CALIFORNIA COASTAL COMMISSION
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STAFF REPORT: CONSENT CALENDAR

Application No.:	**5-18-0682**
Applicant:	**Murray Seidner**
Agent:	**Susan Vanderpool, Architect**
Location:	16655 Pacific Coast Highway, Sunset Beach Community Huntington Beach, Orange County (APN: 178-522-09)
Project Description:	Demolition of a vacant, commercial one-story structure and construction of a two story, 30 feet high, 4,330 square foot mixed use structure including 2,015 square feet of classic car sales on the first floor, and two, 895 square feet residential units on the second floor with 300 square feet of exterior deck area, and an attached 600 square foot, three garage, and a five space parking lot.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION:

The proposed development will occur on an inland (not ocean or harbor front) lot in the Sunset Beach area of the City of Huntington Beach. The applicant is proposing to construct a mixed use development consisting of a classic car sales and showroom on the ground floor and two 895 square foot residential units above. The site has been recognized by the former LCP for the area and by the City's zoning as appropriate for visitor serving uses. One concern raised by the proposed development was whether a classic car showroom is a visitor serving use. Initially, the showroom was proposed to be available to the public by appointment only with no indication of how such an appointment could be obtained. However, the applicant has now included regular, specific hours that the showroom will be open and available to the general public, in addition to appointments. Staff is recommending that the project be conditioned to assure that the public availability of the showroom will made known to the general public and be maintained into the future. This will assure that the use will indeed serve the visiting public.

Another concern raised by the proposed development, although the subject lot is an inland lot, is that the Wave Runup/Sea Level Rise Study prepared for the project, as well as current best available sea level rise science, indicate that the site may become threatened by coastal hazards prior to the end of its expected 75 year life. For this reason, staff is recommending **Special Condition No. 6** which requires that adaptation measures to be applied to the proposed development include the requirement to remove the proposed structure if it becomes threatened by coastal hazards and that no future shoreline protection device be allowed to protect the structure.

Staff is recommending **approval** of the proposed coastal development permit with **ten (10)** special conditions. The special conditions require: 1) the applicant to implement a Public Signage Plan to make the public aware of the visitor use at the site; 2) that the classic car showroom remain available to the public with regular hours; 3) that if the classic car use no longer remains at the site, any subsequent use be a visitor serving use; 4) that the proposed development to retain on-site parking; 5) that the proposed development not obstruct or interfere with preservation of on-street public parking; 6) prohibition of a future shoreline protection device and removal of the development if it becomes threatened by coastal hazards; 7) conformance with the proposed water quality drainage plan; 8) incorporation of all FEMA National Flood Insurance Program (NFIP) regulatory requirements, to the extent practical, contained in the Wave Runup/Sea Level Rise Study prepared for the proposed project; 9) that the applicant assume the risk of site development and waive liability and indemnity; and, 10) Recordation of a Deed Restriction 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.

The applicant is in agreement with the staff recommendation, including all recommended special conditions.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-18-0682 pursuant to the staff recommendation.*

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

Resolution:

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

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the 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. Public Signage

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a signage plan illustrating the methods to be implemented to make the general public aware of the availability of viewing of the classic car collection to the general public. The signage plan shall provide detailed descriptions, at a minimum, of the following:

1) Plans detailing the size and wording for each sign, including, but not necessarily limited to, the dimensions of the sign face, the specific wording of each sign, and the size of the lettering on the sign;
2) The regular hours the car collection showroom is open and available to the general public, which, as proposed by the applicant, shall be a minimum of Fridays from Noon to 7:00 p.m., and Saturdays and Sundays from 9:00 a.m. to 5:00 p.m., and by appointment;
3) Signage with information regarding how the general public may make an appointment to view the car collection within the showroom;
4) The location of the required signs on the property;
5) The method of placement of the required signs on the property;
6) Confirmation that all required signs will be properly maintained and shall not be allowed to become obscured and/or obstructed by, including but not limited to, vegetation, wear, weathering, placement of other signs or structures, etc.;
6) At a minimum at least one sign shall be of a scale and placed in a location such that it will be visible and legible to motorists traveling in both directions along Pacific Coast Highway.
7) Additional signs shall be of a scale so as to be visible to pedestrians on Pacific Coast Highway and along North Pacific Avenue.

