

**CALIFORNIA COASTAL COMMISSION**

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# F11b

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-18-0091

**Applicant:** Anthony Nobles

**Agent:** None

**Location:** 16601 So. Pacific Ave., (Sunset Beach), Huntington Beach  
Orange County  
APN: 178-522-09

**Project Description:** Major remodel consisting of a three-story, 3,076 square-foot addition to a three-story 3,774 square-foot, 35 feet high single-family residence, resulting in a 6,850-square foot, three-story, 35-feet high single-family residence with a new 904-square foot three-car garage, on a beachfront lot. Alterations to the existing residence include demolition of a 13-foot portion of the rear (landward) wall, removal of an interior, three-story stairway located adjacent to the wall section to be demolished, and removal of interior, first floor bath and powder rooms. And, on the third floor, one five-foot length of wall will be replaced with a five-foot long bay window. In addition, one exterior, approximately three-foot wide doorway will be removed and replaced with solid wall on the southeast wall. Removal of encroachments from areas of the beach adjacent to the site and restoration of the beach where encroachments were formerly located, and adjacent beach areas, is proposed.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION:

The subject site fronts on Sunset Beach, a public beach located in the Sunset Beach community in the City of Huntington Beach, Orange County. The existing residence is setback from the rear

property line abutting the public beach only one foot to a few inches, raising concerns about privatization of the public beach and public access. The proposed project includes a significant addition on the landward side of the residence as well as demolition of a portion of the three-story wall on the rear (landward) side of the residence, and other internal renovations, but no changes to the setback from the seaward property line. Although the beach is currently wide, the beach is likely to narrow significantly in the coming decades due to sea level rise.

An important question raised by this project is whether the proposal constitutes “redevelopment” of the existing house versus ordinary improvements to a single-family residence that are typically exempt from coastal development permitting requirements unless located in sensitive areas (i.e., Title 14, Division 5.5, Cal. Code Regs. §§ 13250, 13252). In past instances, the Commission has found that a structure will be considered redeveloped if 50% or more of the major structural components, or a 50% increase in gross floor area through alteration, would occur as a result of the proposed development. If so found, the entire redeveloped house must comply with Coastal Act policies.

In this case, while the applicant proposes to maintain most of the existing residence, the proposed addition would almost double the size and square footage of the existing house and more than double the foundation area, resulting in an 81% increase in gross floor area. In addition, the applicant proposes to demolish a 13-foot portion of the rear (landward) wall of the existing residence on all three floors, as well as other internal renovations, that will alter approximately 11% of the external walls and 9% of the internal floor area of the residence. Thus, taken together, the proposed project entails such significant improvements to the existing residence that it will result in essentially a new home that is new development such that the entire home must comply with Coastal Act requirements, including its public access and recreation policies.

Provision of a five-foot setback from public beach areas is important in this area of Sunset Beach as sea levels continue to rise and the beach area between private residential development and the ocean narrows. Therefore, staff is recommending approving the project with a special condition requiring the redeveloped house to comply with a minimum five-foot setback from the seaward property line.

The applicant has argued that to conform to the recommended setback, the existing home would need to be demolished. Based upon both the applicant’s Engineers’ Assessments and the Commission’s Senior Coastal Engineer’s review of those assessments, staff disagrees that conformance to the setback would require demolition of the existing structure. However, staff does recognize that conforming development at the subject site to the recommended five foot seaward setback would be a significant and complicated undertaking. Nevertheless, due to the significant impacts to public access from retaining the near zero setback from the public beach, and due to the precedential nature of this project, this development must conform to a minimum five foot setback from the seaward property line in order to conform the proposed development with the public access policies of the Coastal Act. If a minimum seaward setback is not imposed with this proposed development at this time on this property, then it will be difficult to impose the setback on future projects. Future projects could also propose to retain the non-conforming portion of the existing structure, in an effort to circumvent accommodating a seaward setback.

The project also raises potential coastal hazards issues. Most of Sunset Beach will be susceptible to hazards with expected future sea level rise, including this property towards the end of the economic

life of the proposed house. Therefore, staff is also recommending a special condition that would require removal of development if (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device to prevent a-d above.

