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (d) the development would require a shoreline protective device to prevent a-c above. **Special**

**Condition 1** requires that if any part of the proposed development becomes threatened by coastal hazards in the future, then the threatened development must be removed rather than protected in place. This condition recognizes that predictions of the future cannot be made with certainty, thereby allowing for development that is currently safe and expected to be for approximately 40 years with 2.5 feet of sea level rise and up to approximately 75 years if sea level rise is about 4.1 feet, but ensuring that the future risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of new development, and not the public.

Because of the potential for loss of beach area (and associated public access and recreational resources) as sea levels continue to rise, this project also must be considered in light of sea level rise adaptation actions that may become necessary over time. The City of Huntington Beach may develop sea level rise adaptation strategies and programs through updates to its Local Coastal Program or through other means, which may include provisions on beach width to maintain public access, consistent with the Coastal Act. Such provisions could define minimum beach and/or dune widths that, once reached, could trigger removal or relocation of potentially threatened residences and thus allow the beach and public tidelands to naturally migrate inland. Therefore, **Special Condition 1** requires the land owner(s) to remove the development if required pursuant to LCP policies for sea level rise adaptation planning.

#### **Assumption of Risk**

The Commission also finds that due to the possibility of storm waves, surges, flooding, erosion and other coastal hazards, the applicant shall assume the risks of development in a hazardous area as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 7**, will show that the applicant is aware of and understands the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicant.

#### **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: Residential 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:*

- (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.*

...

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

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.*

The proposed development will result in the loss of two units across the two lots (demolition of three units and construction of one unit on Lot 4, while residentially zoned Lot 3 will remain vacant). Future development intent for Lot 3 is not known at this time, but will require a CDP subject to the Chapter 3 policies of the Coastal Act and the development standards of the Huntington Beach zoning code, which currently allows up to two units per lot. The Commission will review future development on Lot 3 if/when development is proposed on it.

Section 30253 of the Coastal Act requires that new development minimize risk in areas of high flood hazard, and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

Section 30250 requires new development be located in already developed areas that are able to accommodate it, and where it will not result in adverse cumulative impacts to coastal resources. Section 30253(d) requires minimization of vehicle miles traveled. These policies together encourage the concentration of development away from hazardous areas, and in already developed areas that are able to accommodate it, and where there will not be cumulative impacts to coastal resources. These policies suggest that appropriate areas to maintain housing density are areas that are relatively safe from sea level rise impacts.

Here, as described in detail previously, the subject site, and the Sunset Beach area generally, is very vulnerable to sea level rise hazards, although the most severe of those impacts may not occur for many years. As described previously, USGS CoSMoS modeling (the best available SLR science modeling tool) suggests the subject site and most of the surrounding area will become threatened with 4.1 feet of sea level rise and no storm and with 2.5 feet of sea level rise and a 100 year storm. Under the medium high risk scenario, 4.1 feet of sea level rise is expected sometime between the years 2070 and 2080. And 2.5 feet of SLR is expected to occur by approximately year 2060, forty years from now. Inland areas of Sunset Beach (between the ocean and Huntington Harbour) will be inundated earlier, with only 1.6 feet of sea level rise, which under the medium high risk scenario is expected between year 2040 and 2050, meaning that the site may no longer be accessible.

The Commission's SLR Guidance document<sup>8</sup> suggests limiting new development in current and future sea level rise hazard zones and encourages removal of existing development when threatened. Removal of structures where the right to protection was waived (*i.e.*, via permit condition), as is required herein, is an example in the SLR Guidance of a strategy designed to encourage managed retreat. In this case, consistent with the SLR Guidance and as recommended herein, some adaptation strategies will need to be implemented incrementally over time as conditions change. In this case, the proposed development has been conditioned for removal when threatened. This represents a "hybrid" adaptation strategy in that the applicant is allowed use of its property while it remains reasonably safe to do so, but requires removal once it is no longer safe.