B. The signage plans shall be drawn to scale and prepared by an appropriately recognized professional.

C. The applicant shall implement and carry out all aspects of the approved signage plan for the life of the development.

D. 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.

2. Classic Car Showroom to Remain Public

A. By acceptance of this permit, the permittee agrees that the classic car showroom shall be available to members of the general public a minimum of Fridays from Noon to 7:00 p.m., and Saturdays and Sundays from 9:00 a.m. to 5:00 p.m., and by appointment, as proposed.

The public availability of the classic car show room shall remain in effect for the life of the development, except as provided in Special Condition 3 below.

B. Conversion of all or any part of the classic car showroom to private garage is prohibited.

3. Retention of Visitor Serving Use
By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that the 2,015 square foot ground floor area of the structure subject to this permit shall maintain visitor serving use as described in the City of Huntington Beach certified Local Coastal Program for the life of the development. This restriction shall not apply to the 28 foot x 20 foot (560), three car garage which shall be maintained to serve the second floor residential units.

4. Retention of On-Site Parking
A. By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that the four parking spaces (three within the 560 square foot, 3-car garage and one surface space adjacent to the garage) shall remain available to serve the two residential units for the life of the development.

B. By acceptance of this permit, and as proposed by the applicant, the five on-site, surface parking spaces shall remain available to serve the classic car showroom/visitor serving use for the life of the development.

C. The required and proposed on-site parking described in A and B above is depicted on the site plan attached to this staff report as Exhibit 3.1.

5. On-Street Public Parking
By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that, with the exception of the increase and re-location of driveway along Pacific Coast Highway from ten (10) feet to fifteen (15) feet, the subject development shall not interfere with existing on-street public parking along Pacific Coast Highway and along 18th Street which shall remain unobstructed by the subject development and available to the general public for public parking.

6. 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. 5-18-0682 including, but not limited to, the mixed use commercial/residential structure, garage, foundations, and any future improvements, in the event that the development is threatened with damage or destruction from flooding, 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 applicant further agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the mixed use commercial/residential, garage, foundations, and

hardscape 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) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device to prevent a-d above.

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/or 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.

7. Conformance with 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 all roof drainage will be connected directly to the storm water sewer system by way of gutters and downspouts and that site drainage across the driveways will be served by a trench drain across each driveway approach which will be connected to the storm water sewer system. 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.

8. Incorporate FEMA Recommendations in Wave Runup/Sea Level Rise Study

By acceptance of this permit, the permittee agrees to incorporate all FEMA National Flood Insurance Program (NFIP) regulatory requirements, to the extent practical, included in the Wave Runup/Sea Level Rise Study, prepared for the proposed development by TerraCosta Consulting Group, Inc., dated September 21, 2018.

9. 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.

10. 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 & LOCATION

The applicant is proposing to demolish a vacant structure (formerly a restaurant/bar) and construct a two story, 30 feet high above finished floor elevation (32 feet above finished grade), 4,330 square foot mixed use structure comprised of 2,015 square feet of classic car showroom and sales on the first floor, and two, 895 square foot residential units on the second floor with 300 square feet of exterior deck area. Access to the two residential units is proposed to be provided from the interior of the garage and from an exterior doorway on 18th Street. In addition, the proposed project includes a 560 square foot, three car garage attached to the proposed structure and one surface parking space for a total of four parking spaces to serve the two residential units. Also proposed is a five space surface parking lot to serve the proposed classic car showroom and sales use. The classic car showroom will be open to the public a minimum of Fridays from noon to 7 p.m. and on Saturdays and Sundays from 9:00 a.m. to 5:00 p.m., as well as by appointment.