Unpermitted private encroachments (including, but not limited to, a 20' by 40' wood deck and related patio accessories) associated with the applicant's private residence were located on the public beach in the area between the subject site's seaward property line, extending 37 feet seaward. Although the applicant had been informed that removal of the unpermitted development would require approval of a coastal development permit, the applicant chose to remove the unpermitted development without benefit of a coastal development permit. The applicant is requesting approval of removal of the encroachments after-the-fact through this application. In an effort to offset adverse impacts resulting from unpermitted placement of the encroachments, the applicant has proposed to restore the area where the encroachments were located, and additional adjacent beach area, to dune habitat including by recontouring the area and revegetating the area with plants native to southern California coastal dunes. In addition, the applicant is proposing to remove ornamental vegetation from the street end and beach adjacent to the property for the purpose of removing impediments to public access, and to install a public access sign, in order to create a more welcoming public accessway adjacent to the site. While the encroachments have been removed and the beach is proposed to be restored, the applicant is not proposing to adequately address the temporal public access impacts that occurred due to the presence of the encroachments on the public beach for a number of years, nor the Commission's claims for monetary penalties for these violations. Therefore, the Commission's enforcement division will evaluate further actions to comprehensively resolve these Coastal Act violations.

In all, staff is recommending APPROVAL of the proposed project with thirteen (13) special conditions regarding: 1) project re-design and submittal of revised plans reflecting a minimum setback of five feet from the seaward property line; 2) revised foundation plans; 3) Revised Revegetation and Landscape Plan (Dune Restoration Plan); 4) submittal of a Public Beach Access Improvement Plan that provides details of the applicant's proposed access improvements; 5) limiting the footprint of all work not to exceed the area within the dune restoration area; 6) prohibition of future shoreline protective devices and removal of approved development if threatened, or if essential services to the site can no longer feasibly be maintained, or if located on public trust lands, or if inconsistent with the LCP; 7) submittal of a revised drainage plan modified to accommodate the required seaward setback pursuant to Special Condition 1, that shall otherwise conform with the submitted drainage plan; 8) prohibition of future private development encroachments onto the public beach; 9) appropriate storage of construction materials, mechanized equipment and removal of construction debris; 10) requirement to obtain a coastal development permits for future development; 11) protection of any public rights that exist or may exist at the subject site; 12) notice that the applicant assumes risks of development; and 13) recordation of a deed restriction against the property referencing all of the special conditions contained in this staff report.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION.....</b>	<b>5</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>5</b>
<b>III. SPECIAL CONDITIONS.....</b>	<b>6</b>
<b>IV. FINDINGS AND DECLARATIONS: .....</b>	<b>13</b>
A. PROJECT LOCATION & DESCRIPTION.....	13
B. REDEVELOPMENT .....	15
C. PUBLIC ACCESS AND RECREATION .....	19
D. HAZARDS .....	38
E. WATER QUALITY .....	48
F. DEVELOPMENT.....	49
G. DEED RESTRICTION.....	50
H. UNPERMITTED DEVELOPMENT .....	50
I. LOCAL COASTAL PROGRAM.....	52
J. CEQA .....	53

## APPENDICES

Appendix A - Substantive File Documents

### EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Project Plans

Exhibit 3 – Topographic Plan Showing Current Structural Setback from Seaward Property Line & Formerly Existing Private Development Encroaching Beyond Property Line

Exhibit 4 – Plan Submitted by Applicant to Indicate Previous County Approval of Wood Deck

Exhibit 5 – Google Earth Historic 2009 Photo Showing Smaller Deck

Exhibit 6 – Google Earth 2018 Photo of Site Showing Larger Deck

Exhibit 7 – Grant Deed December 2009

Exhibit 8 – USGS CoSMoS Map Showing Site with 6.6 Feet of SLR

Exhibit 9 – Engineer’s Assessment, Silva, 4/19/2019

Exhibit 10 – Engineer’s Assessment, Castillo, 4/26/2019

Exhibit 11 – Commission’s Senior Coastal Engineer’s Memo, 5/29/2019

Exhibit 12 – Revegetation and Landscape Maintenance Plan, LSA, 5/2/2019

Exhibit 13 – Maintenance Operations Manager, Public Works Dept., email correspondence

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-18-0091 pursuant to the staff recommendation.*

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

### Resolution:

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

## II. STANDARD CONDITIONS:

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Plans: Residence.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of revised final plans, including: site plan, floor plans, and elevations, modified as required below:
1. The rear (seaward side) setback of the structure shall not be less than five feet from the property line on all levels. This five-foot setback shall apply to all habitable and non-habitable areas, all floor levels, and the foundation of the structure except for ground level patios or decks.
  2. The property line and required minimum setback shall be depicted and labeled on all plans.
- B. All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.
- C. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Revised Final Plans: Foundations**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of revised final foundation plans, modified as required below:
1. The foundations to support the residential addition shall be mat foundation or similar shallow foundations; embedded pier foundations shall be prohibited unless an appropriately licensed engineering professional provides written evidence demonstrating, to the satisfaction of the Executive Director, that such foundations are not structurally feasible to support the proposed addition.
  2. The revised foundation plans shall be consistent with Special Condition No. 1, above.
- B. All revised foundation plans shall be prepared and certified by a registered, licensed professional engineer, based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.