The findings of this staff report clearly inform the applicant that the subject property is located in an area at risk from SLR. In addition, the proposed development is conditioned to so that the owner acknowledges and assumes the risk. The project is also conditioned to require a deed restriction to make any future property owners aware of the risk associated with the subject site and proposed development. If the owner chooses to take on development in this area and agrees to remove the development when threatened, then the risk is minimized consistent with Section 30253. Approving the proposed demolition of a triplex and construction of a single-family residence on one of the two lots is consistent with Coastal Act policies relating to housing density, because it limits the risks to life and property in this hazardous area and it is not necessary or advisable to maintain housing density in areas that are most vulnerable to sea level rise.

Moreover, the CCC's SLR Guidance document suggests that development be concentrated "*in areas that can accommodate it without significant adverse effects on coastal resources.*" The

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<sup>8</sup> [https://documents.coastal.ca.gov/assets/slr/guidance/2018/0\\_Full\\_2018AdoptedSLRGuidanceUpdate.pdf](https://documents.coastal.ca.gov/assets/slr/guidance/2018/0_Full_2018AdoptedSLRGuidanceUpdate.pdf)

CCC's SLR Guidance document also recommends against land divisions and similar development to avoid additional development being exposed to hazards. This guidance mimics Section 30250's requirement that development be concentrated in areas that can accommodate it. Land divisions create new lots and so increase people and properties exposed to hazard. Similarly, additional units also increase the number of people and properties exposed to hazard, inconsistent with Section 30253's requirement to minimize hazards. Rather, the Commission's SLR Guidance document encourages building in more resilient areas and/or gradually removing and relocating existing development.

Accepting decreased density in hazardous areas is suitable because it reduces hazards. Future developments in Sunset Beach may include requests for two units on a single lot, as allowed by City zoning. Such requests will be reviewed based on the merits of each future project. In this case, the Commission is not *requiring* the decrease in density, but is rather accepting it as proposed, because the proposed development is consistent with Coastal Act policies regarding development in hazardous areas. Section 30250 requires that development be concentrated in areas able to accommodate it. Because of the hazards due to sea level rise in this area, it is not the best place to concentrate development.

More recently, loss of residential units with proposed development has raised concerns because of the current and on-going housing crisis. Although the Coastal Act does not authorize the Commission to regulate or require affordable housing, Section 30604(f) directs the Commission to encourage low- and moderate-income housing opportunities. Given the current housing crisis in California, consistent with Section 30604(f), the Commission has been working to, at a minimum, retain residential density with new development when possible and, consistent with Section 30250, when located in already developed areas that are able to accommodate it and will not have adverse cumulative effects to coastal resources. Higher density generally yields more affordable housing than would lower density development. In this case, the proposed development would result in a reduction of the number of units on the two lots at the site. Usually, smaller units tend to be more affordable than larger units. However it is unlikely that such units at the subject site would offer *affordable housing* as that term is used in Section 30604(f)<sup>9</sup> given their beachfront location in populous southern California.

Although the Chapter 3 policies of the Coastal Act are the applicable standard of review for the Commission, Section 30604(f) of the Coastal Act directs the Commission to encourage low and moderate income housing opportunities. However, approving a single-family residence on the subject property and allowing the residentially zoned Lot 3 to remain vacant, with the resultant loss of two residential units, would not conflict with efforts to encourage more affordable housing in Huntington Beach. Affordable housing concerns are primarily addressed by cities through the Mello Act. The Mello Act is a statewide law that seeks to preserve housing for persons and families with low and moderate incomes in the Coastal Zone. Under the Mello Act the City of Huntington Beach examines any coastal zone development that entails demolition or conversion of residential units that are not categorically exempt from the California

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<sup>9</sup> Section 65589.5(h)(3) of the government code describes affordable as: "a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based."

Environmental Quality Act (CEQA) as required under the California Government Code (§65588(d) pursuant to Section 65590 (The Mello Act)). The City of Huntington Beach has determined that the proposed development is categorically exempt from CEQA (**Exhibit 4**) and has stated “*The Mello Act is reviewed and addressed in coordination with the update to the Housing Element of the General Plan. With regards to this project, the City has no concerns.*” (**Exhibit 5**). Jason Grohs, a trustee of the applicant (the Jasen C. and Jennifer Grohs Family Trust), has owned an interest in the subject site as a member of JG-4<sup>th</sup> Street Investments, LLC since 2009. Mr. Grohs asserts that, since 2009, the structure was never rented out and has been used by his family as single family residence (**Exhibit 6**). The City may have based its Mello determination on Mr. Grohs’ specific statement that the structure has not been occupied by persons of low or moderate income for at least the last ten years or on other facts which could make the demolition of the three pre-existing housing units exempt from Mello Act requirements (the City of Huntington Beach must make this determination, not the Commission).

