

CALIFORNIA COASTAL COMMISSION

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Th21a

Appeal Filed: 11/5/2018
 49th Working Day: Waived
 Staff: C. Groves
 Staff Report: 4/25/2019
 Hearing Date: 5/9/2019

STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE & DE NOVO REVIEW

APPEAL NUMBER: A-4-VNT-18-0070

APPLICANT: Bridlewood Holdings, LLC

APPELLANTS: Terry O'Brien and Nancy Graham, Paul and Joanne Fillmore, and Robert McPherson

LOCAL GOVERNMENT: County of Ventura

LOCAL DECISION: Approval with Conditions of Planned Development Permit Numbers PL17-0014 & PL17-0015

PROJECT LOCATION: 3692 W. Pacific Coast Highway, Ventura County (APN: 060-0-410-255)

PROJECT DESCRIPTION: Demolition of an existing 2,170 sq. ft. single-family dwelling, 1,500 sq. ft. deck, and 500 sq. ft. detached garage constructed across two legal lots; construction of a new 5,264 sq. ft. single-family dwelling, 802 sq. ft. garage, and 980 sq. ft. deck; construction of a new 4,695 sq. ft. single-family dwelling, 839 sq. ft. garage, and 692 sq. ft. deck; granting of a side yard setback variance; and cosmetic refinishing of an existing seawall.

STAFF RECOMMENDATION: Substantial Issue; Approval with Conditions

MOTION & RESOLUTION: Pages 5 & 13

NOTE: The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally, and at the discretion of the Chair, limited to 3 minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a substantial issue exists with respect to the appellants' assertion that the project is not consistent with the County of Ventura LCP policies and provisions related to coastal hazards and shoreline development standards, and the coastal hazards policies of the Coastal Act, and that the Commission consider the coastal development permit (CDP) application for the project as a de novo CDP application. Further, staff recommends that the Commission approve the de novo CDP application, pursuant to revisions to the project by the applicant and subject to eight special conditions.

The subject planned development permits (CDPs) were approved by the County of Ventura Planning Commission on August 23, 2018. This action was then appealed to the Board of Supervisors of Ventura County by Terry O'Brien and Nancy Graham, Paul and Joanne Fillmore, and Robert McPherson. Ultimately, the Board of Supervisors upheld the Planning Commission's action, thereby approving CDPs Numbers PL17-0014 and PL17-0015 for the demolition of an existing single-family dwelling constructed over two legal lots, the construction of two new single-family dwellings, garages, and decks, the granting of a side yard setback variance, and the cosmetic refinishing of an existing seawall at 3692 W. Pacific Coast Highway. The project is located on two beachfront lots totaling 13,526 square feet within a residentially developed neighborhood in the Faria Beach Community area of the County of Ventura (County).

The County's action on the subject project was appealed to the Commission by Terry O'Brien and Nancy Graham, Paul and Joanne Fillmore, and Robert McPherson. As mentioned above, the appeal contends that the approved project is inconsistent with the County of Ventura LCP policies regarding coastal hazards and development standards, as well as the coastal hazards policies of the Coastal Act. Specifically, the appellants assert that the County did not have the evidence necessary to make findings to support the granting of a variance to allow for the construction of a raised backyard deck within the side-yard setback. The appellants also allege that the construction of the raised decks will increase the risk to coastal hazards by exposing the existing seawall to additional wave energy. They claim that this increased risk will not only affect the subject property, but neighboring properties as well.

Based on staff's review of the County's action and the administrative record, staff recommends that the Commission find the appeal does raise substantial issue with regard to assertions raised by the appeal. The approved development is located on a beachfront lot and will be vulnerable to coastal hazards that will be exacerbated by future sea level rise. As proposed, the structural design of the deck has the potential to create adverse impacts to the existing seawall, and as such will not minimize the risks. Following the appeal, Commission staff spoke with the applicant and its representatives several times to discuss the rationale for the appeal, as well as the ways by which the issues raised could be resolved. In response to the appellants' contentions, the applicant made modifications to the project, including the addition of two wedge-shaped gabion baskets below the raised decks that will serve as wave energy dissipation devices. By helping to dissipate any waves that enter the area below the raised decks, these gabion baskets will reduce the amount of energy hitting the proposed raised decks and existing seawall, thus minimizing any potential adverse impacts from the construction of the decks. Therefore, staff recommends **Special Condition One (1)** to require the applicant to comply with the recommendations contained in several coastal engineering reports, discussed in more detail below.

