

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
 89 SOUTH CALIFORNIA ST., SUITE 200  
 VENTURA, CA 93001  
 (805) 585-1800



# Th15a

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Staff Report:	2/21/19
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## **STAFF REPORT: APPEAL DE NOVO REVIEW**

**APPEAL NUMBER:** A-4-OXN-18-0053

**APPLICANT:** **JREJ Mandalay Properties LLC**

**APPELLANTS:** David and Faith Grant

**LOCAL GOVERNMENT:** City of Oxnard

**LOCAL DECISION:** Approval with Conditions of Coastal Development Permit  
No. 17-400-04

**PROJECT LOCATION:** **1125 Capri Way**, City of Oxnard, Ventura County (APN: 191-0-091-045)

**PROJECT DESCRIPTION:** Demolition of an existing 1,800 sq. ft. single-family residence and construction of a new 5,028 sq. ft. single-family residence with an attached garage.

**STAFF RECOMMENDATION:** Approval with Conditions

**MOTION & RESOLUTION:** Page 4

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve the de novo CDP application, pursuant to revisions to the project by the applicant and subject to nine special conditions, on the basis that the project conforms to the hazards, public access, water quality, and scenic resource protection policies of the certified LCP, as well as the public access and recreation policies of the Coastal Act. The standard of review for consideration of this de novo Coastal Development Permit is whether

the proposed development is in conformity with the policies and provisions of City of Oxnard's certified LCP and the public access and recreation policies of the Coastal Act.

The subject coastal development permit was approved by the City of Oxnard Planning Commission on May 17, 2018. The action by the Planning Commission was appealed to the Oxnard City Council by David and Faith Grant. The Oxnard City Council upheld the Planning Commission's action, thereby approving CDP No. 17-400-04 for the demolition of an existing 1,800 sq. ft. single family residence and construction of a new 5,028 sq. ft. residence with an attached garage. On February 7, 2019 the Commission found that the City's action approving the proposed development raised a substantial issue with respect to the project's conformance with the City of Oxnard's certified Local Coastal Program regarding coastal hazards, shoreline development, public access and visual resources, and the public access policies of the Coastal Act. The Commission is now required to hold a de novo hearing on the merits of the project, which is the subject of this staff report. The de novo hearing was previously scheduled for the February hearing, but was postponed by the applicant on February 6, 2019. The de novo hearing is currently scheduled for the March hearing by request of the applicant.

The project site is located on a 0.15-acre beachfront parcel within the Oxnard Shores community, and is bordered by a vacant lot to the north and residentially developed lots to the west and south. In 1987, the Commission approved a permit for development of an addition to the existing residence, which required the permittee to offer to dedicate a lateral public access easement over a portion of the property. A 1988 settlement agreement regarding vacant undeveloped beachfront lots in the Oxnard Shores area required a reconfiguration of most of the lots in the area, which established a permanent boundary line between beachfront parcels and public tideland parcels and also required creation of public beach accessways. The developed beachfront lots, which were not a part of the settlement agreement, extend farther towards the ocean than the lots subject to the settlement agreement. The subject parcel is one such lot, which was not subject to the settlement agreement and extends towards the water 140 feet in depth from Capri Way. The vacant lot to the north and the appellant's lot (1131 Capri Way) to the south, both of which were lots subject to the 1988 settlement agreement, extend only 120 feet seaward of Capri Way. Oxnard Shores is currently a wide sandy beach; nonetheless, this beach has displayed significant oscillation and has suffered severe beach erosion during the El Nino events in the late 1970s and early 1980s, which resulted in wave uprush all the way onto Capri Way, the eastern border of the subject site. Thus, Oxnard Shores beach and the subject site are clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides, and this will be exacerbated by the effects of future sea level rise.

The proposed development is located on a beachfront lot and will be vulnerable to coastal hazards that will be exacerbated by future sea level rise. The seaward extent of the development approved by the City was not the most landward feasible location and as such would not minimize the risks posed by the hazards affecting shoreline development, nor minimize impacts to public access and visual resources over the anticipated life of the development. Following the appeal, Commission staff met with the applicant several times to discuss the rationale for the appeal, as well as the ways by which the issues raised could be resolved. Consistent with past Commission actions on similar beachfront redevelopment projects, staff suggested that the project minimize seaward encroachment onto the sandy beach by siting the residence in a more

landward location to ensure that the project is consistent with the LCP and relevant Coastal Act policies.

The applicant has made modifications to the project to address the appellants' contentions, including a 20-ft. setback from the seaward (western) property line, which means the residence would extend no further than 120 ft. from the eastern property line along Capri Way, except for a temporary deck that is easily removable will extend up to 10 ft. from the residential structure, but extend no further than the "deck stringline" (drawn between the nearest corners of existing decks upcoast and downcoast of the subject site) with a retractable staircase from the deck to the sand. Restricting the seaward extent of development in this way would establish a logical seaward development line and afford the applicant the opportunity to demolish the existing residence and construct a larger one while minimizing seaward encroachment onto the sandy beach. Therefore, staff recommends **Special Condition One (1)** to require the applicant to submit final revised project plans deleting all portions of the residence that extend beyond the 120 ft. maximum seaward development line, except for a temporary deck that can be easily removed at such time when it becomes threatened with damage or destruction from coastal hazards, is damaged by coastal hazards, or reinforcement, shoreline protective devices, or any other protective action is needed, so it will minimize hazard risks as well as avoid impacts to public access.

Furthermore, the shoreline is a dynamic environment, and although the proposed residence has been designed and conditioned to ensure structural stability relative to wave action and forecasted sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. To address the possibility that the structure will not be constructed in a manner adequate to ensure structural stability relative to increased future wave action, sea level rise, and tidal events, **Special Condition Two (2)** has been required to ensure that no future shoreline protective device will be constructed on site to protect the proposed development and to require the landowner to remove the development if a government agency orders that portions or all of the structures may not be occupied due to hazards or property ownership issues identified in this report. Furthermore, staff recommends **Special Conditions 3-9** to ensure consistency with the hazards, public access, water quality, and scenic resource protection policies of the certified LCP. The motion and resolution to act on this recommendation follow below on page 4.