- C. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

### 3. Dune Restoration Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a revised Revegetation and Landscape Monitoring Plan (Plan), prepared by a qualified restoration biologist/ecologist, consistent with the plan prepared by LSA, dated May 2, 2019, except the revised plan (to be re-titled Dune Restoration Plan) shall be modified to include the changes described below:

1. Non-Native Invasive Plant Removal:

- a. A detailed description of methods to be employed for removal of all non-native plants from the restoration area and within the area of adjacent public beach access improvements (as depicted on Figure 3 of the proposed Revegetation and Landscape Monitoring Plan);
- b. The plan shall require on-going removal of non-native invasive plant species, including but not limited to, Hottentot-fig (*Carpobrotus edulis*), crystal ice plant (*Mesembryanthemum crystallinum*), small flowered ice plant (*M. nodiflru*), Natal plum (*Corissa macrocarpa*), and baby sun rose (*Aptenia cordifolia*).

2. Dune Species Survey:

Prior to commencement of restoration activities, the restoration site shall be surveyed for globose dune beetle (*Coelus globosus*) and silvery legless lizard (*Anniella pulchra pulchra*) and the survey included in the revised plan; if either or both of these species are discovered on the restoration site, a plan for their protection shall be included in the revised Plan.

3. Dune Revegetation Plant Lists:

Tables A and B, on page 4 of the Plan, shall be modified to eliminate Mesa horkelia (*Horkelia cuenata*) and Sand Aster (*Corethrogyne filangifolia*) and to add beach saltbush (*Atriplex leucophylla*). The beach saltbush plants may be from either seed or container plant.

4. Dune Planting Plan:

The location of the initial native dune plantings (both seed and container plantings) shall be depicted graphically on restoration plans.

5. Success Criteria:

Success criteria shall include 35% absolute cover of the dune recontouring area (as shown on Figure 3 of the Plan, as modified herein) by native dune plant species (consistent with natural dune coverage), species richness equal or greater than 5, and no more than 5% absolute cover of non-native invasive plants.

6. Maintenance Weeding:

Regular surveys (at least bi-annually) shall be conducted to identify invasions of non-native plant species. Invaders will be removed by hand for the duration of the restoration project (i.e. until success criteria are met).

7. Irrigation:

Use of irrigation shall be avoided to the extent feasible. Hand watering with private hose is preferred with care to avoid trampling the plantings. Only minimal irrigation shall be used as necessary to establish plantings. Any irrigation lines shall be similar in color to the sand upon which they are placed. Any irrigation system that may be installed shall be removed within a maximum of two years from the date of planting.

8. Monitoring:

- a. Include a requirement to monitor the restoration for a minimum of five years or until success criteria are met, whichever is longer;
- b. Vegetation monitoring: Success of the restoration project will be evaluated by comparing monitoring data with success criteria. This monitoring shall include sampling of native vegetative percent absolute cover, species diversity, and percent absolute cover of non-native invasive species before the project and annually for the duration of the project;
- c. Topographic monitoring: The topography of the site shall be documented using multiple transects perpendicular to the shore. This monitoring following dune contouring and then annually for the duration of the project;
- d. Photographic monitoring: Photographs from fixed locations shall document change at the restoration site over time. This photographic monitoring shall be done prior to non-native plant removal, immediately following (within one week) dune recontouring; and at least bi-annually for the duration of the project;
- e. Comprehensive annual monitoring of vegetation and topography will be used to determine the success of the restoration in establishing native habitat.
- f. Monitoring Reports shall be prepared annually and shall provide analyses, interpretation, and presentation of all monitoring results. The Monitoring Reports shall be submitted to the Executive Director of the Coastal Commission for review and comment.