Furthermore, the shoreline is a dynamic environment and although the proposed residences have 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 residences could be subject to greater wave action and tidal events in the future. While the subject properties are currently protected by a seawall built in 1969, **Special Condition Two (2)** has been required to ensure that no new shoreline protective device will be constructed on site in the future 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 3-8** to ensure consistency with the hazards, public access, and marine resource protection policies of the certified LCP, and the public access policies of the Coastal Act. The motions and resolutions to act on this recommendation follow below on pages 5 and 13.

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EXHIBITS

Exhibit 1.	<u>Vicinity Map</u>
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Exhibit 6.	<u>Final Local Action Notice & County Resolutions</u>
Exhibit 7.	<u>Appeal by Terry O'Brien and Nancy Graham, Paul and Joanne Fillmore, and Robert McPherson</u>

I. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission determine that Appeal No. A-4-VNT-18-0070 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-4-VNT-18-0070 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPEAL JURISDICTION AND PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff (Coastal Act Section 30603(a)). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone (Coastal Act Section

30603(a)(4)). Finally, developments that constitute major public works or major energy facilities may be appealed to the Commission (Coastal Act Section 30603(a)(5)).

In this case, the project site is located on West Pacific Coast Highway in the Faria Beach Community in the County of Ventura, (Exhibits 1-3). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the County of Ventura indicates that the appeal jurisdiction for this area extends between the first public road and the sea, which includes the subject property. As such, the County's CDP for the subject project is appealable to the Commission.

2. Grounds for Appeal

The available grounds for an appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act (Coastal Act Section 30603(b)(1)).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue questions, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. Pursuant to Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issues and that the Commission will therefore not review the merits of the appeal *de novo*. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The project that is the subject of this appeal was approved by the Ventura County Planning Commission on August 23, 2018. The action by the Planning Commission was appealed to the Ventura County Board of Supervisors by Terry O'Brien and Nancy Graham, Paul and Joanne Fillmore, and Robert McPherson within the local appeal period, on August 28, 2018. On October 16, 2018, the Board of Supervisors denied the appeal and approved the subject project. The County's Notice of Final Action for the project was received by Commission staff on October 23, 2018 (Exhibit 7). Commission staff provided notice of the ten working day appeal period, which began on October 24, 2018 and ended on November 6, 2018. Terry O'Brien and Nancy Graham, Paul and Joanne Fillmore, and Robert McPherson filed the subject appeal on November 5, 2018, during the Commission's appeal period (Exhibit 8). After reviewing the appeal, Commission staff notified the County, the applicant, and all interested parties that were listed on the appeal and requested that the County provide its administrative record for the permit. The

administrative record was received on November 13, 2018. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would be January 17, 2019. Pursuant to Section 30625(a), the applicant can waive that time limit. On November 14, 2018, prior to the 49 working day deadline for Commission action, the applicant waived its right to a hearing within the 49 working day time period.

C. PROJECT DESCRIPTION, BACKGROUND, AND SETTING

The subject coastal planned development permits (CDPs) approved by the County of Ventura (County) are for the demolition of an existing 2,170 square foot single-family dwelling, 500 square foot detached garage, and 1,500 square foot deck that extends over two legal lots, the construction of a new 5,264 square foot single-family dwelling with a 802 square foot attached garage and 980 square foot deck, the construction of a new 4,695 square foot single-family dwelling with a 839 square foot attached garage and 692 square foot deck, and the cosmetic refinishing of an existing seawall. As a component of the subject CDPs, the County also granted a variance to allow for the proposed decks, railing, and walkways, which would be located within the required three-foot side yard setback area on each of the two lots. The subject property is located at 3692 W. Pacific Coast Highway (APN 060-0-410-250) in the Faria Beach Community of Ventura County (Exhibits 1-3).

The proposed project is located on two beachfront lots totaling 0.31 acres (each of the subject lots are approximately 0.15 acres) within a residentially developed neighborhood in the Faria Beach Community area of the County, about 5 miles north of the City of Ventura. Faria Beach is a narrow, sandy beach with cobble and shoreline rocks that is backed by a seawall that extends the entire length of the community. The subject parcels are zoned Residential Beach (RB). The purpose of this zone designation is to provide for the development and preservation of small-lot beach-oriented residential communities. The subject parcels are bordered to the north and south by residentially developed lots. The nearest vertical public access to the beach is located approximately 300 feet south of the subject site at Mondo's Beach, as well as 4,000 feet north of the subject site at Faria Beach County Park. Additionally, as described in further detail below, there is an existing lateral public access easement that extends across the subject property.