More broadly, planning for concentration of development and encouragement of affordable housing is typically addressed through a City’s Local Coastal Program. The City of Huntington Beach does have a certified Local Program, but it does not include the subject Sunset Beach area which was annexed by the City after certification of its LCP. When the City of Huntington Beach updates its LCP to include Sunset Beach, appropriate residential density would be addressed at that time.

In this case, the reduction in residential units will not significantly affect Huntington Beach housing stock; there are low, medium, and high-density residential zones throughout the City that will continue to maintain a diversity of housing, though it must be acknowledged, the majority of residential land in the rest of the City is zoned low density. The City of Huntington Beach has indicated<sup>10</sup> that it is committed to complying with all applicable housing laws and working with the state Housing & Community Development agency towards a resolution of its housing issues. Since January 2014, the City has entitled almost 1,000 of its 1,353 RHNA units (Regional Housing Needs Assessment).<sup>11</sup> The City has been sued by the State of California because of its alleged non-compliance with RHNA requirements and a likely outcome of that lawsuit is re-zoning for additional density in the next RHNA cycle. Re-zoning may occur citywide, but would likely include higher density zoning in areas where the infrastructure is able to support it and which are not subject to high risks posed by natural hazards, which is unlikely to include this area of Sunset Beach. Commission staff is available to work with City staff as necessary to ensure that increased numbers of housing units are provided, including in portions of the coastal zone, to address the critical housing shortage affecting so many Californians. In this case, the replacement of a triplex with one single-family residence and one residentially zoned vacant lot, will not prejudice the ability of Huntington Beach to develop an LCP amendment for the subject area that is consistent with the Coastal Act because the project does not result in a significant loss in housing opportunities and, moreover, as required by Section 30253, development should not be concentrated in hazardous areas. Also Section 30250 requires that development be concentrated in areas able to accommodate it. Due to the subject area being extremely vulnerable to sea level rise, it is not an area able to accommodate concentration of development.

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<sup>10</sup> <https://www.huntingtonbeachca.gov/announcements/announcement.cfm?id=1280>

<sup>11</sup> Ibid



Addressing the impacts of SLR in Sunset Beach already poses huge challenges, including addressing threatened development and accounting for relocation of displaced residents in the future. Requiring retention (or intensification) of density in Sunset Beach will only exacerbate these challenges. Rather, because this area is so susceptible to impacts from sea level rise, it makes sense to accept the proposed loss of two residential units, and alleviate to a small degree the challenges of SLR in this area in the coming years. Therefore, the Commission finds that, as conditioned, the project is consistent with Sections 30250 and 30253 of the Coastal Act.

#### **D. PUBLIC ACCESS**

Coastal Act Section 30210 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 30214 of the Coastal Act states, in relevant part (emphasis added):

- (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

#### **Development Setback**

The project site is a beach-fronting site located within and along a row of beach fronting, residentially developed lots along South Pacific Avenue. Vertical access from South Pacific Avenue to the public beach is available approximately 50 feet northwest (upcoast) of the subject site at the end of 19<sup>th</sup> Street and approximately 150 feet southeast (downcoast) of the site, at the end of 18<sup>th</sup> Street. The proposed residence will be set back 5 feet from the seaward property line, on all three levels. An at-grade patio deck is proposed within the setback area. No other development, including upper story decks, will extend into the five foot setback area.

As reflected in the policies cited above, the Coastal Act requires that public access to the shoreline be maximized. Coastal Act Section 30221 requires that oceanfront land suitable for recreational use be protected for recreational use, unless demand for such a use is or likely will be provided elsewhere in the area. With expected future sea level rise and resulting coastal erosion, it is likely that future demand for public recreational activities, such as use of the sandy beach, will need to be accommodated on smaller, narrower beaches. In addition, the population is expected to continue to increase. And so, the area of sandy beach will decrease while the demand for remaining sandy beach areas will only increase.