The subject site, a 5,600 square foot lot, is located at 16655 Pacific Coast Highway, in the Sunset Beach area of the City of Huntington Beach, Orange County (Exhibit 1). Sunset Beach is located on a low-lying, relatively narrow strip of land between two water bodies –the ocean (approximately 200 feet to the west) and Huntington Harbour (approximately 250 feet to the east). The project is located within an existing urban area, on an interior (non-waterfront) lot. The applicant is proposing to incorporate a flood wall that will be consistent with FEMA standards[1]. More specifically, the applicant is proposing to provide a flood wall around the perimeter of the building, including flood shields or barriers. The flood wall will be the lowest 3½ feet of the proposed structure which will be constructed of concrete/block wall. This lowest 3½ feet will be sealed with vapor barriers and then covered with epoxy sealant. The flood shields or barriers will be installed when needed.

Sunset Beach is an area that was formerly unincorporated Orange County area. Under the County's jurisdiction, Sunset Beach was subject to a certified Local Coastal Program (LCP). The former

[1] FEMA P-259, Engineering Principles and Practices of Retrofitting Floodprone Residential Structure, Third Edition (2012).

County LCP for the area was effectively certified in 1982 and last updated in 1992. 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 was last reviewed by the Coastal Commission almost thirty years ago and did not adequately address a number of issues of current concern including appropriate development setbacks from the seaward property line of beachfronting lots and sea level rise concerns, which are likely to be a significant issue in the new LCP, given the high degree of sea level rise vulnerability in the area.

The City has adopted essentially 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 (classic car sales and showroom on the ground floor, with two 895 square foot residential units on the second floor) is consistent with many of the development standards that would have been applicable to the proposed project under the old Sunset Beach LCP, and also the City's current zoning. The old LCP and current City zoning designate the site Sunset Beach Tourist, which requires uses that cater to the needs of tourists, visitors, and the local community. The Sunset Beach Tourist designation also allows residential development when it is: located above the ground floor level, the required parking is provided, and the residential use does not exceed 50% of the gross square footage of the entire structure. The proposed development is consistent with this designation. The height of the proposed structure will be 32 feet above the finished grade, consistent with the City's current height limit for the site and the former County LCP height limit. In addition, the design of the proposed mixed used commercial/residential structure is consistent with existing surrounding development along Pacific Coast Highway in Sunset Beach.

B. PRIORITY OF USE

Coastal Act Section 30213 states, in pertinent part:

> *Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred.*

Coastal Act Section 30222 states:

> *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Sections 30213 and 30222 of the Coastal Act establish a higher priority for visitor serving and recreational uses over lesser priority uses such as residential, industrial or general commercial. These policies prioritize visitor serving uses within the coastal zone. Not all land within the coastal zone is designated for visitor serving use. Non-visitor serving land use designations are allowed

within the coastal zone. However, this underscores the importance of promoting and retaining visitor serving uses over lesser priority uses at those sites that are recognized as appropriate for visitor serving uses. Typically, land that is designated for visitor serving use is specifically identified for such use because its location and attributes especially lend itself to recreational opportunities. These locations may be near the beach, on a busy visitor access corridor, offer coastal view opportunities, and/or are located in an area known as a visitor destination. Any change of use within areas of known visitor serving uses, such as the subject site, must be carefully considered.

The subject site is located within the City of Huntington Beach, though not in an area covered by the City's certified LCP. Nevertheless, that LCP may be used as guidance. The City's LCP includes a Commercial Visitor (CV) land use designation. The CV land use designation allows uses such as "hotels/motels, restaurants, recreation-related retail sales, cultural uses (e.g. museums) and similar uses oriented to coastal and other visitors to the City." The City's zoning (also not yet certified by the Coastal Commission) for this site is Sunset Beach Tourist.

The subject site is located on Pacific Coast Highway, a major tourist and public access corridor. It is also located within walking distance to the beach, as well as the public amenities along Huntington Harbour, including a public walkway and other visitor serving uses. In addition, a number of overnight visitor accommodations are present along Pacific Coast Highway in Sunset Beach. The majority of sites fronting Pacific Coast Highway in this area, including the subject site, have been recognized as Sunset Beach Tourist under the County's former LCP and in the City's zoning, reflecting the suitableness of the subject site for visitor serving uses.