The subject site was first developed in 1962 when a single-family residence was built. On September 29th, 1967, the original lot was subdivided into two lots, Lots 81 & 81A, by a Record of Survey in Book 36, Pages 27 through 33. At this time, pursuant to the Subdivision Map Act, a tentative parcel map and notation by Record of Survey were required to subdivide one lot into two lots. The applicant filed a Certificate of Compliance (No. 15-09-1006) recorded on April 28, 2016, in the Ventura County Recorder's Office (Doc. No. 20160428-00058905) legalizing the creation of the two underlying lots in compliance with California Government Code Section 66499.35.

In 1977, the Commission issued CDP No. 146-35 to authorize the demolition of the residence constructed in 1962, and the construction of one new residence across both of the subject legal lots. The associated County permits for this redevelopment were issued in 1978, and the construction of the current residence was finished in 1982. That same year, the Commission issued CDP No. 4-81-462 to authorize the installation of rip-rap along a portion of the existing

seawall in front of the subject lots. This CDP was subject to 3 Special Conditions regarding lateral access, waiver of public liability, and public rights. Special Condition One required recordation of a deed restriction to allow lateral public access on the beach from the toe of the revetment to the mean high tide line across the subject parcels.

The existing concrete seawall that spans the length of the Faria Beach Community was constructed in 1969. This seawall protects all of the homes in the Faria Beach Community; however, because it is physically located on each individual parcel, it is maintained by the individual property owners, and not the community collectively. Unlike the other properties in the area, the subject site has a unique, multi-level design, as depicted on (Exhibit 4). Specifically, on the subject site, in addition to the community-wide seawall, there is a lower seawall, and between the two walls are rectangular-shaped open areas that are filled with sand (referred to as “sand boxes”).

In its action on the subject permit, the Board of Supervisors found that the project site does not contain any environmentally sensitive habitat areas (ESHA), would not impact public access or recreation, and that based upon the information contained within a site specific wave run-up study, the subject development would remain safe from wave attack and wave run-up over the expected life of the structures in consideration of projected sea level rise. Furthermore, the Board of Supervisors found that the approved development is consistent with all applicable policies and provisions of the County’s LCP, including the maximum building height and building coverage.

D. SUMMARY OF APPEAL CONTENTIONS

The County’s final action on the subject CDPs was appealed to this Commission by Terry O’Brien and Nancy Graham, Paul and Joanne Fillmore, and Robert McPherson, the owners of properties located near the subject property. The appeal was filed on August 28, 2018, and is attached as Exhibit 8. The appellants contend that the approved demolition of the existing single-family residence and the construction of two new single family residences and associated development at the project site is inconsistent with the Ventura County LCP policies and provisions. Specifically, the appellants assert that the findings necessary for issuance of the subject variance for the proposed decks cannot be made. The appellants also allege that the construction of the rear deck, which would cover the “sand box” areas in the existing seawall, would create reflecting wave forces that would undermine the seawall and cause it to fail, which will in turn endanger neighboring properties, inconsistent with the hazards policies of the LCP. The appellants supported this claim with two engineering reports that contradicted the engineering reports prepared by the applicant. The specific policy inconsistencies raised in the appeal are discussed in further detail below.

E. SUBSTANTIAL ISSUE DETERMINATION

1. Substantial Issue Background

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the locally-approved project’s conformity to the policies contained in the certified County of Ventura (County) Local Coastal Program (LCP) or the public access policies of the

Coastal Act. In this case, the appellants are alleging that the project does not conform to the County's LCP because the variance granted for the raised deck construction were not supported by the necessary findings required pursuant to Section 8181-4.2 of the County's Coastal Zoning Ordinance. The appellants also allege that construction of the proposed deck would be inconsistent with the hazards policies of the LCP because its construction would result in increased wave forces that would undermine the seawall and endanger neighboring properties.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., Title 14, Section 13115(b)). In previous appeal decisions, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significant.

In this case, for the reasons discussed below, the Commission determines that the appeal raises substantial issue with regards to the grounds on which the appeal has been filed, as discussed below.

2. Hazards and Shoreline Development Standards

The existing rear yard deck covers 1,500 square feet and extends from the residence to the edge of the upper portion of the stepped seawall, leaving the "sand box" areas between the two seawalls open to the sky, as depicted on Exhibit 3. Part of the proposed development involves constructing a new 1,672 square foot rear yard deck that extends to the edge of the lower portion of the stepped seawall, thereby covering the top of each "sand box". The portions of the deck that would be located over the "sand boxes" would be supported by four-foot-high caissons. The proposed deck would be in line with the existing rear yard decks of properties located up- and downcoast of the subject lots. Because the proposed decks would be located within the required three-foot side yard setback and the height of the decks would be 6 feet above existing grade, the applicant requested a variance pursuant to County Implementation Plan (IP) Sections 8175-4.4 and 8181-4.2.