9. Dune Recontouring:

- a. Sediment Analysis: Sand samples from the subject site shall be taken prior to commencement of dune recontouring. Grain size and chemistry analysis shall be performed on each of the sand samples consistent with US Army Corps of Engineers and US Environmental Protection Agency established protocols as outlined in the Inland Testing Manual (USEPA and USACE 1998). Sand Compatibility Opportunistic Use Program (SCOUP) guidelines (M&N 2006) shall also be used to evaluate the site material. The grain size and chemistry of clean sand to be imported for the dune recontouring shall also be analyzed. Only clean imported sand found, to be compatible in grain size and chemistry, shall be allowed to be imported to the site for the dune recontouring;
- b. Topography maps of the proposed dune restoration profile shall be included in the revised Plan;



- c. The restored dune configuration and elevation shall be similar to the sand dune fronting other South Pacific Avenue development fronting on the sandy beach, to elevation 16 feet NAVD88 across the width of the restored area (40 feet width), tapering to meet the elevation of the subject site on the landward side and to meet the elevation of the beach on the seaward side of the restored dune. The sand shall be arranged such that it mimics a natural sand dune with hummocks and mounds;
  - d. Profiles/cross section plans (minimum of two) of the proposed dune recontouring area shall be included in the revised Plan;
  - e. The six (6) foot wide strip of land labeled “maintained beach access”, shown in the middle of the area labeled “dune recontouring” (Figure 3 of Plan) shall be eliminated and the area shall instead be included within the area to be recontoured and the entire length of six foot width shall be subject to dune revegetation;
  - f. The strip of land within the restoration area shown adjacent to but outside and north of the dune recontouring area on Figure 3 of the Plan, shall be included in the dune recontouring area;
  - g. Temporary wooden sand fencing (installed perpendicular to the prevailing wind direction) shall be used to slow wind-driven movement of sand through the site, reduce sand encroachment, and allow native hummock-forming dune plants to establish. This dune fencing shall remain in place only as long as necessary for the dune plants to become established and the dune hummocks to form. The fencing shall remain in place only as long as needed, but in no case longer than three (3) years;
  - h. Straw bundles (made from a weed-free straw material) may be employed to slow sand movement and provide sheltered planting locations.
10. Within the area between the applicant’s seaward property line and the dune recontouring area (20 feet seaward of the applicant’s seaward property line) as shown on Figure 3 of the Plan shall be maintained free of invasive and non-native plant species. No native dune species that establish within this area shall be removed or harmed.
11. Minimal fencing to demarcate the restoration area shall be placed along the outer edges of the restoration area and shall include signage stating “Dune Restoration Area” or words to that effect.
12. Future private encroachments shall be prohibited seaward of the private property, including within the entire restoration area.
13. Dune Restoration Timing:  
The Dune Restoration Plan shall be implemented within sixty (60) days of completion of construction of the residence and shall be pursued in a diligent manner and completed in a reasonable period of time.
- B. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within 90

days a revised or supplemental restoration program to compensate for those portions of the original program that were necessary to offset project impacts which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit.

- C. The permittee shall undertake dune restoration in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

#### 4. Public Beach Access Improvement Plan.

- A. Prior to issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, a Public Beach Access Improvement Plan. In order to improve the public beach accessway located at the 20<sup>th</sup> Street streetend, as proposed by the applicant, the Public Beach Access Improvement Plan shall include removal of all non-native vegetation from the area adjacent to and northeast of the subject site as depicted on Figure 3 of the Revegetation and Landscape Monitoring Plan (Plan) consistent with the plan prepared by LSA, dated May 2, 2019, (proposed by the applicant) except that the plan shall also include the following:

1. A detailed description of methods to be employed for removal of the non-native plants from the public beach accessway (as depicted on Figure 3 of the proposed Revegetation and Landscape Monitoring Plan), including equipment to be used, methods of disposal of the removed vegetation;
2. A detailed description of how public access will be maintained at all times during the proposed non-native vegetation removal;
3. Public access signage to be placed at the oceanward end of 20<sup>th</sup> Street in the area of the proposed public access improvements; including details of the public access signage, including but not necessarily limited to: the location of the sign(s), the method of posting the sign, the sign(s) materials, the wording of the sign(s), the size of the lettering on the sign(s), the size of the face of the sign(s), the height of the sign(s), timing for installation of the sign(s);
4. Timing within which the non-native vegetation will be removed and within which the sign(s) will be posted.
5. Implementation of the Public Beach Access Improvement Plan shall not interfere with or disturb the dune restoration described in Special Condition 3 above;

- B. The permittee shall implement the Public Beach Access Improvement Plan in conformance with the approved final plan unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

5. All work shall be contained within the smallest footprint practicable. No work shall occur on the public beach beyond the area of the dune restoration.