The visitor use proposed, classic car sales and showroom would provide a visitor use as long as it is accessible to the general public visitor on a regular basis. Such a use would be similar to art galleries or museums, appealing to those with specific interests as well as the public in general. Originally, the applicant proposed that the showroom would be available by appointment only, with no description of how a member of the public would know the classic cars could be viewed by appointment, if at all. Under that scenario there would be no assurance that a visitor use would actually be provided with the proposed development, raising concerns that the classic car showroom would become a de facto private garage. A private garage, even if opened to others by special appointment only, cannot be considered a visitor serving use. However, the applicant has modified the proposal to open the classic car showroom to the general public during specific hours. As now proposed, the classic car showroom will be open to the public at a minimum on Fridays from noon to 7:00 p.m. and on Saturdays and Sundays from 9:00 a.m. to 5:00 p.m., as well as by appointment.

Such a use, when available to the general public during regular hours as well as by appointment, may be considered a visitor serving use. Visitors to the area may stroll along Pacific Coast Highway and the Sunset Beach area generally before or after a visit to the beach, as guests of the overnight accommodations in the area, before or after visiting local restaurants, or they may even make a special trip to Sunset Beach specifically to see the classic car collection. Thus, in addition to serving the owner of the collection and potentially high-end car collectors, the proposed use, as long as it remains available to the general public during regular hours, would be considered a visitor serving use for the general public. However, it is important that the availability of this visitor use, viewing of classic cars, be made known to the general public. If the use is present, but the public is unaware of the opportunity, it is little better than not having the visitor use. The provision of signage at the site would address this issue. Signage, visible both to motorists traveling along Pacific Coast

Highway and to pedestrians in the area, will maximize the realization by visitors of their opportunity to actually visit the showroom. Therefore, the Commission imposes **Special Condition No. 1** which requires the applicant to implement a signage plan (reviewed and accepted by the Executive Director) to promote the visitor serving use at the site to the general public. Only as conditioned is the proposed development consistent with Coastal Act Sections 30213 and 30222 regarding the higher priority of visitor serving uses.

In addition, it is equally important to assure that the use continues to remain available to the general public into the future, and does not instead ultimately become merely a private garage or other non-visitor serving use. Only then is there assurance that a visitor serving use would actually be provided for the duration of the development. Therefore, the Commission imposes **Special Condition No. 2** to assure that the visitor use (public viewing of the classic cars) remains available to the public, and that the public visitor use is maintained at the site for the life of the development. In addition, in the event the classic car use may no longer be viable or otherwise change in the future, it is important to assure that whatever future use may occur also be a visitor serving one. Therefore, the Commission imposes **Special Condition No. 3** which requires that the lower floor (other than the garage serving the residential units) be maintained as a visitor serving use only. These conditions are necessary to assure that the proposed development is consistent with the Coastal Act priority of visitor serving use over lesser priority uses consistent with Sections 30213 and 30222 of the Coastal Act.

The proposed residential use on the second floor is consistent with the County's former LCP for the area and with the City's zoning for the site. The Commission recognizes there can be benefits from locating residential development within areas that include commercial uses. This juxtaposition of uses can create an environment where residents are less reliant on vehicles to conduct routine activities such as shopping, dining and, in some cases, commuting to work. Also, when limited residential development is allowed within visitor serving areas it helps provide a base of support for the commercial development during the off-peak seasons, which in turn helps to support the continuance of those uses for visitors. The Commission has approved mixed use type development and zoning when and where appropriate and when adequate visitor serving uses remain the predominant use in the vicinity. One such example is in the downtown core area of the City of Huntington Beach, which is still a significant visitor draw even though residential development occurs above the ground floor. In this case, the residential use will be comprised two 895 square foot units on the second floor, a total of 1,790 square feet of a 4,330 square foot structure. This represents approximately 41% of the total structure. In addition, the entire ground floor area of the proposed development will be a visitor serving use (as described above). The ground floor is the area most likely to be used by visitors as it is most visible and easily accessible. For these reasons, the Commission finds the proposed development is consistent with Sections 30213 and 30222 of the Coastal Act regarding prioritizing visitor serving uses.