Pursuant to Section 8181-4.2 of the County's IP, the permitting authority must find that the following standards are met by the application in order to grant the variance:

- a. There are special circumstances or exceptional characteristics applicable to the subject property with regard to size, shape, topography and location, that do not apply generally to comparable properties in the same vicinity and zone within the coastal zone; and

- b. Granting the requested variance will not confer a special privilege inconsistent with the limitations upon other properties in the same vicinity and zone within the coastal zone; and
- c. Strict application of the zoning regulations as they apply to the subject property will result in practical difficulties or unnecessary hardships with the general purpose of such regulations; and
- d. The granting of such variances will not be detrimental to the public health, safety or general welfare, nor to the use, enjoyment or valuation of neighboring properties; and
- e. All development authorized by the variance is consistent with all applicable standards of the LCP.

As described in further detail below, the appellants allege that the above findings were not supported by substantial evidence, and that the variances should not have been granted.

The first finding necessary to grant a variance is the existence of special circumstances or exceptional characteristics applicable to the subject property. The County found that the site's existing seawall constituted a qualifying circumstance, because although the subject lots are uniform in shape and size with many other lots in the Faria Beach Community, no other property in the Faria Beach Community contains two walls with a "sand box" in between in their shoreline protection. The variance would result in a deck that is in line with the adjoining neighbors' decks. The appellants allege that the site's existing seawall does not constitute a qualifying circumstance, because it is not related to the site's size, shape, topography or location.

The second finding necessary to grant a variance is proof that said variance will not confer special privilege upon the property. The County found that the variance would not confer special privilege inconsistent with the limitations on other properties in the Faria Beach Community, and that the applicant requests equal treatment with their neighbors by allowing their deck to line up with other decks from the surrounding homes. The appellants allege that allowing the raised decks to be built over the "sand box" portions of the seawall would grant the applicant special privilege, because the neighboring decks do not extend beyond the "at grade" portions of their respective properties. While it is true that the neighboring decks do not extend beyond the "at grade" portions of their respective properties, this is because each property's seawall is at grade with the rest of the property.

The third finding necessary to grant a variance is that strict application of the zoning regulations will result in practical difficulties or unnecessary hardships. The County found that adherence to the standard three-foot side yard setbacks would allow the two "sand box" areas to remain open to the sky, which would create a narrow, un-useable deck space, leave gaps in the raised decks, and potentially create a falling hazard due to the change in grade. The appellants allege that the absence of the raised decks over the "sand box" portions of the seawall will not create a hardship for the applicant, as it is not a true safety hazard. The appellants further allege that the loss of backyard space is not significant and could be compensated for in other ways. As has been noted, the decks of nearby properties extend to their respective side property lines within the side yard setbacks, which creates a virtually seamless deck structure between multiple properties in the Faria Beach Community. These decks did not require issuance of a variance because they were built at grade, and only decks that are raised over 30 inches must maintain a three-foot side setback, pursuant to County IP Section 8175-4.4. As such, the variance for the proposed deck on

the subject site is necessary only because of the difference in grade, a condition that does not apply to neighboring properties and which requires the decks to be raised on caissons.

The fourth finding necessary to grant a variance is proof that said variance will not be detrimental in any way to the public or neighboring properties. The County found that the granting of this variance would improve the design and provide added safety around the proposed deck and that the proposed project (including the raised deck) would not extend beyond the boundaries of the subject properties, such that it would impede any shoreline public access routes. The appellants allege that the raised decks over the “sand box” portions of the seawall will redirect wave uplift forces in such a way as to undermine and eventually destroy the site’s seawall, which protects not only the subject property but neighboring properties as well, thus constituting a detriment to the use and valuation of neighboring properties.

The fifth finding necessary to grant a variance is that the development is consistent with the applicable standards of the LCP. The County found that although the proposal to reduce the side yard setback does not comply with the development standards of the IP, the proposal will not be contrary to or in conflict with the general purposes and intent of the goals, policies and programs of the LUP. The appellants cite LUP Policy 4.2.4(A), and Hazards Policies 2 & 3, which require that new development be designed to minimize its impacts to hazards. The appellants allege that the project is not consistent with these policies because the construction of the raised decks will negatively impact the site’s seawall, which will increase the risks associated with hazards. As noted above, the construction of the raised decks over the “sand boxes” will redirect wave uplift forces. Currently, any waves that overtop the lower seawall and enter the “sand boxes” are deflected upwards when they hit the upper seawall. By constructing raised decks over the top of the “sand boxes”, the wave energy that would have been deflected upwards will now be redirected within the “sand boxes”. This could potentially increase the amount of wave energy hitting the existing seawall, which protects both the subject property and the neighboring properties.