#### 6. No Future Shoreline Protective Device.

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-18-0091 including, but not limited to, the redeveloped residence, garage, foundations, and any future

improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea level rise, or other natural hazards in the future. By acceptance of this permit, the applicant acknowledges that the project is new construction for which there is no right to construct shoreline protective devices, and hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under applicable law.

- B. By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the redeveloped residence, garage, foundations, and hardscape if: (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device to prevent a-d above.
- C. In the event that portions of the approved development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. Prior to removal, the permittee shall submit two copies of a Removal Plan to the Executive Director for review and written approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, including the beach and Pacific Ocean.

**7. Revised Drainage Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of revised drainage plans, modified as required pursuant to Special Condition No. 1, above. The revised drainage plan shall otherwise include the site drainage details depicted in the On-site Retention Exhibit prepared by Priority Engineering, received in the Commission's South Coast District office on 6/11/2018 (Exhibit 2e) indicating site drainage, including roof downspouts, will be directed to pervious side yard area. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### **8. No Future Encroachments**

By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that any future encroachments shall be prohibited seaward of the private property, including within the entire restoration area (except as provided in the approved Revised Revegetation and Landscape Monitoring Plan, to be re-titled Dune Restoration Plan, as required in Special Condition 3 above).

**9. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:

- (a) No demolition or construction materials, debris, or waste shall be placed or stored on the beach or anywhere it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- (n) During construction of the project, no runoff, site drainage or dewatering shall be directed from the site into any street, alley or stormdrain, unless specifically authorized by the California Regional Water Quality Control Board.

**10. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-18-0091. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-18-0091. Accordingly, any future improvements to the single-family residence and associated

garage authorized by this permit shall require an amendment to Permit No. 5-18-0091 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. In addition, an amendment to CDP No. 5-18-0091 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance to the redeveloped residence and garage identified as requiring a permit pursuant to PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

**11. Public Rights.** The approval of this permit shall not constitute a waiver of any public rights that exist or may exist within the project site now or in the future. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the project site now or in the future.

**12. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards including, but not limited to, erosion, flooding, wave uprush, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**13. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT LOCATION & DESCRIPTION**

The applicant is proposing a major remodel to a single family residence consisting of a three-story, 3,076 square-foot addition to the existing three story 3,774 square-foot, 35 feet high (measured from centerline of frontage road) single family residence. The resultant structure would be a 6,850 square foot, three-story, 35 foot high single family residence with a new 904 square foot, three-car garage. The 3,076 square foot addition is proposed entirely at the landward side of the subject site. Only

limited work (described below) is proposed to the existing structure. The project site is roughly rectangular, approximately 40 feet wide by 77 feet long. The subject site is an ocean-facing, beachfront lot and is immediately adjacent to the 20<sup>th</sup> Street street-end public accessway. Proposed project plans are included as Exhibit 2. The City issued an Approval in Concept for the proposed project (City of Huntington Beach Initial Plan and Zoning Review No. 17-020 (Nobles, 1/31/18)).

The residential addition is proposed to be constructed on shallow wall footings and isolated column footings that will be interconnected with girder beams. The foundations proposed to support the addition will include pier footings along the edge of the proposed addition adjacent to the existing structure. Three 24-inch diameter piers are proposed to be embedded 22-feet below grade.

Staff has concluded that violations of the Coastal Act that are associated with the subject property have been undertaken by the applicant on the adjacent public beach, including placement of private development that encroaches beyond the applicant's seaward property line including a 40-foot wide wood deck that encroaches 20 feet beyond the property line and, approximately 17 feet beyond that, a low wall comprised of stacked paver stones, within which a concrete fire pit, stairs, and patio furniture are present. Accessories associated with the encroaching wood deck include 5-foot high glass windscreen, concrete fire ring, and barbeque, space heaters, and patio furniture. In early April 2019, despite having been informed that approval of a coastal development permit was required, the applicant removed the encroachments without benefit of the required coastal development permit.