Consideration of a seaward setback is important because, although the sandy beach in this area is currently a wide beach, the width is expected to become more and more narrow as the sea rises. And while it is true that most beach-goers prefer to congregate closer to the ocean and prefer to look toward the ocean and not inland, as the beach narrows, which it will do with expected future sea level rise, beach-goers will be forced closer and closer to the private development. In addition, although at this time it is expected to continue into the future, there is no guarantee that the Army Corps led sand replenishment project, upon which the beach width is dependent, will continue for the entire 75 year life of the proposed project.

Sea level rise is one factor to be considered now that was not recognized as a significant factor when the Commission certified the County's LCP for Sunset Beach (originally certified in 1982, with a comprehensive update approved in 1992). This is discussed in far greater detail in the preceding section of this staff report. As described there, scientific opinion overwhelmingly accepts that the seas are rising and that such rising will have significant impacts on existing, low-lying, coastal communities such as Sunset Beach. The only real sea level rise questions are not whether the seas are rising but by how much and how soon. Even though, at this time, it appears that the greatest and earliest threat to existing development in Sunset Beach may come from the harbor inland of the subject site rather than the ocean, the threat to the *size and extent of the public sandy beach* from the ocean is significant. Generally, the beach in Sunset Beach ranges in width (depending on season and location, and the time elapsed from the last USACOE replenishment activity) from approximately 300 to 400 feet. That is expected to narrow significantly with sea level rise over time. The proposed seaward setback will help to, among other things, preserve public access opportunities as sea level rises, and the beach narrows.

Section 30214 of the Coastal Act recognizes the inherent conflicts likely to arise when private property abuts public use areas, but the Act prioritizes public access needs. This means that the private property owner's need for privacy must be accommodated on the private property itself, not by burdening the increasingly limited public beach area available for public use. When such conflicts are not addressed at the planning/permitting stage of development, and adjacent residential development is allowed too close to public beach areas, the resulting lack of privacy could lead to future demands by residents to curtail public use of the public area in order to afford privacy. Sunset Beach is a public beach, and new development should not be allowed to be constructed in a manner that could foreclose the ability of the homeowner to maintain privacy. This issue is likely to arise, especially as the beach narrows as it is expected to do, with increasing demands on the public beach and concentrating the public area increasingly closer to the public/private border. The applicant has addressed this issue by incorporating a 5-foot

setback from the seaward property line in the design of the proposed residence.

The proposed 5-foot seaward setback allows the resident to conduct normal maintenance activities typically necessary to maintain a residence without encroaching onto the public beach. These activities include washing or repairing windows, and painting or making repairs to the residence on its seaward side. In addition, with the proposed 5-foot seaward setback, the resident would be able to exit the proposed home on its seaward side, without needing to step directly onto public beach.

The impact of sea level rise on public recreational use of sandy beach areas will occur not only at Sunset Beach, but at virtually all sandy beach areas, further aggravating the loss of public recreational opportunities and the ability of the public to enjoy sandy public beaches throughout the state. Sea-level rise and erosion that results in loss of public beach will occur gradually, meaning that requiring even a minimal 5-foot setback to minimize the loss of public beach due to sea-level rise will allow for meaningful public access for years if not decades longer than would otherwise be the case.

The Commission recognizes the historic pattern of development on beach-fronting properties in Sunset Beach over the last few decades has been to allow a zero or minimal setback from the seaward property line. However, with more recent development, the Commission has begun imposing seaward setbacks for beach fronting development in Sunset Beach as necessary to maximize public access, especially considering the impacts from sea level rise.

As proposed with the 5-foot seaward setback, the project would be consistent with the requirements of Coastal Act Section 30210 to maximize public access. In addition, Coastal Act Section 30221 requires that oceanfront land suitable for recreational use shall be protected for recreational use. The proposed 5-foot setback means that the proposed development will be consistent with Section 30221, in that it will not interfere with land suitable for recreational use (the sandy public beach area). Finally, the proposed residence with the 5-foot seaward setback will balance the competing demands of public use and privacy in a manner that emphasizes public recreation and access, as is required by Section 30214 of the Coastal Act. The residence as proposed to be setback five (5) feet from the seaward property line will reduce some of the pressure due to the public/private interface described above could be reduced. A minimum 5-foot structural setback from the seaward property line also allows the applicant to conduct routine maintenance on the structure from within the private property lines, without encroaching onto public beach area. Additionally, the proposed 5-foot seaward setback would provide space that could provide a degree of privacy for residents of the proposed structure. Moreover, the effects of the “self-imposed” buffer would also be reduced. Therefore, as proposed, the project is consistent with Sections 30210, 30221, and 30214 of the Coastal Act.