3. Factors Considered in Substantial Issue Analysis

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development’s conformity to the policies contained in the certified LCP and the public access policies of the Coastal Act. In this case, the appellants cite the coastal hazards and shoreline development policies and provisions of the LCP. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. The Commission’s regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government’s decision that the development is consistent with the subject provisions of the certified LCP. In this case, the County had adequate support for several of the required variance findings regarding the exceptional characteristics of the properties in question, that no special privilege would be conferred upon the applicant, and that strict application of the standard would be a hardship to the applicant. However, the County

did not provide adequate evidence that the proposed rear yard decks would be designed in such a way as to minimize the subject property's risk from coastal hazards. So, its variance findings that the variance would not be detrimental to the public or neighboring properties and that the project is consistent with the LUP were not adequately supported. Therefore, the County has not provided a high degree of factual and legal support for the decision that the proposed development is consistent with the certified LCP policies related to hazards and shoreline development, as explained in detail above.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the project consists of the residential development of two single-family dwellings on a previously developed property located within a residentially developed neighborhood. Although this property is not particularly large and the development type is consistent with the surrounding area, the extent and scope of the approved development has implications for future development projects along the Ventura County coastline both currently and into the future, as substantial redevelopment increases the amount of development exposed to shoreline hazards.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site consists of developed beachfront lots located in a developed residential community. Development in such a location raises substantial issue with regard to shoreline processes and sand supply, as well as public access, as the subject development could have an adverse effect on these significant coastal resources.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the precedential value of the County's decision for future interpretation of its LCP is significant because there are several beachfront residential communities with existing shoreline protection in the County where substantial redevelopment could raise similar resource issues. As described above, under the certified LCP, beachfront development is required to be sized, sited and designed to minimize risks from hazards. If redevelopment of beachfront property (such as the subject project) is not required to be consistent with these LCP policies, cumulative impacts of residential development along the Ventura County coastline could result in an increased risk of hazards and degradation of coastal resources over time. This is an issue of important precedent not just for the County, but also statewide.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. The appeal not only raises local issues, but also has implications for resources of regional or statewide significance. The subject development raises issues associated with redevelopment on land subject to shoreline hazards, which are expected to increase over time due to sea level rise. These are important issues common to jurisdictions throughout the Coastal Zone and therefore this appeal does have regional and statewide significance.

F. SUBSTANTIAL ISSUE DETERMINATION CONCLUSION

For the reasons discussed above, the Commission finds that the County-approved project raises substantial issue with respect to its conformance with applicable LCP provisions related to coastal hazards and shoreline development, and the public access policies of the Coastal Act. Therefore, the Commission finds that substantial issue exists with respect to the approved project's conformance with the certified County of Ventura LCP and the Coastal Act. As such, the Commission will evaluate the project under a de novo permit review.

III. MOTION AND RESOLUTION ON DE NOVO REVIEW

Motion:

*I move that the Commission **approve** Coastal Development Permit Number A-4-VNT-18-0070 pursuant to the staff recommendation.*

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

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the public access and recreation policies of the Coastal Act and the policies of the certified Local Coastal Program for the County of Ventura. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

IV. 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.

V. SPECIAL CONDITIONS

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

2. No Future Shoreline Protective Device

- A. By acceptance of the permit, the applicant/landowner 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, driveway/patios, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant/landowner hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices or to augment the existing rock revetment located immediately seaward of the subject property 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 County of Ventura LCP.
- B. By acceptance of this permit, the applicant/landowner 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, septic system, 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 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 County of Ventura and/or Coastal Commission provides a written determination that no coastal development permit is legally required.

3. Coastal Hazard Risk

By acceptance of this coastal development 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 County 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 County and the 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 owner of the property on which the permitted project is located.

- 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 structures 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. 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.

5. 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.

6. 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.

7. 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.

8. County of Ventura Conditions

The applicant shall comply with all of the County of Ventura conditions attached to the County's approval of CDP Numbers PL17-0014 & PL17-0015 as listed in Resolution No. R-18-13 (Exhibit 7 of this staff report), except as specifically modified by this approval. 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.

VI. 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 County of Ventura certified LCP and the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings and previously cited policies above are incorporated herein by reference.