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Exhibit 1.	<b>Vicinity Map</b>
Exhibit 2.	<b>Parcel Map</b>
Exhibit 3.	<b>Aerial Photo</b>
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Exhibit 5.	<b>Historic Aerial Photos 1972 &amp; 1979</b>
Exhibit 6.	<b>Revised Project Plan and Deck Stringline</b>
Exhibit 7.	<b>Conceptual Temporary Deck Design</b>
Exhibit 8.	<b>Final Local Action Notice &amp; City Resolution</b>
Exhibit 9.	<b>Correspondence from Appellant’s Representative, dated September 10, 2018</b>

## I. MOTION AND RESOLUTION ON DE NOVO REVIEW

The staff recommends that the Commission adopt the following resolution:

Motion:

*I move that the Commission **approve** Coastal Development Permit Number A-4-  
OXN-18-0053 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 an affirmative vote by a majority of the appointed 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 public access and recreation policies of the Coastal Act and the policies of the certified Local Coastal Program for the City of Oxnard. 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 impact of the development on the environment.*

**II. PROCEDURAL HISTORY**

On May 17, 2018, the City of Oxnard Planning Commission approved a coastal development permit (CDP No. 17-400-04) with conditions. The action by the Planning Commission was appealed to the Oxnard City Council by David and Faith Grant within the local appeal period, on May 29, 2018. The appeal was denied and the permit for the project was approved by the Oxnard City Council on July 10, 2018. The City’s Notice of Final Action was received by Commission staff on July 10, 2018 (Exhibit 8). The Commission’s ten-working day appeal period for this action began on July 16, 2018 and ended on July 30, 2018. An appeal of the City’s permit was filed by David and Faith Grant on July 27, 2018, during the appeal period. Commission staff immediately notified the City, the applicant, and interested parties that were listed on the appeal form of the appeal, and requested that the City provide its administrative record for the permit. On August 7, 2018 Commission staff received the administrative record from the City.

On February 7, 2019 the Commission found that the City’s action approving the proposed development raised a substantial issue with respect to the project’s conformance with the City of Oxnard’s certified Local Coastal Program regarding coastal hazards, shoreline development, public access and visual resources, and the public access policies of the Coastal Act. The Commission is now required to hold a de novo hearing on the merits of the project, which is the subject of this staff report. The de novo hearing was previously scheduled for the February hearing, but was postponed by the applicant on February 6, 2019. The de novo hearing is currently scheduled for the March hearing by request of the applicant.

**III. 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.

#### **IV. SPECIAL CONDITIONS**

##### **1. Final Revised Plans**

- A. *Prior to issuance of the Coastal Development Permit*, the applicant shall submit for the review and written approval by the Executive Director, revised final plans that are in substantial conformance with the plans prepared by Martha Picciotti Architect, dated 3/19/18, except that they shall demonstrate that the proposed project has been revised to restrict the residential structure and all development to extend no further than 120 feet from the northern property line, except a temporary deck that is easily removable may extend up to 10 ft. beyond that but no further than a “deck stringline”, which shall be drawn between the nearest corner of the existing legally permitted deck at 1131 Capri Way and the nearest adjacent corner of the existing legally permitted deck at 1115 Capri Way, based upon a surveyed map that is drawn to scale and prepared by a licensed land surveyor.
- B. The permittee shall undertake development 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.

##### **2. No Future Shoreline Protective Device and Development Removal**

- A. By acceptance of the permit, the Permittee agrees, on behalf of itself and all successors and assignees, that no new shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this coastal development permit including, but not limited to, the residence, garage, deck, driveway, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the Permittee hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices for the purpose of protecting the development approved pursuant to this coastal development permit that may exist under Public Resources Code Section 30235 or any analogous provision of the City of Oxnard LCP.
- B. By acceptance of this permit, the Permittee further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit including, but not limited to, the residence, garage, deck, driveway, and any other

future improvements if: (1) any government agency with relevant authority and jurisdiction has ordered that the structures are not to be occupied due to hazards, or must be removed; (2) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); or (3) the development requires new shoreline protective devices that conflict with LCP or relevant Coastal Act policies. In addition to these requirements, the landowner shall remove the approved temporary deck, or portions of it, when it becomes threatened with damage or destruction from coastal hazards, is damaged by coastal hazards, or if reinforcement, shoreline protective devices, or any other protective action is needed. Further, development approval does not permit 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.

In the event that portions of the development fall to the beach before they are removed, the landowner 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. The landowner shall obtain a coastal development permit for removal of approved development and recoverable debris unless the City of Oxnard and/or Coastal Commission provides a written determination that no coastal development permit is legally required.

### **3. Coastal Hazard Risk**

By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:

- (a) Coastal Hazards: That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same and as influenced by sea level rise;
- (b) Assume Risks: To assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such coastal hazards in connection with this permitted development;
- (c) Waive Liability: To unconditionally waive any claim of damage or liability against the City and Coastal Commission, and their officers, agents, and employees for injury or damage from such coastal hazards;
- (d) Indemnification: To indemnify and hold harmless the City and Coastal Commission and their 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 coastal hazards;
- (e) Shifting Property Boundaries and Permit Intent: The boundary between public land (tidelands) and private land may shift with rising seas, the structure(s) may eventually be located on public trust lands, the development approval does not permit encroachment onto public trust land; any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and

authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval. The intent of this permit is to allow for the approved project to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains reasonably safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance to protect it from coastal hazards, and for only as long as the approved project remains on private property;

- (f) Disclosure: All documents related to any future marketing and sale of the subject property, including but not limited to marketing materials, sales contracts, deeds, and similar documents shall notify buyers of the terms and conditions of this Coastal Development Permit; and
- (g) Property Owner Responsible: That any adverse effects to property caused by the permitted project shall be fully the responsibility of the property owner.
- (h) Essential Services: Sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage, drainage, or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable;
- (i) Removal trigger: The structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to Special Condition 2.

#### **4. Deed Restriction/Recordation of Notice of Terms of CDP**

*Prior to issuance of the Coastal Development Permit*, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the landowner has executed and recorded 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 (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and 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 applicant's entire parcel or parcels. 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.

#### **5. Plans Conforming to Geotechnical and Coastal Engineer's Recommendations**

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted coastal engineering and geology, geotechnical, and/or soils reports. These recommendations, including recommendations concerning foundations, construction, grading, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant(s) prior to commencement of development.



The final plans approved by the consultant(s) shall be in substantial conformance with the plans approved by the City relative to foundation, construction, grading, drainage, and height of the structure. Any substantial changes in the proposed development approved by the City that may be required by the consultant(s) shall require an amendment to this permit or a new Coastal Development Permit.

**6. Interim Erosion Control Plans and Construction Responsibilities**

A. *Prior to issuance of the Coastal Development Permit*, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

1. Erosion Control Plan

- (a) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags.
- (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
- (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
- (d) The plan shall specify that grading shall take place only during the dry season (April 15 – October 15). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.
- (e) The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

- (g) All temporary, construction related erosion control materials shall be comprised of bio-degradable materials (natural fiber, not photo-degradable plastics) and must be removed when permanent erosion control measures are in place. Bio-degradable erosion control materials may be left in place if they have been incorporated into the permanent landscaping design.