C. 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.*

Coastal Act Section 30252 states, in pertinent part:

> *The location and amount of new development should maintain and enhance public access to the coast by … (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, …*

The subject site is located approximately 200 feet from the public sandy, ocean-fronting beach. And approximately 250 feet inland of the subject site, there is a small harborfront beach suitable for launching small craft such as kayaks and paddleboards (see Exhibit 1). In addition, there is a public boardwalk along the harborfront located approximately 1200 feet from the subject site. In order for the proposed development to be found consistent with the Coastal Act's requirement that public access be maximized, new development must not interfere with continued public access opportunities to both the sandy beach and the public amenities at the harbor.

There is a public parking area located on either side of the "greenbelt" located just steps from the subject site and about 150 feet from the sandy public beach. In addition, there are 72 parking spaces available to public beach-goers at Peter's Landing, located about 1,200 feet from the subject site. However, there is otherwise very limited on-street parking in Sunset Beach to serve public beach-goers and visitors to the harbor. During peak use periods, the parking demand exceeds the supply. This especially affects public use of Sunset Beach's public beach, which tends to be under-utilized compared to Bolsa Chica State Beach and Huntington City and State beaches, located just downcoast. The downcoast beaches are adjacent to large public parking lots. Both the beach and harbor are great visitor destinations, especially in the summer. During the peak use periods, the lack of parking can interfere with public access when visitors cannot find an available space to park.

Parking

Consistent with Coastal Act Section 30252, one of the ways the Commission assures that public access is maximized is by assuring that adequate parking is provided with new development and that new development not adversely impact the availability of existing public parking spaces.

The proposed development is a mixed use commercial and residential project. The parking standard typically imposed by the Commission for residential development is two parking spaces per residential unit. The proposed project includes one, three-car garage and one surface parking space to serve the two residential units, which meets the Commission's typically imposed parking standard. In addition, the proposed development includes 2,015 square feet of classic car sales. The

parking standard typically imposed by the Commission for car sales is one parking space per 500 square feet of sales area. The City's zoning requirement for car sales establishments in the Sunset Beach area is one parking space for each 400 sq. ft. of gross floor area (generating a parking demand of five spaces), which is in general alignment with the Commission's typically imposed standard. The proposed development would provide five parking spaces in a surface parking lot. Thus, as proposed, the development will provide adequate parking to serve the proposed uses. To assure that the applicant is aware of the importance of retaining on-site parking necessary to serve the proposed development now and in the future, **Special Condition No. 4** is imposed, which informs the applicant of this requirement.

To further assure public access is maximized, another parking consideration with new development is whether the project would have adverse impacts on existing, public parking such as on-street parking available to the general public. In this case public parking spaces are currently available adjacent to the site along Pacific Coast Highway and 18th Street. No changes to the 18th Street parking would result from the proposed development. However, on Pacific Coast Highway the current driveway access is 10 feet wide. The proposed project would shift the driveway access slightly to the northwest (toward 18th St.) and would increase the width to 15 feet. The PCH parking frontage of the subject site is 70 feet. Currently there is a 16 foot space between driveways on PCH, which is slightly under the typical minimum length of 19 feet required for a parking spot. Shifting the driveway to the northwest would increase the length of the on-street parking space to 20 feet long, which would allow a car to park on-street in that area. Currently there is 40 feet of space along PCH northwest of the existing driveway access, enough for two cars to park. Once the driveway opening is shifted and lengthened as proposed, the space along PCH will be approximately 36 feet, which would still allow parking of two cars. Thus, as proposed the project would not reduce any currently available, on-street public parking, enhancing public access. There currently is no public parking available along North Pacific Avenue, and, although there will be new driveways to serve the residential garage and the surface parking lot, no change to the current public parking condition would result from the proposed project. North Pacific Avenue parking is available by permit only. The permits are available only to residents. The Commission has never reviewed or accepted this permit parking status. However, this applicant has no control over whether the area is available for public parking or limited to permit parking only. To assure that the applicant is aware of the importance of retaining on-street public parking now and in the future and that this development not interfere with continuance of that publicly available on-street parking, **Special Condition No. 5**, which informs the applicant of this requirement.

Sea Level Rise

As reflected in the Coastal Act Sections 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. 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. 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.