A. DE NOVO PROCEDURES

If a substantial issue is found to exist, the Commission will consider the CDP application de novo. The Commission may conduct its de novo review of the permit application immediately following its substantial issue determination or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the entire proposed development is in conformity with (1) the certified Local Coastal Program and (2) if the development is between the sea and the first public road paralleling the sea, the public access and recreation policies of the Coastal Act. (Coastal Act Section 30604(b) & (c)). If a de novo review is conducted, testimony may be taken from all interested persons.

B. REVISED PROJECT DESCRIPTION FOR DE NOVO COASTAL DEVELOPMENT PERMIT

After the subject appeal was filed, Commission staff spoke with the applicants and their representatives several times to discuss the rationale for the appeal, as well as the ways by which the issues raised by the appeal could be resolved. Consistent with past Commission actions on similar beachfront re-development projects, staff suggested changes to the project's design that could be made to ensure that the project was consistent with the LCP.

Based on several discussions with Commission staff to address issues related to shoreline protection and coastal hazards, the applicant has modified the proposed project for the de novo coastal development permit. This change proposed by the applicant includes the addition of two wedge-shaped gabion baskets filled with 5 pound rocks to be placed within the "sand box" areas to dissipate incoming wave energy (Exhibit 6). The applicant's engineer has indicated that these dissipation devices will sufficiently minimize any altered wave energy within the "sand box" areas and will ensure that the stability of the existing seawall is not adversely impacted.

As now revised, the proposed project includes the demolition of an existing 2,170 square foot single-family dwelling, 1,500 square foot deck, and 500 square foot detached garage constructed over two lots; the construction of a new 5,264 square foot single-family dwelling, 802 square foot garage, and 980 square foot deck on one lot; the construction of a new 4,695 square foot single-family dwelling, 839 square foot garage, and 692 square foot deck on one lot; the granting of a side yard setback variance; the cosmetic refinishing of an existing seawall located across both lots; and the installation of two wave energy dissipation devices.

C. HAZARDS AND SHORELINE PROCESSES

County of Ventura Land Use Plan Policy 4.2.4(A)(2) states:

New development shall be sited and designed to minimize risks to life and property in areas of high geologic, flood, and fire hazards.

County of Ventura Land Use Plan Policy 4.2.4(A)(3) states:

All new development will be evaluated for its impacts to, and from, geologic hazards (including seismic safety, landslides, expansive soils, subsidence, etc.), flood hazards, and fire hazards. Feasible mitigation measures shall be required where necessary.

County of Ventura Land Use Plan Policy 4.2.4(A)(6) states:

New development shall be sited and designed so as not to cause or contribute to flood hazards, or lead to the expenditure of public funds for flood control works.

County of Ventura Implementation Plan Section 8178-4.1 states:

All new development shall be evaluated for potential impacts to, and from, geologic hazards (including seismic hazards, landslides, expansive soils, subsidence, etc.), flood hazards and fire hazards. New development shall be sited and designed to minimize risks to life and property in areas such as floodplains, blufftops, 20% or greater slopes, or shorelines, where such hazards may exist. New development shall be sited and designed so as not to cause or contribute to flood hazards, or lead to the expenditure of public funds for flood control works. Feasible mitigation measures shall be required where necessary.

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

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:

(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 do all of the following:

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

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.

(d) Minimize energy consumption and vehicle miles traveled.

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

The certified Ventura County LCP contains policies and provisions, including LUP Section 4.2.4(A), IP Section 8178-4.1, and Coastal Act Section 30253, 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. These policies and provisions also 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, 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 project site is located on Pacific Coast Highway in the Faria Beach Community in the unincorporated area of Ventura County. The site lies next to a narrow sand and cobble beach along a relatively high wave energy section of shoreline. A report prepared in 1989 by the Beach Erosion Authority for Clean Oceans and Nourishment (BEACON), a joint powers agency that includes the cities and counties in Santa Barbara and Ventura County area, indicates that this section of coastline has historically hosted a narrow sand and/or cobble beach, and the shoreline is relatively stable. The California Department of Boating and Waterways in partnership with the US Army Corps of Engineers maintain wave recording buoys throughout Southern California, and the record of historical waves for this region, both from direct observation or recording and from hindcast analysis, is very extensive. Waves as high as 20 feet were recorded on January 17, 1998 and 14-16 foot waves with a period in excess of 20 seconds were recorded during the 1982-

83 El Niño. Faria Beach has been susceptible to previous damage from flooding and/or wave damage from storm waves and storm surge conditions which, prior to the effective date of the Coastal Act, resulted in the need for the original construction in 1969 of the existing community-wide seawall that is located seaward of all the residential parcels. Although this is a contiguous seawall that extends the length of the Faria Beach Community, it is located on individual parcels, and is maintained by each individual owner. As mentioned above, CDP 4-81-462 was issued in 1982 for the installation of rip-rap at the base of the wall on the subject property.