2. Construction Best Management Practices

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a permitted disposal site or recycled at a permitted 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.

B. The final Interim Erosion Control and Construction Best Management Practices Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

## **7. Sign Restriction**

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach located adjacent to the subject site is private or otherwise not open to the public, or (b) contains similar messages that attempt to prohibit public use of this portion of the beach.

## **8. Public Rights**

A. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. 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.

B. This permit does not authorize the development to physically interfere with any public access rights that may exist at any future date.

## **9. City of Oxnard Conditions**

The applicant shall comply with all of the City of Oxnard conditions attached to the City's approval of CDP No. PZ-17-400-04 as listed in Resolution No. 2018-11 (Exhibit 8 of this staff report), except as specifically modified by this approval and any subsequent amendments to the project description. Any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Development Permit is required. *Prior to issuance of the Coastal Development Permit*, the applicant shall submit evidence of such condition compliance for the review and approval of the Executive Director.

## **V. FINDINGS AND DECLARATIONS**

The standard of review for the Commission's de novo review of this CDP application is contained in the policies and provisions of the City of Oxnard certified LCP and the public access and recreation policies of the Coastal Act.

## **A. PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING**

The project includes demolition of an existing 1,800 sq. ft. single family residence and construction of a new 5,028 sq. ft. single family residence on a caisson foundation with an attached four car garage, a temporary detachable deck constructed on removable wood posts on shallow removable concrete piers (as depicted on Exhibit 7), and the construction of a retractable staircase at 1125 Capri Way (APN: 19-0-091-045) (Exhibits 1-4).

Prior to the Commission's substantial issue hearing, the applicant met with Commission staff several times to discuss the appeal, as well as ways by which the issues raised by the appeal could be resolved. Based on several discussions with Commission staff to address the coastal issues, the applicant has made several modifications to the proposed project for the de novo coastal development permit. The currently proposed project, which is sited further landward than the proposed structure approved by the City, will be set back 20 feet from the seaward (western) property line to restrict all new development no further than 120 feet from the eastern property line along Capri Way, except that a temporary detachable deck that is easily removable which will extend up to 10 ft. from the residential structure, but extend no further than the "deck stringline" which shall be drawn between the nearest adjacent corner of the existing deck located at 1131 Capri Way and the nearest adjacent corner of the existing deck at 1115 Capri Way, as depicted on Exhibit 6.

The proposed project is located on a 0.15-acre, 45-foot wide by 140-foot long, beachfront lot that is located within the Oxnard Shores Neighborhood. Oxnard Shores is currently a wide sandy beach; however, this beach has displayed significant oscillation and has suffered severe beach erosion during the El Nino events in the late 1970s and early 1980s. The subject site is an infill lot within the existing residential beach community, and is bordered by a vacant lot to the north and residentially developed lots to the north and south (Exhibit 3). The nearest vertical public access to the beach is located approximately 90 feet to the north of the subject site and 90 feet south of the subject site. There is an existing lateral public access and recreation area that stretches approximately 998 ft. along the shoreline adjacent to the project site to the west. These existing public access areas are the result of a 1988 settlement agreement which created parcels dedicated to the State of California for vertical access to the shoreline and lateral access and recreation along the shoreline. This 1988 settlement agreement involved vacant undeveloped beachfront lots in the Oxnard Shores area and required a reconfiguration of most of the lots in the area, which created a boundary line establishing beachfront parcels and tideland parcels. The property owners subject to the settlement agreement agreed to dedicate to the public an area of land on the seaward sides of their lots, between the seaward boundaries of their property and the mean high tide line, for public recreational uses and lateral beach access for the benefit of the public. The developed beachfront lots (which were already developed and therefore not a party to the 1988 settlement agreement) that were not a part of the settlement agreement extend farther towards the ocean than the lots subject to the settlement agreement. The subject parcel is one such lot, which was not subject to the settlement agreement and extends towards the water 140 feet in depth from Capri Way. The subject project (involving demolition of an existing residential structure and construction of an entirely new residence) constitutes a substantial redevelopment of the subject site. The existing residence was originally constructed in 1971.

### **Prior Commission Action**

In 1987 the Commission approved a second story addition to the existing detached garage pursuant to CDP No. 4-87-16. The Commission found that the proposed development, located between the first public road and the shoreline, would not protect nor maximize public access to the shoreline consistent with Coastal Act Sections 30210-30212. Accordingly, the Commission conditioned the permit to require that the applicant offer to dedicate an easement for lateral public access and recreational use across the entire width of the lot to a line 5 feet inland of the parcel's western lot line. The offer to dedicate the lateral public access easement was recorded by the previous owner (Marilyn J. Colbert) on March 30, 1987 (irrevocable offer to dedicate public access easement and declaration of restrictions recorded as Document No. 87-046275) and was accepted by the State Lands Commission (Document No.03-0308926) on August 15, 2003.

### **City of Oxnard's Sea Level Rise Planning LCP Update**

The City of Oxnard is currently updating its Local Coastal Program (LCP) with funding support from the Ocean Protection Council (OPC) and the Coastal Commission through the Local Coastal Program Assistance Grant Program. This grant also provided funding for the City to prepare a Sea Level Rise Vulnerability Assessment, Adaptation Plan, and overall LCP Update. The City is in the process of comprehensively updating its LCP to incorporate state guidance on assessing and adapting to coastal hazards. On May 4, 2018, the City provided Commission staff with an initial draft of the Land Use Plan (LUP) component of the LCP for Commission review. Commission staff and City staff have been regularly coordinating on this effort. The submitted draft LUP contained several policies and provisions for addressing and planning for sea level rise. While the draft Oxnard LCP has not been considered or certified by the Commission and therefore does not serve as the standard of review, the draft policies and provisions do demonstrate how the City intends to regulate shoreline development that will be subject to coastal hazards.