As described below, and as indicated by the best available science for this area, the subject site and surrounding area are vulnerable to impacts of sea level rise. Review of CoSMoS modeling in the immediate project vicinity indicates the currently wide sandy beach will likely narrow significantly over the 75-year life of the proposed mixed use development (Exhibit 2). The loss of sandy public beach area due to sea level rise will increasingly limit the sandy beach areas available for public use. **Special Condition No. 6** requires removal of the proposed development if it blocks or impeded public access through the landward migration of the public trust boundary, if it becomes threatened by coastal hazards, or is required to be removed pursuant to LCP policies of a certified LCP. Removing threatened development, rather than protecting it, increases likely future opportunities to retain remaining and/or shifting beach area for public access, as does recognizing that adaptation planning by the local jurisdiction may warrant removal of the property to protect, for example, public beach areas for recreation. Only as conditioned, can the proposed development be found to be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

D. 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 residences and damaging necessary public services. Although development currently exists between the subject site and the ocean and harbor, sea level rise models suggest the site will likely become at risk within the expected 75-year life of the proposed mixed use structure. To address questions raised by these issues, the applicant's coastal engineer provided a Wave Runup/Sea Level Rise Study (TerraCosta Consulting Group, Inc., September 21, 2018).

The Sunset Beach community, where the subject site is located, has historically experienced flooding and damage from storm waves, and areas adjacent to the harbor can flood now during high

tides, or high tides combined with storms. In response to these recurring flood problems, the community has developed several programs to minimize beach loss and flood risk. The US Army Corps of Engineers (USACE), in conjunction with the city and county, undertakes a periodic beach replenishment program that is on-going for more than 50 years. The County, and now the City of Huntington Beach, also constructs a seasonal berm across the beach each winter for protection from storm waves. Both of these programs enhance the beach areas and reduce flooding, but such efforts happen only with a sustained financial commitment from the different funding agencies. Without ongoing interventions, much of the lower lying areas of Huntington Beach, including Sunset Beach, would likely be at increased risk from flooding, and shoreline areas would be at risk from erosion. With rising sea level, these risks are likely to increase unless the interventions become larger or more frequent to keep up with the future hazards.

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.[2] 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*.[3] 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*.[4] 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 probabilistic projections in the 2017 Rising Seas report and the 2018 OPC Guidance suggest sea levels could rise

[2] http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf

[3] Griggs, G, Árvai, 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.

[4] 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

between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge[5], 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[6].

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 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, groundwater rise, 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

[5] 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.

[6] https://www.coastal.ca.gov/climate/slrguidance.html

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.[7] 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 about 200 feet from the subject site). Although the subject site is not a beachfront site, with expected sea level rise and related erosion and flooding, the 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 and groundwater rise, while an area of developing science, could exacerbate flood risks in future. Together, these risks raise 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 statewide LCPs 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."*[8]

In order to avoid the adverse impacts of shoreline protection devices (described above), it is important to assure that new development (such as demolition of an existing structure and

[7] Summarized from http://www.beachapedia.org/Seawalls

[8] 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 plainly new development.

construction of a new structure, 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.

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 not currently located adjacent to the public sandy beach. But with sea level rise the location of the beach may well move inland, towards the subject site. Even though development is currently present between the site and the beach, that may not be the case in the future.

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 commercial and residential uses are not public trust uses and the existence of private commercial and 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 shoreline currently located about 200 feet seaward of 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 600 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 Wave Runup/Sea Level Rise Study, prepared by TerraCosta Consulting Group, Inc., dated September 21, 2018 (Study). The Study states:

> *Moffatt & Nichol*[9] *developed tidal flooding maps for 1 foot, 2 feet, and 5.5 feet of sea level rise, with the results reproduced on Figures 16, 17, and 18 of this report. The corresponding worst-case 100-year design flood level assuming 1 foot of sea level rise along Pacific Coast Highway is 8.18 feet NAVD 88, 9.18 feet NAVD 88 with 2 feet of sea level rise, and 12.68 feet NAVD 88 with 5.5 feet of sea level rise. As indicated on Figure 2, top-of-curb elevations along Pacific Coast Highway in front of the subject property range from 7.51 to 7.97 feet NAVD 88 with the actual proposed garage floor elevation at 8.50 feet NAVD 88. Thus, about 1.3 feet of sea level rise would inundate the proposed showroom floor sometime between 2035 and 2100, depending on the SLR scenario selected. These scenarios are also shown on Figure 15 with the finish floor (FF) elevation of the display facility, along with the architectural flood wall around the building.*
>
> *By the year 2100, with a tidal high flood level of 12.68 feet*[sic (NAVD 88 assumed)]*, as shown on Figure 18, much of the Huntington Harbour area would be inundated, affecting all of the properties on Pacific Coast Highway. Notably, the proposed antique car display facility was designed with architecturally attractive flood walls that could accommodate waterproof closures to prevent flood waters from entering the facility.*

The Study considers impacts to the site due to sea level rise of 1 foot, 2 feet, and 5.5 feet. The Study finds that "*about 1.3 feet of sea level rise would inundate the proposed showroom floor sometime between 2035 and 2100, depending on the SLR scenario selected."* The Study finds that, with construction of the proposed flood wall, the site is expected to be safe from sea level rise impacts until sea level reaches about 4.8 feet, expected by the Study to occur with their identified high sea level rise scenario by approximately 2080. The provided analysis used a maximum sea level rise of 5.5 feet by 2100; however, the Study does not examine the most recent OPC and Coastal Commission guidance. The current best available science, 2018 OPC Guidance and 2018 Coastal Commission Sea Level Rise Policy Guidance provides that residential structures, such as the proposed development, should examine the sea level rise projections associated with Medium-High risk aversion or 6.7 feet of SLR by 2100. Applying the best available science standard, the proposed development may be threatened earlier than identified in the applicant's Study and prior to its expected 75 year life. 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.

The Study acknowledges that the applicant is proposing to incorporate a flood wall that will be consistent with FEMA standards[10]. More specifically, the applicant is proposing to provide a flood wall at the base of the building perimeter, including flood shields or barriers. The flood wall will be the lowest 3½ feet of the proposed structure's exterior walls which will be constructed of concrete/block wall. This lowest 3½ feet of the proposed structure's wall will be sealed with vapor barriers and then covered with epoxy sealant. The flood shields or barriers will be installed when needed. In addition, the applicant is proposing to keep electrical utilities at the 42" height, and

[9] Moffatt & Nichol prepared a Sea Level Rise Vulnerability Assessment for the City of Huntington Beach dated December 2014, which has been used as a reference in the project's Study. Moffatt & Nichol is a multidiscipline professional services firm with expertise in structural, coastal, and civil engineering; environmental sciences; economics analysis; inspection & rehabilitation; and program management solutions.

[10] FEMA P-259, Engineering Principles and Practices of Retrofitting Floodprone Residential Structure, Third Edition (2012).

providing submersible pumps as needed. The Study includes a number of other FEMA recommended measures for development in areas prone to flooding such as use of construction materials resistant to damage from immersion in flood waters, and the use of construction methods and practices that minimize flood damage. Special Condition No. 8 is imposed which requires these FEMA measures be incorporated into the design of the structure to the extent practical. These measures are consistent with the Coastal Commission's Sea Level Rise Guidance which recommends the projects incorporate FEMA flood protection measures. These measures are proposed to protect against future flooding, but since these recommendations do not consider future flooding with sea level rise, the flood recommendations should be modified to include the Medium-High Risk sea level rise projections whenever possible.

Further, it is important to note that the proposed flood wall would not act as a shoreline protection device (SPD) because it is not intended or engineered to act as one. It would not be constructed at a low enough elevation to stop erosion from wave activity or scour, which a SPD would. As proposed, this flood wall would act similarly to the placement of sandbags during an anticipated flooding episode. The proposed flood wall is consistent with the Commission's Sea Level Rise Guidance accommodations strategy for areas prone to flooding as identified by FEMA. However, FEMA flood areas do not currently consider future sea level rise.

Moreover, the applicant has stated (in written correspondence with Coastal Commission staff received in response to staff's 10/16/2018 letter requesting additional information to complete the application files[11]): "*The property owner understands the risk and is willing to undertake the responsibility of these conditions.*" The applicant has also indicated acceptance of all recommended special conditions including Special Condition No. 6 which states that the applicant has no right to a shoreline protective device for the proposed development and that development must be removed if threatened.