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 century¹. 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.

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

¹ 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.

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

As discussed in the Substantial Issue findings above, the applicant has submitted a Coastal Hazard and Wave Run-Up Study dated July 5, 2016 prepared by GeoSoils, Inc., for the property. The study concludes that while the subject site will likely be subject to future wave run-up and overtopping, this will not significantly impact the proposed development because it is designed on caissons at an elevation to withstand wave forces without shoreline protection. The report also states that if the existing shore protection were to be removed, the only portion of the development that may be subject to direct wave action would be the vertical piles supporting the residence, which have been designed to extend well below the maximum anticipated beach scour

depth. Furthermore, the report states that the long-term stability of the adjacent properties and Pacific Coast Highway will depend on the continued existence and maintenance of the existing shoreline protection. The coastal engineer for the applicant prepared three additional reports that reinforce these findings, dated November 6, 2017, July 12, 2018, and August 3, 2018.

Although the subject residences have been designed to not require the construction or use of a shoreline protective device, as mentioned above, several existing residences located near the project site depend on the existing seawall for protection from hazards. The appellants allege that the proposed design of the new residences will affect this shared seawall in such a way as to expose the neighboring residences to increased hazards. To support this assertion, the appellants submitted two reports prepared by David C. Weiss Structural Engineer & Associates, Inc., dated August 21, 2018 and October 11, 2018. These reports allege that the construction of the raised decks over the “sand boxes” will cause undermining of the upper seawall, which could in turn cause the total collapse of the back walls of the structure.

As noted in the Substantial Issue findings above, the construction of the raised decks over the “sand boxes” will change the wave energy dynamics on the subject property. Currently, any waves that overtop the lower seawall and enter the “sand boxes” are deflected upwards when they hit the upper seawall, thereby dissipating much of their energy. By constructing raised decks over the tops of the “sand boxes”, the wave energy that would have been deflected upwards will now be redirected within the “sand boxes”. This could potentially increase the amount of wave energy hitting the existing seawall.

Following the filing of the appeal, the applicant has modified the proposed project to include gabion baskets within the “sand box” areas, which will act as wave energy dissipation devices (Exhibit 6). By helping to dissipate any waves that enter the “sand box” areas below the raised decks, these gabion baskets will reduce the amount of energy hitting the proposed raised decks and existing seawall, thus minimizing any potential adverse impacts.

These gabion basket dissipation devices do not constitute new shoreline protective devices, and they will not extend the life of the existing seawall. They have, however, been designed to minimize any impacts to the seawall that could have potentially been caused by increased wave energy resulting from the construction of the raised decks over the “sand box” areas.

The Coastal Hazard and Wave Run-Up Study (Study) also considers the effect of sea-level rise on potential future wave action using the sea-level rise recommended projection of 1.25-4.75 ft. contained in the Coastal Commission’s 2015 Sea-Level Rise Policy Guidance, which was the most current at the time that the report was prepared. Specifically, the Study 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 through time accounting for sea level rise. To ensure that all recommendations of the coastal engineering consultant have been incorporated into the proposed development, **Special Condition One (1)** 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 the existing shoreline protection device based on the hazard and sea level rise conditions included in the Study, it's important to state that new development such as this is not entitled to new shoreline protection under the Coastal Act or LCP, and the Commission would not approve this project if it required a new shoreline protection device now or at some point in the future. The shoreline is a dynamic environment and although the proposed residences have 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 residences 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, 20250, and 30253, as incorporated in the LCP, the applicant must waive any right to construct a new 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.

Additionally, **Special Condition Seven (7)** 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 Ventura County 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 Ventura County 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 Coastal Act and 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, as incorporated in the LCP). Additionally, **Special Condition Five (5)** 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 County of Ventura LCP, including Coastal Act policies incorporated therein.

D. PUBLIC ACCESS AND RECREATION

County of Ventura Land Use Plan Policy 4.2.2(B)(1) states:

For all new development between the first public road and the ocean, granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:

- a. Adequate public access is already available within a reasonable distance of the site measured along the shoreline, or*
- b. Access at the site would result in unmitigable adverse impacts on areas designated as sensitive habitats or tidepools by the land use plan, or*
- c. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or*
- d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner.*

County of Ventura Land Use Plan Policy 4.2.2(B)(2) states:

For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory unless subsection (a) below is found. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access shall be removed as a condition of development approval.

a. Findings are made, consistent with Section 30212 of the Act that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected.