It should also be noted, however, that the Commission finds that an even greater setback than proposed with this project may be appropriate in the future with future development, and that this issue should be carefully evaluated as part of the future LCP amendment to incorporate this annexed area into the City’s LCP. In this case, the proposed 5-foot setback from the seaward property line should be considered the minimum setback necessary to allow for normal construction, repair and maintenance activities of the residence on site to occur on the

applicant's property without requiring encroachment into public beach, provide a minimum privacy buffer, avoid the appearance of privatization of the public sandy beach area, and generally help to minimize potential conflicts between private property owners and members of the public visiting Sunset Beach. **Special Condition 2** requires the applicant to undertake development in accordance with the approved final plans, which include the 5-foot setback.

### **Encroachments**

The Coastal Act requires that public access and recreation be maximized. The subject site is located adjacent to a currently wide, sandy public beach. The issues discussed above regarding impacts to public access due to an insufficient seaward setback of private property from the public beach will also occur when private development occurs directly on the public beach, only the issues are intensified due to the actual physical displacement of public beach area by the private development. A single approximately 10 by 60 foot wood deck is currently located immediately seaward of the seaward property line, adjacent to both of the subject lots. This unpermitted deck occupies 600 square feet of public beach. In order to remove adverse impacts to public access identified above in the discussion regarding the seaward setback, the applicant has proposed to remove all existing encroachments located seaward of the property line (including the approximately 10 by 60 foot wood deck). To assure that the existing seaward encroachments are removed as proposed by the applicant, the Commission imposes **Special Condition 2** which requires that the removal of the encroachments be carried out as proposed.

Seaward of all the beach-fronting residences in Sunset Beach is a berm that was constructed by the County of Orange sometime in the early 1980s to protect development in Sunset Beach following severe flooding resulting from the 1982/83 El Nino. The berm has remained in place ever since and has contributed to the absence of flooding from the ocean in the area according to numerous wave runup and coastal hazards studies submitted over the years for development in this area, including the Coastal Hazard Study submitted for the proposed development. Over time, the berm has come to function in the manner of a natural, though degraded, dune. This dune is degraded due to the lack of native dune plants and coverage by non-native species such as Hottentot-fig, crystalline ice plant, small flowered ice plant, natal plum, and baby sun rose. Notwithstanding its degraded state, the dune exhibits dune morphology and dune substrate.

Coastal dunes form in areas of the California coast that have ample sand supplies, strong winds and relatively flat topography. In these places, plants growing along the coastal strand slow the movement of blowing sand. The plants grow taller as sand deposits build up around them and eventually small foredunes are created. Three native plant species are considered to be important in the early phases of this process: beach saltbush (*Atriplex leucophylla*), beach bur (*Ambrosia chamissonis*) and red sand verbena (*Abronia maritima*) Over time, more sand may be trapped and the foredunes can build up and coalesce to form more stable dune ridges that are often seen windward of backdune or dune swale areas. Once the system shifts from an unstable sheet of sand (subject to rapid movement under the influence of strong winds) to a vegetated habitat with dune topography, a number of other native dune plants can colonize the habitat including beach evening primrose (*Camissonia cheiranthifolia*), beach morning glory (*Calystegia soldanella*), and several species of shrubs.<sup>12</sup>

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<sup>12</sup> Pierpont Beach Sand Management Plan, David Hubbard and Mathew James, Coastal Restoration Consultants, Inc., 11/19/2007.

In addition, western snowy plovers are known to be present in Sunset Beach area. They are listed as federally threatened and are also a California Species of Special Concern. The most recent documented sighting of the western snowy plovers in the area known to Commission staff was on April 15, 2018<sup>13</sup>, when 17 western snowy plovers were spotted at Sunset Beach. The Commission acknowledges that the western snowy plover may not be expected to utilize beach area seaward of the project site for nesting or substantial foraging due to beach maintenance and daily human activity. Nevertheless, increased dune habitat in the area may prove beneficial to the threatened western snowy plover.