## **B. HAZARDS AND SHORELINE PROCESSES**

Coastal Act Section 30235, as incorporated into the certified LCP, states:

### *Construction altering natural shoreline*

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.*

Coastal Act Section 30250, as incorporated into the certified LCP, states, in relevant part:

### *Location; existing developed area*

*(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.*

Coastal Act Section 30253, as incorporated into the certified LCP, states:

*New development shall:*

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

*(2) Assure stability and structure 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.*

Land Use Plan Policy 13 states, in relevant part:

*The construction of shoreline structures such as, but not limited to, retaining walls, groins, revetments and breakwaters shall not be permitted except where absolutely necessary to protect public safety, or to preserve existing public beaches, marinas or structures. All permitted structures shall be designed to minimize adverse impacts, including those on both lateral and vertical access.*

Land Use Plan Policy 39 states:

*All applications for grading and building permits and subdivisions shall be reviewed for threats from hazards such as seismic activity, liquefaction, tsunami run-up, seiche, beach erosion, flood, storm wave run-up, and expansive soils. Geologic reports may be required in known hazard areas. Appropriate mitigation measures shall be applied to minimize threats from any hazards.*

Land Use Plan Policy 40 states:

*a. If new development is located within the 100-year flood and storm wave run-up area as designated by the Department of Housing and Urban Development and on the land use map, it shall be designed and engineered to withstand the effects of the flooding and wave run-up. Any person developing property within the 100-year flood line shall agree to indemnify and hold the City harmless from any liability or damages resulting from the construction of this development.*

*b. Any development located on the beach shall be designed to assure lateral beach access.*

Additionally, Section 17-35(B)(1) of the City's Coastal Zoning Ordinance states:

*All development shall ensure 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 land forms along the coast.*

The LCP contains policies and provisions, including LUP Policy 39, LUP Policy 40, CZO Policy 35-70 and Coastal Act Section 30253, as incorporated in the LCP, that regulate new shoreline development. These policies and provisions require new beachfront development to avoid impacts to beaches and to be sized, sited and designed to minimize risks from hazards without the need for shoreline protective devices. Together, Coastal Act Section 30253, LUP Policy 39, and CZO Section 17-35(B)(1) mandate that new development shall minimize risks to life and property in area of high geologic, flood, and fire hazard and shall not require the construction of protective devices that would substantially alter natural landforms. Further, when hazards from sea level rise cannot be avoided over its anticipated duration, new development should include provisions to ensure that hazard risks are minimized for the life of the development without shoreline protection, including through future modification, relocation, or removal when they become threatened by natural hazards, including sea level rise.

The proposed project site is located in the Oxnard Shores Neighborhood in the City of Oxnard on Capri Way, which lies west of Mandalay Beach Road. Oxnard Shores is a beach that has displayed significant oscillation and suffered severe beach erosion during the El Nino events in the late 1970's and early 1980's, which resulted in wave uprush all the way up onto Capri Way, the eastern border of the subject site. Commission staff has viewed several photos from winter storms seasons in 1981 and 1983 of the Oxnard Shores area including the subject site, which show wave uprush up to and underneath structures located along this stretch of beach. The photos depict severe damage caused by storm waves to existing structures and waves washing over the beach all the way up to Capri Way, landward of the existing residences. The Oxnard Shores area including the subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. Siting new development significantly seaward on a beach subject to this type of scour and erosion from storm waves does not minimize risks to property as is required pursuant to the LCP and the Section 30253 of the Coastal Act, which is incorporated as a policy in the City's LCP.

### **Sea Level Rise**

Sea level has been rising for many years. As an example in the Santa Monica Bay area, the historic rate of sea level rise, based on tide gauge records, has been 1.8 mm/yr. or about 7 inches per century<sup>1</sup>. In the past century, average global temperature has increased by about 0.8°C (1.4°F), and average global sea level has increased by 7 to 8 in (17 to 21 cm) (IPCC 2013). Sea level at the San Francisco tide gauge has risen 8 in (20 cm) over the past century, and recent reports developed by the California Ocean Protection Council (OPC) project that by the year 2100, sea levels may rise by approximately 3.1 to 6.6 feet in the area near the project site, with the potential for rapid ice loss to result in an extreme scenario of 10.2 feet of sea level rise (Griggs et al., 2017; OPC 2018). Recent observations of sea level along parts of the California coast have shown some anomalous trends, however; there is a growing body of evidence that there has been a slight increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature.

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<sup>1</sup> Lyles, S.D., L.E. Hickman and H.A. Debaugh (1988) *Sea Level Variations for the United States 1855 – 1986*. Rockville, MD: National Ocean Service.

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 2013, the Ocean Protection Council (OPC) adopted the National Research Council (NRC) report, “Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past Present and Future”, as best available science for the State of California, and recommended in its 2013 State Sea Level Rise Guidance that state agencies and others use these projections in their planning processes. The Coastal Commission also adopted the NRC report as best available science its 2015 Sea-level Rise Policy Guidance. Two subsequent OPC reports have updated the best available science, including the Rising Seas in California: An Update on Sea-Level Rise Science, released in April 2017 by a working group of OPC’s Science Advisory team, and the State of California Sea Level-Rise Guidance: 2018 Update. The OPC’s most recent projections in its statewide sea-level rise guidance is that in this area sea levels may rise between 2.9 and 6.0 feet by the year 2094 (the anticipated duration of the proposed project), though there is a risk of much more significant sea-level rise depending on various uncertainties, including the dynamics of ice sheet loss. The projection is given in a range largely because climate models that predict future climate conditions include inherent uncertainties stemming from uncertainties about the climate system, which in an area of developing science. Additionally, researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea-level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea-level rise are tracking along the higher projections), the Coastal Commission Sea Level Rise Guidance relies on projections associated with this “business as usual” emission scenario. The OPC has also recommended that medium/high risk aversion be used to inform decision-making for less adaptive, more vulnerable projects or populations that will experience medium to high consequences as a result of underestimating sea-level rise, such as residential development. In the case of the proposed project, this means looking at 6.0 feet of sea level rise over the 75-year anticipated duration of the project.

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.

Coastal Act Section 30235 acknowledges that shoreline armoring, including seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” methods designed to forestall erosion also alters natural landforms and natural shoreline processes. Accordingly, Section 30235 only requires the approval of shoreline protective works when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion (and when designed to address impacts on local shoreline sand supply). The provision is so limited 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. Shoreline armoring or protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective 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 storm events and the winter season. As an unarmored shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of rock revetments and seawalls to protect private property fixes the inland limit of the shoreline and prevents any landward migration of the shoreline inland of the structure. The dry beach area will narrow and eventually the mean high tide line will intersect the structure on a regular basis. The intertidal zone (the distance between the high water mark and low water mark) will narrow and eventually these two will both intersect the structure. As the distance between the high water mark and low water mark becomes narrower, the seawall effectively eliminates lateral access opportunities along the beach as the entire area below the fixed high tideline is 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 over time) is a reduction or elimination of the area of sandy beach available for public access and recreation.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile that result from a reduced beach berm width, alter the usable area under public ownership. 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 reduces the actual area in which the public can pass on their own property. 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 area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments 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 seasonally-eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. 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 the wave's energy and more wave energy will be reflected off the face of the seawall or revetment rocks.