County of Ventura Implementation Plan Section 8178-6.1 states:

The granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:

- a. Adequate public access is already available within a reasonable distance (one-quarter mile) of the site measured along the shoreline, or*
- b. Access at the site would result in unmitigable adverse impacts on areas designated as "sensitive habitats" or tidepools by the land use plan, or*
- c. Findings are made, consistent with Section 30121 of the Coastal Act, that access is inconsistent with public safety or military security needs, or that agriculture would be adversely affected, or*
- d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner. This shall mean that the possibility does not exist to site the accessway five feet or more from the residential structure and that the structure cannot be redesigned to accommodate the accessway with the five-foot separation.*

County of Ventura Implementation Plan Section 8178-6.2 states:

The granting of lateral easements to allow for public access along the shoreline shall be mandatory unless findings are made, consistent with Section 30212 of the Coastal Act, that access is inconsistent with public safety or military security needs, or that agriculture would be adversely affected. In coastal areas where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated for public use. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, "no trespassing" signs and other obstructions that may limit public lateral access shall be removed as a condition of development approval. For new development, including additions seaward of an existing residence, the improvements shall not extend seaward to an extent which does not provide the required ten-foot separation between the high tide lateral access and the improvements, unless there is a protective structure, e.g.,

a seawall, in which case the separation between the structure and the lateral access may be less than 10 feet.

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

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

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, 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.

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 4.2.2.B and IP Section 8178-6.2 require 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 affect public access, 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 Ventura County 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 two beachfront lots that are located within the Faria Beach Community. The nearest vertical public access to the beach is located on either side of the community, approximately 4,000 feet north of the subject site and 300 feet south of the subject site. Lateral public access along the beach in front of the community also exists at certain tide conditions. Furthermore, in 1982, the Commission approved CDP 4-81-462 for the installation of rip-rap along the base of the existing seawall, which required a deed restriction for lateral public access and recreational use across the entire width of the subject lots. No portion of the proposed project will encroach into or over this lateral public access easement. Therefore, consistent with LUP Policy 4.2.2.B and Section 8178-6.2, lateral public access is provided on the sites, through the previous recordation of a lateral access deed restriction.

As described above, new development on beachfront parcels should be designed in a manner that will not require the future use of shoreline protective devices. Construction of a new 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 new shoreline protective device will ever be built to protect the proposed structures. As such, **Special Condition Two (2)** requires the applicant to waive the right, per Coastal Act 30235 (as incorporated in the LCP) and any equivalent LCP policy, 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 residences have 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 structures

are 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 Seven (7)** 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 properties now or in the future. **Special Condition Seven (7)** 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 **Seven (7)**, respectively, clarify that the permit only authorizes the development for as long as it remains on private property and ensure that the homes do 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 homes do 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 homes 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 Ventura County area. These signs have an adverse effect on the ability of the public to access public trust lands. Therefore, **Special Condition Six (6)** 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 Five (5)** 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 and provisions of the certified Ventura County LCP and the public access and recreational policies of the Coastal Act.

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 Four (4)** requires that the project applicant comply with specific construction standards and best management practices. **Special Condition Four (4)** 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 County'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 County's LCP. Thus, **Special Condition Eight (8)** requires the applicant to submit evidence of compliance with the County's conditions, except as specifically modified by this approval and any subsequent amendments to the project description. **Special Condition Eight (8)** 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 County of Ventura 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 County 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 8

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

County of Ventura Local Coastal Program; County of Ventura Planning Commission Staff Report for PD Permits Nos. PL17-0014 & PL17-0015, prepared for June 21, 2018 hearing; County of Ventura Planning Commission Staff Report for PD Permits Nos. PL17-0014 & PL17-0015, prepared for August 23, 2018 hearing; Board of Supervisors De Novo Hearing Staff Report for PD Permit Nos. PL17-0014 & PL17-0015, prepared for the October 16, 2018 hearing; Coastal Development Permit No. 4-81-462 (Faria Family Partnership); Coastal Hazard & Wave Run-Up Study for 3692 W. Pacific Coast Highway, prepared by GeoSoils, Inc., dated July 5, 2016; Memorandum: Scour Control System 3692 W. Pacific Coast Highway, prepared by GeoSoils, Inc., dated February 7, 2019; 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.