Because limited encroachments were previously recognized in the lapsed LCP for the area, the majority (though not all) of the beach front properties have varying degrees of encroachments; staff has found no evidence, nor has the applicant provided evidence, that the applicant obtained the necessary coastal development permit from Orange County for the encroachments pursuant to its now lapsed Local Coastal Program. Moreover, portions of the encroachments extend seaward of the area on which encroachments were previously recognized by the LCP. Thus, in addition to being unpermitted as a whole, portions of the encroachment appear to be inconsistent with the LCP that previously applied to this area. More recently, new applications have included proposals to remove these encroachments. CDP applications that proposed removal of encroachments include: 5-13-0678 (Senn); 5-13-0650 (Valenzuela); 5-16-0420 (Smith Alakor); 5-16-0419 (Von Blasingame); 5-17-0016 (Redhill); 5-17-0524 (Perricone); 5-17-0678 (Bassaly); 5-17-0680 (Bassaly); 5-18-0241 (Poulis, withdrawn prior to Commission action for other reasons); and, 5-18-0295 (Senn, withdrawn prior to Commission action for other reasons).

In an effort to offset impacts due to the unpermitted development, the applicant is proposing to restore the area of former encroachments to dune habitat. In addition, the applicant is proposing to remove non-native vegetation from the public accessway and to post a public access sign at the 20<sup>th</sup> Street streetend accessway. However, consideration of the proposed development has been based solely on the Chapter 3 policies of the Coastal Act. The Commission's enforcement division will consider options to address the Coastal Act violations that have occurred at the subject site as a separate matter.

The subject site is located at 16601 South Pacific Avenue in the Sunset Beach community of the City of Huntington Beach, Orange County (Exhibit 1, Vicinity Map). Sunset Beach is located on a low-lying, relatively narrow strip of land between two water bodies – the ocean to the southwest and Huntington Harbour to the northeast. The project is located within an existing urban residential

area. The subject lot is located between the first public road (South Pacific Avenue) and the sea. The site fronts the wide sandy public beach (approximately 350 feet wide) known as Sunset Beach located between the subject property and the Pacific Ocean.

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

The City has adopted equivalent land use and zoning designations for the site as those set forth in the former Orange County LCP for Sunset Beach. However, the Commission has not yet certified land use designations or zoning for the Sunset Beach area since it was annexed into the City. Nevertheless, it is worth noting that the proposed project (a single-family residence) is consistent with the City's adopted zoning for the area. The lapsed LCP designated the site *Sunset Beach Residential – High Density*. The proposed single-family residence is consistent with this City zoning designation. The project meets the former LCP's height restriction of 35 feet for the *Sunset Beach Residential* zone, which is also the City's current height limit. In addition, the design of the proposed single-family residence project is consistent with existing surrounding residential development on South Pacific Avenue in Sunset Beach.

## **B. REDEVELOPMENT**

The issue of whether this project constitutes “new development” or “redevelopment” or more ordinary improvements is important because, as discussed more fully below, the existing house is not consistent with Coastal Act public access policies because it is inadequately set back from the public beach. “New development” must comply with all Coastal Act Chapter 3 policies—and, hence, include sufficient setbacks from public beach areas. (14, Cal. Code Regs. §§ 13250).

While the dividing line between an improvement (or repair and maintenance) and “redevelopment” is not always clear, at a certain point, substantial alterations to a home can no longer be considered minor improvements, but instead must be considered new development. Thus, Coastal Act Section 30610(a) allows certain types of “improvements” to existing single-family residences without a coastal development permit, which may include modest additions. Although the Coastal Act and its implementing regulations do not define “improvement,” the regulations acknowledge that “improvements” generally include additions that result in an increase of at least up to 10 percent of internal floor area of an existing home. (see 14 Cal. Code Regs § 13250(b)(4).) In addition, at least in the context of requiring new public access, the Coastal Act defines relatively large additions to existing structures as new development, rather than improvements to existing structures. (See Pub. Res. Code § 30212: project constitutes “new development” if it increases the floor area, height, or bulk of a structure by more than 10 percent.) Section 13252(b) of the Commission's regulations also

states that the “replacement” of 50 percent or more of a single-family residence constitutes a replacement structure requiring a coastal development permit, rather than repair or maintenance.