### **Application to this Project**

In this case, the project constitutes a complete redevelopment of the subject site, and any new development must conform to the policies and standards of the LCP. Consistent with Land Use Plan Policy 39, the applicant has submitted a Coastal Hazard and Wave Runup Study dated July 28, 2017 prepared by GeoSoils, Inc., for the property which looked at the proposed development in relation to coastal hazards under a range of sea level rise projections, combined with the 100-year storm and wave run-up events, over the 75 year design life of the development and without relying on shoreline protective devices. The study concludes that because there is a wide sandy beach between the subject property and the Pacific Ocean, wave runup and overtopping will not significantly impact this site over the life of the proposed development, but that during storm events with eroded beach conditions, wave action will reach the residence. The report finds that this holds true even for an estimated sea-level rise ranging from 1.25 to 4.75 feet. This sea level rise scenario range was derived from the 2012 National Research Council (NRC) report. At the time of the preparation of the Coastal Hazards and Wave Run-up Study, the Commission's 2015 Sea Level Rise Policy Guidance recommended the use of region-specific sea level rise protections contained in the NRC 2012 science report as the best available science.

However, it's important to note that in August 2018, the Commission's Sea Level Rise Guidance was updated to reflect new best available science with new sea level rise projections stemming from two reports from the California Ocean Protection Council (OPC), the State Sea Level Rise Guidance (OPC 2018) and Rising Seas in California (Griggs et al. 2017). The new best available science on sea level rise indicates that in this area, sea levels may rise between 2.9 and 6.0 feet by the year 2094, potentially significantly higher than the level analyzed by GeoSoils. More specifically, the updated Guidance states that because residential structures have moderate capacity to adapt to sea level rise and relatively high consequences if impacted by sea level rise, it is appropriate to use the 6.0 foot sea level rise scenario to inform decision-making, reflecting medium/high risk aversion. This guidance has been adopted by both the Ocean Protection Council and the California Coastal Commission. Therefore, it should be noted that the 4.75-foot scenario utilized by GeoSoils in its 2017 report is lower than the 6-foot scenario recommended by the current best available science and adopted state guidance on sea level rise, which indicates that hazard conditions at the project site could intensify sooner than described in the GeoSoils report. In addition, hazards conditions associated with sea level rise have a level of uncertainty, as beaches are dynamic areas and our understanding of climate change and sea level rise is constantly evolving. Therefore, the proposed new development on a beachfront property may be threatened by sea-level rise at some point in the future and require a shoreline protective device

or other adaptation measure, if the rate of erosion and wave uprush accelerates faster than projected or if there are changes in the frequency or effectiveness of beach nourishment activities or changes to sediment management in the area.

Therefore, if new development along the shoreline is to be found consistent with the LCP, the most landward feasible location must be explored to minimize hazards. Shoreline structures must also be located as far landward as feasible to protect public access along the beach. In this case, the proposed structure approved by the City was not sited as far landward as is feasible to minimize the risks from storm wave action and beach erosion as is required pursuant to Section 30253 of the Coastal Act, which is incorporated as a policy in the City's LCP, and pursuant to the other LCP policies cited above.

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum public access and minimize wave hazards, as well as minimize adverse effects to coastal processes, shoreline sand supply, and public views, the Commission has, in past permit actions (and most notably in City of Oxnard Appeal No. A-4-OXN-02-429) applied a "stringline" as a means to limit the seaward extent of development. A stringline policy has been established in many LCPs for coastal communities in the area, including Carpinteria and Malibu. As applied to infill beachfront development, the stringline limits the seaward extension of a new structure to a line drawn between the nearest corners of adjacent structures and limits decks, or other appurtenant structures, to a similar line drawn between the nearest corners of the adjacent decks, or other appurtenant structures. This policy has been applied to numerous past permits involving infill on sandy beaches and the Commission has found it to be an effective policy tool in preventing further encroachments onto sandy beaches. While the City of Oxnard does not have an established stringline policy in the LCP, the City has applied the concept to beachfront development in past permit actions (for example Oxnard Planning and Zoning No. 01-6-80), and it is a tool that the City can apply in order to implement the coastal hazard, public access, and visual resource policies of the LCP.

As previously discussed above, a settlement agreement that occurred in 1988 regarding vacant undeveloped lots in the Oxnard Shores area required a reconfiguration of most of the lots in the area, which created a fixed boundary line between beachfront parcels and tideland parcels. The settlement agreement property owners agreed to dedicate to the public on average 40 feet of land on the seaward side of their lots, between the seaward boundaries of their property and the mean high tide line, for public recreational uses and lateral beach access for the benefit of the public. The developed beachfront lots (which were already development and therefore not a party to the 1988 settlement agreement) that were not a part of the settlement agreement extend farther towards the ocean than the lots subject to the settlement agreement. The subject parcel is one such lot, which was not subject to the settlement agreement and extends towards the water 140 feet in depth from Capri Way. The vacant lot to the north and the appellant's developed lot to the south (1131 Capri Way) extend only 120 feet seaward of Capri Way. New development on such residential lots poses a significant threat to coastal resources if the seaward extent of development is not limited. The beach area at Oxnard Shores is important public access space, and this beach space will narrow in the future as it is trapped between rising seas and the first line of development. Oxnard Shores is a beach that has displayed significant oscillation over time and suffered severe beach erosion during the El Nino events in the late 1970's and early 1980's, which resulted in wave uprush all the way onto Capri Way, the eastern border of the

subject site (Exhibit 5). The Oxnard Shores beach and the subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides and this will be exacerbated by the effects of future sea level rise. According to the City's Sea Level Rise Atlas dated April 2016, the Oxnard Shores neighborhood and beach will be impacted by coastal hazards (erosion, tidal inundation, and coastal storm flooding) by 2030, and these impacts will increase substantially between 2030 and 2100 based on conservative projections of sea level rise.

Considering the unique configuration of lots which vary in different lengths on this stretch of beach, as can be seen on Exhibit 2, a strict stringline policy is not appropriate in this case. It is important that new development acknowledge changing circumstances that may require revisions to historic patterns of development, whether that means designing for increased storms and flooding, or accommodating sea level rise. On the subject site, there is a building envelope that allows the applicant enough room and flexibility, taking into consideration the City's required side yard setbacks, to design a home at a similar bulk and scale to the surrounding residential development. Therefore, Commission staff carefully analyzed the unique configuration of lots along this stretch of beach and the development pattern that has resulted from the settlement agreement utilizing aerial photos and maps and found that a logical maximum development line could be drawn along the 120 ft. seaward limit line for this property. This 120 ft. maximum seaward development line would establish a logical seaward development line and afford the applicant the opportunity to demolish the existing residence and construct a larger one while minimizing seaward encroachment onto the sandy beach.