The Study notes that shoreline erosion and even flooding from the ocean are likely to be minimal due to the expected continued maintenance of the beach nourishment program and constructed sand berms. The Study notes that the USACE "remains committed to ongoing nourishment of the surfside Sunset Beach shoreline, ongoing future beach nourishment project, at least for the next century, will continue to mitigate overtopping the beach berm and the associated flooding from a 100-year wave event, even with the highest range of SLR considered by the year 2100 at 5.5 feet." Despite the optimism provided in the Study, program funding for the rest of the century is not guaranteed, nor is the commitment to undertake more frequent nourishments and larger berms to keep pace with rising sea level. 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 (Exhibit 2) and related flooding. Impacts due to expected future sea level rise flooding will be worse when storm activity and possible groundwater impacts are also factored in.

In this case, because with future sea level rise, 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, where the

[11] Applicant's response is undated, but was received in the Coastal Commission's South Coast District on 11/5/2018.

subject site is located, 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. The Study acknowledges that by 2100, much of Huntington Harbour may be inundated, affecting all of the properties on Pacific Coast Highway. Moreover, the flooding that may be likely at the site with future sea level rise may mean the subject site is no longer located on private property due to the migration of the public trust boundary.

Because the best available science indicates the proposed development will be threatened by coastal hazards as a result of sea level rise at some point during 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, nothing would prevent the applicant from requesting 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 development approved by this permit is not entitled to a shoreline protection device now or in the future. Therefore, **Special Condition 6** 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.

Removal if Development is Threatened

Given that coastal hazards may impact the proposed development to some extent during 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 towards 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 proposed development 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 new development were to be removed if threatened, rather than protected by a shoreline protection device, the proposed development may be found to be consistent with the Coastal Act hazards policies, because the structurally unsound or unsafe development would be removed, minimizing risks to property and life.

Therefore, the Commission imposes **Special Condition 6**, which requires the landowner to remove the development 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) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device to prevent a-d above. **Special Condition 6** 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 most of its economic life, 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 their 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 6** requires the land owner(s) to remove the development if required pursuant to LCP policies for sea level rise adaptation planning.

The Commission also finds that due to the possibility of storm waves, surges, flooding, erosion and other coastal hazards the applicant shall assume these risks 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 9**, 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.

In addition, the Commission imposes **Special Condition 10**, which requires the applicant to record a deed restriction on the property, acknowledging the risks inherent in undertaking development in this dynamic area and acknowledging that the degree of future risk cannot be known with certainty today. Additionally, **Special Condition 10** imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser and any

future owners of the site with recorded notice that the restrictions are imposed on the subject property. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the hazards and shoreline development policies of the Coastal Act.

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.

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 has proposed the following measures to minimize impacts to coastal waters in conjunction with development of the subject site: roof drainage will be connected directly to the storm water sewer system, site drainage across the driveways will be served by a trench drain across each driveway and connected to the storm water sewer system. Because of the high water table at the subject site and vicinity, the applicant is not proposing to retain water on-site. These measures are reflected on plan sheet A-03 (Exhibit 3.3).

Implementation of the proposed water quality measures will minimize adverse water quality impacts and protect water quality. In order to assure these measures are implemented as proposed by the applicant, **Special Condition 7** is imposed which requires the applicant to carry out the drainage plan as proposed. As proposed and conditioned, the project conforms to the water quality policies of the Coastal Act. 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. 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 9**, 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 proper notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

G. 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. 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.

H. 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 categorical exemption because the project involves construction of a 4,330 square foot mixed use (commercial/residential) structure in an urbanized area. 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 certified Local Coastal Program

3) City of Huntington Beach Approval in Concept, 8/8/18

4) Wave Runup/Sea Level Rise Study; TerraCosta Consulting Group, Inc., (September 21, 2018)

5) Ocean Protection Council's *Rising Seas in California: An Update on Sea-Level Rise Science*

6) Ocean Protection Council's *State of California Sea-Level Rise Guidance 2018 Update*