In applying Section 13252(b), the Commission has found (see A-5-VEN-17-0009 (Thomas), A-5-LGB-18-0012 (Bracamonte); 6-18-0182 (Harris); 5-18-0223 (Walsh)) that a structure is considered redeveloped if one of the following takes place: 1) 50% or more of the major structural components are replaced; 2) there is a 50% increase in gross floor area; 3) replacement of less than 50% of a major structural component results in cumulative alterations exceeding 50% or more of that major structural component (taking into account previous replacement work undertaken); and/or 4) less than a 50% increase in floor area where the alteration would result in a cumulative addition of 50% or more of the floor area, taking into account previous additions to the structure.<sup>1</sup>

Thus, in the past, the Commission has looked at the size of a proposed addition to an existing residence to determine whether it alters the existing residence to such a significant degree that the entire structure constitutes “new development” that must, as a whole, comply with Coastal Act policies. For instance, in A-5-VEN-17-0009 (Thomas), the Commission found that even though a proposed residential project would retain 50 percent of the existing residence, because it would also include an addition far larger than the existing home (2,694 sq. ft. addition to an existing 1,020 sq. ft. 1-story single family residence), it “would result in the construction of what is, in practical effect, a new single-family residence” and was not exempt from coastal development permitting requirements. Likewise, when considering A-5-VEN-16-0081 (Marciano), the Commission found that the project would result in a 235 percent increase in the size of the structure – more than doubling its size –constituting a substantial redevelopment of the project site; thus resulting in the construction of what is, in practical effect, a new single-family residence, rather than an improvement to the existing home.

Although not the standard of review for this project, the City of Huntington Beach’s certified LCP (which does not currently apply to Sunset Beach) includes policies addressing non-conforming structures. Section 236.06 of the LCP’s implementation plan allows for the construction of additions to non-conforming structures; however, the policy requires that the “area of enlargement to a nonconforming structure in any five-year period shall not exceed 50% of the area of the structure as it exists on the effective date of this ordinance.”<sup>2</sup> Thus, rather than require a

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<sup>1</sup> For example, in A-3-STC-16-0016 (Honjo), the Commission found that the proposed changes to the single-family residence “include a completely new foundation structure, as well as substantial changes to other major structural components, meaning that the main house constitutes a redeveloped structure”, and thus, the residence must conform to the minimum bluff setback requirement of the LCP. Similarly, the Commission denied CDP application 5-10-031 (Paicius) because the extent of the proposed project’s alterations to the existing single-family residence (including demolition of 64% of the existing, exterior walls, removal of all interior walls on the lower living level, removal of all interior walls on the upper living level with the exception of 16 feet along the existing stairwell, and removal and replacement of the entire roof) constituted a major remodel/new development and, consequently, the non-conforming structure must be brought into conformance with the bluff top setback. The Commission denied the project because it proposed to retain its non-conforming location seaward of the bluff setback.

<sup>2</sup> The Commission has certified other LCPs recognizing a 50% structural alteration threshold for determining when a project should be considered new development and thus when existing non-conformities (such as seaward development setbacks) should be brought into conformance with current standards. For example, the certified City of Laguna Beach LCP Land Use Element defines Major Remodel as “*Alteration of or an addition to an existing building or structure that*



redeveloped structure to be brought into conformance with the certified LCP, this IP policy would simply prohibit proposed development that would enlarge a non-conforming structure (such as a structure that does not adhere to appropriate setbacks) more than 50% of the area of the structure that existed on the effective date of the ordinance.

In this case, although the 3,076 square-foot addition is proposed entirely at the landward side of the subject site, the proposed addition would add approximately 81% of the area of the existing 3,774 square-foot structure. Moreover, the proposed project would result in enlargement of the existing foundations by more than 100% of the existing foundation. In addition to this substantial enlargement of the existing residence, the applicant proposes alterations to the existing structure, including: demolition of a 13-foot portion of what is currently the rear (landward) wall of the existing structure on each of the three stories, removal of an interior, three-story stairway located adjacent to the wall section to be demolished, and removal of interior, first floor bath and powder rooms. On the northwest/upcoast wall, an existing window will be replaced with a five-foot long bay window, representing five square feet of demolition. In addition, one exterior, approximately three-foot wide doorway will be removed and replaced with solid wall on the southeast wall.

Of the 3,078 square feet of existing exterior wall area, 459 feet of exterior wall area will be altered, resulting in alteration of approximately 11% of existing exterior wall area. Interior alterations proposed to the existing structure amount to roughly 9% alteration of the existing structure, which include: ground floor (removal of a 60 square foot bathroom + removal of 90 square feet of powder room/stairs) = 150 square feet of alterations; third floor interior alterations = 93 square feet removal of interior stairway. Thus, the total interior alterations proposed to the existing building are 33 square feet, which is approximately 9% of the existing 3,744 square-foot structure. Although the interior renovations would not, on their own, require treating the project as “new development,” they are not insignificant when viewed in conjunction with the very significant addition being proposed that would almost double the size of the existing house.