The applicant has modified the subject project description to restrict all new development to extend no further than 120 feet from the northern property line along Capri Way, except for a temporary detachable deck constructed on removable wood posts on shallow removable concrete piers. In addition, the applicant has provided staff with a memo from GeoSoils, Inc. which indicates that the proposed removable detached deck has been designed to be easily removed. Because it is not supported by the caisson foundation system for the house (with the exception of a removable header supporting the landward side of the deck), removal of the deck will not require alteration of the residence. As designed, the deck can then be easily removed at such time as it is threatened by coastal waves, erosion, or other hazard, so it will minimize hazard risks as well as avoid impacts to public access.

The applicant has not yet submitted revised final project plans which delete all portions of the development that extends further than 120 feet from the northern property line except for the proposed temporary detachable deck; therefore, the Commission finds it necessary to impose **Special Condition One (1)** Revised Plans to require the applicant to submit revised project plans deleting all portions of the development that extends beyond the maximum seaward development line as illustrated on Exhibit 6. The plans shall reflect all new development to conform to the maximum seaward development line (120 ft. from Capri Way) except for a temporary deck that is easily removable may extend up to 10 ft. beyond that but no further than the "deck stringline" and all other setbacks as provided for in the LCP. As such, the Commission finds that the proposed project, only as conditioned to revise the project plans, will not result in the seaward encroachment of development on the beach in this area and will serve to minimize adverse effects to coastal processes.

As previously stated, the applicant has submitted a Coastal Hazard and Wave Runup Study dated July 28, 2017 prepared by GeoSoils, Inc., for the proposed project, which evaluated the safety and stability of the project site in relation to the proposed development. This report included a number of coastal engineering recommendations in order to minimize adverse effects on coastal processes and to ensure the structural stability of the proposed development. The proposed residence will be constructed on driven piles and elevated high enough on piles to allow storm waves to run under and around the structure. Specifically, the bottom of the lowest structural member will be +17 feet NAVD88. In the event of a storm event with significant wave run-up, the project's design will prevent the need for a shoreline protective device. To ensure that all recommendations of the coastal engineering consultant have been incorporated into the proposed development, **Special Condition Five (5)** requires the applicant to agree to comply with the recommendations contained in the submitted coastal engineering and geology, geotechnical, and/or soils reports and that final plans approved by the consultant(s) shall be in substantial conformance with the final plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultant shall require an amendment to the permit, or a new Coastal Development Permit.

New development on beachfront parcels must be designed in a manner that will not require the construction or use of a shoreline protective device that would alter the natural landforms or shoreline processes. Although the project has been designed to not require a shoreline protection device based on the hazard and sea level rise conditions included in the GeoSoils report, it's important to state that new development such as this is not entitled to shoreline protection under the Coastal Act or LCP, and the Commission would not approve this project if it required a shoreline protection device now or at some point in the future. The shoreline is a dynamic environment and although the proposed residence has been designed to ensure structural stability relative to wave action and 4.75 feet sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. In particular, the science of understanding and predicting sea level rise is rapidly changing, and the predictions of what will constitute the "worst case" sea level rise scenario have kept getting worse over the past decade or two. This trend and uncertainty support using a cautionary approach when approving shorefront development. In order to be consistent with Coastal Act Sections 30235, 30250, and 30253, as well as LUP Policy 13 and Section 17-35(B)(1) of the City's Coastal Zoning Ordinance, the applicant must waive any right to construct a shoreline protective device to protect the development in the future, as outlined in **Special Condition Two (2)**. Further, the landowner must remove the development if (a) any government agency has ordered that the structure 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 requires new shoreline protective devices that conflict with LCP or relevant Coastal Act policies. **Special Condition Two (2)** also requires the landowner to remove the approved temporary deck, or portions of it, when it becomes threatened with damage or destruction from coastal hazards, is damaged by coastal hazards, or if reinforcement, shoreline protective devices, or any other protective action is needed.

Additionally, **Special Condition Eight (8)** clarifies that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property and

prohibits the applicant from using the permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

Moreover, the proposed development is located along the shoreline in the City of Oxnard that has historically been subject to substantial damage as the result of storm and flood occurrences; therefore, ample evidence exists that all beachfront areas in the City of Oxnard area are subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The subject site, even after completion of the proposed project, will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that development, even as designed and constructed to incorporate the recommendations of the applicant's coastal engineer, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

Thus, in this case, the Commission finds that due to the possibility of tsunami, storm waves, surges, and erosion, the applicant shall assume these risks as a condition of approval. Because the 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 Three (3)**, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the development it protects, and will effectuate the necessary assumptions of those risks by the applicant. This condition will also ensure that the applicant is aware of the potentially ambulatory nature of their seaward boundary, and that this boundary may move with sea level rise. It further ensures that future property owners will be made aware of the risks and limitations placed on the development by this permit, so that any future owners can properly assess risks before purchasing property. In general, disclosing risks to current and future property owners helps ensure that property owners will plan with these hazards in mind and will help set reasonable expectations for future development potential and investments. Similarly, requiring property owners to assume the risks of developing in hazardous locations will help avoid the need to spend public funds on disaster recovery for private development and will ensure future owners are aware of limits on the use of shoreline armoring that harms coastal resources. These conditions help carry out LCP policies related to minimizing risks to life and property in areas of high flood hazard, as well as the mandate to ensure that new development is located in areas able to accommodate it, including over time as conditions change (see Coastal Act Section 30250). Additionally, **Special Condition Four (4)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser 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 hazards and shoreline development policies of the certified City of Oxnard LCP.

**C. PUBLIC ACCESS AND RECREATION**

The City of Oxnard certified LUP incorporates Sections 30210, 30211, 30212(a) and 30221 of the Coastal Act concerning public access and recreation.