It is important to note that removal of the unpermitted encroachments alone will not offset the impact of the presence of the unpermitted development over many years. Restoration of the area of unpermitted development would aid in the effort toward resolving the violation resulting from the unpermitted presence of the encroaching development. To that end, the applicant has submitted and proposes to implement an *Encroachment Removal and Dune Restoration Plan* (EnviCom Corporation, 9/19/2019) for the area where the unpermitted encroachments (proposed to be removed by the applicant) are located. The restoration area agreed to by the applicant includes the area of the 60' wide unpermitted deck that extends 10' seaward of the seaward property line, as well as the area of non-native vegetation located within the area approximately 25 feet seaward of the unpermitted deck (Exhibit 1.3).

In conjunction with the proposed removal of the private encroachments from the public beach, it is important that the area of the unpermitted development be returned to its former state. Simply removing the encroachments from the restoration area alone will not restore the area to its former state in the long term. Thus, the *Encroachment Removal and Dune Restoration Plan* provides for removal of all non-native plants and re-creation of the formerly existing topography of the restoration area. In addition to removing all non-native plants and re-creating the previous topography, it is important that the restoration area be planted with appropriate native dune plants. Without such planting, onshore wind and storms would blow the sand away, creating issues for the adjacent residents from blown sand. Thus, once the encroachments are removed and all non-native plants are removed, and the former topography is restored, the area must be planted to provide long term stability. Most of the dune/berm along Sunset Beach is vegetated primarily with ice plant and other non-natives. However, a better solution for re-vegetating the restored area would be to plant dune plants native to coastal southern California. This would have the dual benefit of stabilizing the berm and, potentially, increasing the habitat value. Moreover, native dune plants would be more visually pleasing than ice plant, which is important in this public beach area. The proposed *Encroachment Removal and Dune Restoration Plan* includes these measures.

To help stabilize the restored area, temporary wooden sand fencing (installed perpendicular to the prevailing wind direction) may be installed to slow wind-driven movement of sand through the site, reduce sand encroachment, and allow native hummock-forming dune plants to establish.

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<sup>13</sup> A memorandum for a project also fronting on Sunset Beach (5-18-0091, LSA Memorandum is dated 5/9/2018), referenced the sighting of 17 western snowy plovers. That is the most recent data Commission staff is aware of, however, it is reasonable to assume a similar western snowy plover presence remains in the area today in July of 2019.

This wooden sand fencing would help the dune to establish, but should eventually be removed in order to allow the restored dune to function as naturally as possible. In addition, straw bundles (made from a weed-free straw material) may be employed to slow sand movement and provide sheltered planting locations. These measures may help to advance the long term viability of the restoration area.

The locations of the initial native dune plantings (both seed and container plantings) are depicted graphically in the required *Encroachment Removal and Dune Restoration Plan*. It is important to know where these plants will be placed in the restoration area to better understand and assess the overall Plan. The Plan must also address irrigation, and note that it should be avoided to the extent feasible, allowing hand watering in a diffuse manner, with care to avoid trampling the plantings. This requirement is reflected in the required *Encroachment Removal and Dune Restoration Plan*.

The dune restoration area must be maintained free of invasive and non-native plant species. In addition, for successful dune restoration to occur, the *Encroachment Removal and Dune Restoration Plan* must acknowledge that no native dune species that establish within this area shall be removed or harmed. Additionally, it must be made clear that future private encroachments including any placement of any items not needed for the restoration are prohibited in the area seaward of the private property, including within the entire restoration area. And, it is important that the dune restoration occur within a timely manner to encourage the impacts from the unpermitted encroachments to be offset in as timely a manner as possible. All of the above requirements have been incorporated into the *Encroachment Removal and Dune Restoration Plan* in order to assure that the Plan will effectively restore the dune area that was disturbed by the private encroachments. However, the proposed *Encroachment Removal and Dune Restoration Plan* does not address the responsibility for the on-going removal-by-hand of all non-native plants within the restoration area for the life of the permitted development. Consequently, this is required as outlined in Special Condition No. 3.

For the reasons described above, the Commission imposes **Special Condition No. 3** which requires the applicant to implement the proposed *Encroachment Removal and Dune Restoration Plan* (prepared by Envicom, dated 9/19/2019) which incorporates all the measures described above, except for the on-going removal of non-natives. The on-going removal of non-natives is described and required in Special Condition No. 3. In order to assure that the proposed restoration area is protected and to assure no further private development of public beach area occurs, the Commission also imposes **Special Condition No. 2** which prohibits any future private encroachments onto the public beach (other than as necessary to carry out the approved revised restoration plan).

The proposed development, as conditioned by **Special Conditions 2 and 3** will protect the public's ability to gain access to, and to use the public beach area and will protect and enhance sensitive habitat. Furthermore, as conditioned to require a waiver of future shoreline protection (**Special Condition 1**), approval of the proposed development further ensures protection of coastal public access by avoiding potentially significant adverse impacts to the beach which are generally known to occur with placement of shoreline protective devices on or near the beach. (See discussion above.) Therefore, the proposed development, as conditioned, conforms to

Section 30210 of the Coastal Act. The Commission hereby finds that the proposed development, as conditioned, is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

#### **E. 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 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The proposed development has the potential for construction and post-construction discharge of polluted runoff from the project site into coastal waters, either directly or via the community's storm drains, which ultimately flow to the sea. The applicant is proposing measures to address these water quality concerns, including directing site drainage to two bottomless sediment basins at the landward corners of the lot that will be developed with the new residence.

Special **Condition 3** requires the project to conform to the site drainage plan as proposed. (**Exhibit 3.3**). In addition, the Commission imposes **Special Condition 4** which identifies construction related measures to be incorporated into the project during construction. By incorporating these water quality protection measures into the proposed development, as conditioned, the project minimizes the effect of construction and post-construction activities on the marine environment. Therefore, the Commission finds that the proposed development, as conditioned, conforms to 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. DEVELOPMENT: FUTURE IMPROVEMENTS**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. The majority of beachfront homes in Sunset Beach are single family homes, of similar height and square footage to the proposed residence. The demolition of the triplex and its replacement with one single family residence and one vacant,

residentially zoned lot will not result in a change to community character because the single family home will be consistent with other homes in the area. There are very few vacant lots in this area, but the proposed residence will be entirely consistent with the existing scale and type of development in the area. 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. Section 30610(a) of the Coastal Act provides that certain improvements to existing single-family homes do not require a coastal development permit, subject to Section 13250 of the Commission's regulations, which lists certain improvements to single-family structures that require a coastal development permit because they involve a risk of adverse environmental effect, including those improvements to a structure that is located on a beach (13250(b)(1)). The Commission finds that exemption from coastal development permit requirements for certain improvements to existing single-family homes per section 30610(a) does not apply to the proposed single-family structure because it is located on a beach. Thus, to assure that future improvements are consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that it is necessary to impose **Special Condition 5** prohibiting the construction of future improvements to the proposed single-family structure without first obtaining an amendment to this permit or a new coastal development permit. Therefore, as conditioned, the development conforms to the Chapter 3 policies of the Coastal Act.

#### **G. 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 8**, 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 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. Therefore, the Commission finds that the proposed development, as conditioned, conforms to the Coastal Act by ensuring that any successors-in-interest have notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

#### **H. UNPERMITTED DEVELOPMENT**

Violations of the Coastal Act that are associated with the subject residence have been undertaken on the public beach adjacent to the subject property, including placement of private development that encroaches beyond the applicant's seaward property line, including a 60-foot wide wood deck that encroaches 10 feet (totaling 600 square feet) beyond the property line. In addition, the formerly existing residential structure at the subject site was removed without a coastal development permit.

On July 24, 2019 Commission staff sent the property owner a Notice of Violation ("NOV") letter and on July 25, 2019 discussed the encroachment matter with the property owner's representative. In response and in an effort to offset adverse impacts resulting from the unpermitted placement of the encroachments, the property owner (applicant) has agreed to take remedial action, including removal of the unpermitted encroachments, restoration of the area of



the removed encroachments to dune habitat, including recontouring the area and revegetating the area with plants native to southern California coastal dunes as outlined in the proposed *Encroachment Removal and Dune Restoration Plan* (prepared by Envicom, dated 9/19/2019) and required by **Special Condition No. 3**. In addition, the applicant has agreed to perform ongoing removal of invasive ice plant from the public sandy beach within and adjacent to the area where the encroachments will be removed, which is also required by **Special Condition No. 3**.