Coastal Act Section 30210, as incorporated into the certified LCP, states:

*In carrying out the requirements 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 for overuse.*

Coastal Act Section 30211, as incorporated into the certified LCP, states:

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

Coastal Act Section 30212(a), as incorporated into the certified LCP, states:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Coastal Act Section 30221, as incorporated into the certified LCP, 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.*

Land Use Plan Policy 72 states:

*Public access to and along the shoreline and the Inland Waterway shall be required as a condition of permit approval for all new developments between the shoreline and the first public roadway inland from the shore, except as provided below.*

Section 17-39(B)(2) of the City's Coastal Zoning Ordinance (CZO) states:

*Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development except where:*

*(a) The access is inconsistent with public safety, military security needs, or the protection of fragile coastal resources;*

- (b) Adequate access exists nearby, consistent with applicable policies of the certified Oxnard coastal land use plan; and*
- (c) Agriculture would be adversely affected;*

Coastal Act Section 30210 and Coastal Act Section 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Section 30212(a) of the Coastal Act provides that adequate public access to the sea be provided in new development projects. Section 30221 of the Coastal Act protects oceanfront land for recreational uses. LUP Policy 72 and Section 17-39(B)(2) of the CZO requires public access to and along the shoreline for new development, except in very limited circumstances, such as where it would be inconsistent with public safety, military security, or protection of sensitive resources. The policies that limit use of shoreline protective devices (cited in the hazards section, above) also address public access because such protective devices, as described more below. Further, the public has rights in tidelands that currently lie seaward of the proposed development, but which may come to be located closer to, or even under, the proposed development at some point in the future. The Coastal Commission has a duty, under the public trust doctrine and the Coastal Act, to ensure that new development does not impair trust resources by, for example, impeding current or future public access.

The beaches of Oxnard are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to significantly increase over the coming years.

The proposed project is located on a beachfront lot that is located within the Oxnard Shores Neighborhood. The nearest vertical public access to the beach is located approximately 90 feet to the north of the subject site and 90 feet south of the subject site. There is an existing lateral public access and recreation area that stretches approximately 998 ft. along the shoreline adjacent to the subject site to the west. In a previous Commission action described in detail above, the Commission required the previous property owner to dedicate an easement for lateral public access and recreational use across the entire width of the lot to a line 5 feet inland of the parcel's western lot line. No portion of the proposed project will encroach into or over the five-foot lateral public access easement. Moreover, the project as revised will be set back a minimum of 5 feet from the lateral public access easement.

Even though the previously proposed residence did not extend further seaward than the existing residence and would have occupied the same general footprint as the existing residence, it would continue to be vulnerable to coastal hazards, which will be exacerbated by future sea level rise. Given this beach will narrow in the future due to sea level rise, when the shoreline moves inland, if the structure is not removed before then, the structure will eventually be located on public trust lands and will impede the public's access to and along the beach. Therefore, siting new development as far landward as feasible is essential in order to minimize adverse impacts to public access. In this case, it would be appropriate to use a logical maximum seaward development line as described in the section above to limit seaward development onto sandy beach area. The applicant has modified the subject project description to restrict all new development to extend no further than 120 feet from the northern property line along Capri Way, except for a temporary detachable deck constructed on removable wood posts on shallow removable concrete piers. This 120 ft. maximum seaward development line would establish a



logical seaward development line and afford the applicant the opportunity to demolish the existing residence and construct a larger one while minimizing seaward encroachment onto the sandy beach. As designed, the deck can then be easily removed at such time as it is threatened by coastal waves, erosion, or other hazard, so it will minimize hazard risks as well as avoid impacts to public access. The applicant has not yet submitted revised final project plans which delete all portions of the development that extends further than 120 feet from the northern property line except for the proposed temporary detachable deck and; therefore, the Commission requires final revised plans, pursuant to **Special Condition One (1)**, to ensure the development does not extend further seaward than proposed.

As described above, new development on beachfront parcels should be designed in a manner that will not require the construction or use of shoreline protective devices. Construction of a shoreline protective device to protect the proposed development would arrest the landward migration of the shoreline, and the corresponding migration of the publicly accessible intertidal zone. This would make access to and along the sea difficult, if not impossible. Courts have also found that shoreline armoring can constitute trespass on public tidelands if the armoring blocks the migration of the tidelands and prevents the tidelands trustee from gaining property that should rightfully be theirs. *United States v. Milner* (9th Cir. 2009) 583 F.3d 1174, 1189-1190. As previously discussed in detail in subsection (C) above, shoreline armoring or protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective 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 storm events and the winter season.

Therefore, in order to protect shoreline processes, natural landforms, the ambulatory nature of the shoreline, and continued public access to the shoreline, the Commission finds that it is necessary to ensure that no shoreline protective device will ever be built to protect the new proposed structure. As such, **Special Condition Two (2)** requires the applicant to waive the right to build a new shoreline protective device to protect new development authorized by this Coastal Development Permit.

Furthermore, the shoreline is a dynamic environment and, although the proposed residence has been designed and conditioned to ensure structural stability relative to wave action and forecasted sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions on site will change and that the residence could be subject to greater wave action and tidal events in the future. Because it is not possible to ensure that the structure is constructed in a manner adequate to ensure structural stability relative to increased future wave action, sea level rise, and tidal events, **Special Condition Two (2)** ensures that no future shoreline protective device will be constructed on site to protect the proposed development, and requires the landowner to remove the development if a government agency orders that portions or all of the structures may not be occupied due to hazards identified in this report. Furthermore, **Special Condition Eight (8)** clarifies that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property and prohibits the applicant from using the permit as evidence of a waiver of any public rights that may exist on the property now or in the future. **Special Condition Eight (8)** also clarifies that the permit does not

authorize the development to physically interfere with any public access rights that may exist at any future date. This ensures that the permit and development may not be used as evidence that public agencies have waived any public rights on tidelands or other public rights-of-way. The permit also only authorizes the development for so long as it remains on private property; thus, if any portion of the development came to be located on public trust lands, the permittee would need to either remove that development or apply to the Commission for a CDP to retain it and to the State Lands Commission or other trustee agency for a lease or other appropriate instrument allowing the encroachment to remain.

Further, **Special Conditions Three (3)** and **Eight (8)**, respectively, clarify that the permit only authorizes the development for as long as it remains on private property and ensure that the home does not physically impede public access to the shore, as that shoreline may exist in the future. These conditions are necessary in order to allow the public trust tidelands to migrate inland over time, and ensure that the home does not impede future public access to or along the shore, thus assuring continued public access and use of coastal areas, as required by the LCP and Coastal Act. Merely requiring the home to be designed to withstand coastal hazards does not address this issue, but the additional conditions do.

Finally, the Commission notes that numerous unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Oxnard area. These signs have an adverse effect on the ability of the public to access public trust lands. Therefore, **Special Condition Seven (7)** provides that no signs shall be posted on the property subject to this permit which either (a) explicitly or implicitly indicate that any portion of the beach located seaward of the subject site is private or (b) contain messages that attempt to prohibit public use of the public beach. **Special Condition Four (4)** ensures that future owners will be made aware of the various conditions and limitations on the development so that they can appropriately take them into consideration when planning for possible purchase or planning later development.