For background, the Commission notes that the formerly certified LCP for the Sunset Beach area included provisions for private encroachments beyond the seaward property line onto the adjacent public beach. Encroachments were allowed under the former LCP upon receipt of a coastal development permit and there is no evidence that one was ever granted for the encroachment at issue. The encroaching deck was present when this applicant purchased the property in April of 2018; however, this does not affect the applicant's liability for the violation. The applicant is voluntarily proposing to remove the encroachment through this application.

In addition, with regard to demolition of the existing structure at the site, the Commission notes that the applicant pursued and received a demolition permit from the local government and that the local government did not inform the applicant that a coastal development permit from the Coastal Commission was also required. Nevertheless, it is the applicant's responsibility to assure that all required permits are obtained. The applicant is applying for an after-the-fact coastal development permit for the demolition now in an effort to rectify the situation. If the Commission adopts the staff recommendation, this will resolve the violation related to unpermitted demolition of the three-unit residential structure. The Commission has considered the unpermitted demolition as if it had not occurred.

Nevertheless, there were impacts to public access and dune habitat that occurred for a period of time due to the presence of the unpermitted encroaching deck. These impacts due to the unpermitted deck development must be addressed. To address and offset these impacts that accrued due to the unpermitted development, the Commission finds that in addition to removal of the encroachments, the encroachment area, including adjacent beach area, must be restored to natural dune habitat (as described earlier in this report). The applicant has proposed restoration of natural dune habitat in the encroachment area, including the adjacent beach area. The restoration is required by **Special Condition No. 3**.

If the staff recommendation is approved by the Commission, and if the encroachments are removed as proposed by the applicant, and if the site is restored consistent with the requirements of Special Condition No. 3 pursuant to the staff recommendation, and the permit is issued, and the applicant complies with all of its terms and conditions, the violation regarding the unpermitted private development on the public beach will be resolved. However, if the removal of the deck does not occur as proposed, and/or if the encroachment area is not restored consistent with an approved plan pursuant to Special Condition No. 3, enforcement staff will consider action to address the violations of the Coastal Act, including but not necessarily limited to action pursuant to Coastal Act Section 30821, which authorizes the Commission to impose civil penalties for violations of the Coastal Act's public access provisions, with certain exceptions that do not apply here.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations going forward.

#### **I. LOCAL COASTAL PROGRAM**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit must be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. Orange County's LCP for Sunset Beach was effectively certified in 1982 and updated in 1992. However, Sunset Beach was annexed into the City of Huntington Beach effective August 2011. This annexation terminated the County's LCP permitting jurisdiction for the area. The Sunset Beach annexation area has not yet been incorporated into the City of Huntington Beach certified LCP. Thus, there is not currently an effective certified LCP for Sunset Beach and, therefore, the Chapter 3 policies of the Coastal Act provide the standard of review for coastal development permits in the area. The previously certified Sunset Beach LCP may be used as guidance as appropriate where appropriate. As conditioned, the proposed development is consistent with the Chapter 3 policies of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

#### **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096(a) of the Commission's 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 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 City of Huntington Beach is the lead agency responsible for CEQA review. The City determined that the project qualifies for a CEQA exemption. Typically projects are exempt from CEQA pursuant to section 15303(a) of the CEQA Guidelines when they consist of construction of one single-family residence located within an urbanized residential zone. As conditioned, there are no additional feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified possible impacts, is consistent with CEQA and the policies of the Coastal Act.

## **APPENDIX A**

### **SUBSTANTIVE FILE DOCUMENTS**

- 1) Formerly Certified County of Orange Sunset Beach Local Coastal Program |
- 2) City of Huntington Beach Local Coastal Program
- 3) Coastal Hazard & Wave Runup Study; GeoSoils Inc. (10/17/2018, 3.8.2019)
- 4) Encroachment Removal and Dune Restoration Plan (prepared by Envicom Corporation, dated 9/19/2019)