Thus, the Commission finds that the proposed project, as conditioned, will not significantly impact public access or recreational opportunities, and therefore the project is consistent with the public access policies of the certified Oxnard LCP and public access and recreational policies and provisions of the Coastal Act.

#### **D. VISUAL RESOURCES**

Coastal Act Section 30251, as incorporated into the certified LCP, states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Land Use Plan Policy 37 states:

*All new development in the coastal zone shall be designated to minimize impacts on the visual resources of the area. Particular care should be taken in areas of special quality, such as those identified in the LCP.*

In this case, the project is visible from the beach and, according to the City of Oxnard's findings, the project is located in a "designated scenic coastal area." Section 30251 of the Coastal Act requires public views to and along the ocean and scenic coastal areas to be considered and protected when siting new development. Furthermore, LUP Policy 37 requires all new development in the coastal zone to be designed to minimize impacts on the visual resources of the area. As previously mentioned, the proposed project constitutes infill development in a built-out section of coastline in Oxnard.

The City's findings for the City approved project state that the project is consistent with these policies because it is an infill development that is consistent with surrounding development and that complies with the development standards of the zone district. However, as explained in subsection B above, the Commission in past permit actions in Oxnard and other areas has restricted the seaward extent of development on a beach to ensure maximum public access and minimize wave hazards, as well as to minimize adverse effects to public views. Although the previously proposed residence that was approved by the City would have occupied the same general footprint as the existing residence, it would continue to be vulnerable to coastal hazards, which will be exacerbated by future sea level rise. Given this beach will narrow in the future as it is trapped between rising seas and the first line of development, public views of the shoreline will be affected when the public beach erodes. Specifically, the applicant's lot extends 140 seaward of Capri Way, while the vacant lot to the north and the appellant's lot (1131 Capri Way) to the south extend only 120 feet seaward of Capri Way. The City-approved project would perpetuate an irregular pattern of development in this area, which would not minimize visual resource impacts or ensure visual compatibility with the character of the area. As the beach in this area narrows as a result of sea level rise over the anticipated life of the development, public views along the shoreline will also narrow. A regular pattern of development that is sited as landward as feasible will serve to minimize impacts to the visual quality of this area, now and in the future.

Therefore, **Special Condition One (1)** requires the applicant to submit revised plans reflecting a seaward development line that conforms to the general pattern of development along this stretch of beach. As previously mentioned, the proposed project constitutes infill development in a built-out section of coastline in Oxnard and all proposed development will be constructed landward of the appropriate seaward development line established at the project site so as not to obstruct visual resources along the shoreline. Thus, the Commission finds that the project, as conditioned, will not significantly impact public views to or along the coast and is consistent with the visual resources policies of the City's LCP.

## **E. MARINE RESOURCES**

Coastal Act Section **30230**, as incorporated into the certified LCP, 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.*

Coastal Act Section **30231**, as incorporated into the certified LCP, states:

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

Section 30230 of the Coastal Act requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. In addition, Section 30231 requires that the biological productivity and quality of coastal waters be maintained.

Construction activities related to the proposed construction have the potential to negatively impact the surrounding marine environment. Introduction of waste or construction debris into the marine environment could create deleterious impacts to coastal waters and could stem from activities such as stockpiling of materials or cleaning of construction equipment on or adjacent to the beach. In order to ensure that adverse impacts to the marine environment are minimized, the Commission finds it necessary to require the applicant to include construction best management practices in the project. **Special Condition Six (6)** requires that the project applicant comply with specific construction standards and best management practices. **Special Condition Six (6)** further requires that no construction materials, debris or waste shall be placed or stored where it may be subject to wave erosion and dispersion, that all debris resulting from construction activities shall be removed from the beach prior to the end of each work day; no machinery or mechanized equipment shall be allowed in the intertidal zone; and all excavated beach sand shall be redeposited on the beach.

Further, the Commission finds that the Conditions attached to the City's approval of the project include numerous provisions that pertain to other aspects of water quality and serve to ensure the project's consistency with the City's LCP. Thus, **Special Condition Nine (9)** requires the applicant to submit evidence of compliance with the City's conditions, except as specifically modified by this approval and any subsequent amendments to the project description. **Special Condition Nine (9)** provides that any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to the Coastal Development Permit is required.

Thus, the Commission finds that the proposed project, as conditioned, will not significantly impact marine resources, and therefore the project is consistent with the policies of the certified City of Oxnard LCP.

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096(a) of the Commission's administrative regulations require Commission approval of a Coastal Development Permit application 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 that the activity may have on the environment.

The City prepared a categorical exemption pursuant to CEQA Section 15301 – Existing Facilities, and found that the project is listed among classes of projects that have been determined not to have a significant adverse effect on the environment.

The Commission incorporates its findings on consistency with the City's certified LCP at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the applicable policies of the certified LCP. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. The following conditions are required to assure the project's consistency with Section 13096 of the California Code of Regulations:

##### Special Conditions 1 through 9

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment, and that the project, as conditioned, will not have any significant impacts on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with the requirements of the certified LCP and conforms to CEQA.

## **APPENDIX 1**

### **Substantive File Documents**

City of Oxnard Local Coastal Program; Oxnard Comment Letter 1125 Capri Way April 19, 2018 Planning Commission, dated April 16, 2018; Oxnard Comment Letter 1125 Capri Way May 17, 2018 Planning Commission, dated May 16, 2018; Coastal Development Permit No. 4-87-16 (Colbert); A-4-OXN-08-249 (Baruck); A-4-VNT-15-0034 (Sandefer); Coastal Hazard & Wave Runup Study for 1125 Capri Way, prepared by GeoSoils, Inc., dated July 28, 2017; Coastal Commission Comment Response Concerning Coastal Development Permit Application No. 17-400-04 for 1125 Capri Way, prepared by GeoSoils, Inc., dated May 7, 2018; Memorandum: Detachable Deck Design 1125 Capri Way, Oxnard Shores, prepared by GeoSoils, Inc., dated October 29, 2018; California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits. Adopted August 12, 2015. Updated November 7, 2018; California Coastal Commission Residential Adaptation Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs. Revised March 2018; National Research Council (NRC). 2012. Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future. Report by the Committee on Sea Level Rise in California, Oregon, and Washington. National Academies Press, Washington, DC. 250 pp. 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; Intergovernmental Panel on Climate Change (IPCC). 2007. Climate Change 2007: Ocean Protection Council (OPC). 2013. State of California Sea-Level Rise Guidance Document. Ocean Protection Council (OPC). 2018. State of California Sea-Level Rise Guidance: 2018 Update.