Therefore, taken together, the Commission finds that the proposal entails such significant improvements to the existing residence that the project, if approved, would for all practical purposes result in a new house, and cannot be treated as minor improvements under the Coastal Act and implementing regulations. Thus, the redeveloped residence must comply with the applicable standards of the Coastal Act, discussed further below.

At the Commission’s April 12, 2019 hearing on this matter (which was continued), the applicant indicated that the staff recommendation to remove the portion of the existing residence located within five feet of the seaward property line, was tantamount to requiring that the existing structure be demolished. The Commission advised the applicant to provide Commission staff with an

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*increases the square footage of the existing building or structure by 50% or more; or demolition, removal, replacement and/or reconstruction of 50% or more of the existing structure . . .”* In addition, the La Jolla Community Plan in the City of San Diego includes a policy requiring that if a non-conforming bluff top home increases in size by more than fifty percent, it must all be brought up to current code. Relatedly, in the City of San Diego’s Land Development Code, which serves as their IP, Section 127.0106(c) the La Jolla community Plan policy states, in pertinent part: *Additions that increase the size of the structure by 50 percent or more, shall not be authorized unless the structure is brought into conformance with the policies and standards of the Local Coastal Program.*

Engineer's Assessment addressing structural consequences of imposing the five foot setback. In response, the applicant submitted separate structural assessments from two engineers: Christina R. Silva, P.E., and Margarito Castillo, S.E., Castillo Engineering (Exhibits 9 and 10). Both structural Engineers' Assessments note that the existing home is supported by a three story, single bay, steel moment frame embedded in a large concrete grade beam located at the seaward face of the existing structure. The two Engineers' Assessments further note that removal of this moment frame structural support would leave the entire structure susceptible to failure from lateral loads which the moment frame was originally designed and constructed to support.

The Commission's Senior Coastal Engineer has reviewed both of the applicant's Engineers' Assessments (Memo 5/29/19, Exhibit 11). The Commission's Senior Coastal Engineer concurs that the existing structure relies on the moment frame. However, removal of the seaward five feet of the structure could nevertheless be accomplished by constructing new structural support inland of the moment frame prior to removing the moment frame (Exhibit 11).

One of the applicant's engineering consultant's (Castillo, 4/26/2019) states: *"Even with professional engineering, construction drawings, designed by a licensed professional, due to the risk of potential structural failure and subsequent life-safety concerns that there can be no assurance that the structure will be safe to inhabit."* However, what this is saying is that when the structure is opened up in the first steps to conform to the new setback, existing problems may be discovered within the structure, which would be unsafe if left unattended; or, if the new structural elements and related changes are not constructed properly, they would be unsafe. However, neither of these conditions would be caused by the work needed to conform the structure to the new setback. Regarding this point, the Commission's Senior Coastal Engineer (Memo 5/29/2019) states:

*"The engineers hired by the applicant to comment on the possibility of removing the seaward 5-feet of the existing structure note that the changes to the foundation and framing could introduce weaknesses in the framing and for assured safety, it would be better to completely demolish the existing house and build a brand new house. When any old building is opened up, it is possible that previously unidentified weaknesses can be exposed. The discussion about modifying the existing building assumes that it has not suffered any damage that would result in existing weaknesses to the moment frame. If problems are identified when the framing is exposed, they would not be the result of the proposed modifications to the building, but would still need to be addressed, along with the modifications to the building, foundation and framing that would be needed to meet the required setback. In addition, one of the steps in the process for modifying the foundation and framing would be to test the modified system to determine whether the new elements are providing sufficient stiffness, load bearing and load resistance to keep the structure safe. If testing shows weaknesses or flaws in the frame modification, the engineer of record would need to address these before the work could be approved."*

That is to say that if the existing structure has flaws that exist but are not known until exposed during construction, such structural flaws are not caused by the construction, but rather simply exposed by it. Similarly, if the new structural elements are not properly constructed, again that is not caused by the requirement to revise the structure's existing setback. Such flaws would be avoided, not by eliminating the work to conform the home to the new setback, but by properly constructing the new structural elements.

In addition, one of the applicant's engineering consultant's (Silva, 4/19/2019) comments that, in order to accommodate the revisions necessary to accomplish the five foot setback, the "*owner would have to move out during construction so the existing house can be partially demolished.*" However, the disruption to the owners should not be significantly greater than disruption due to construction of the 3,076 square foot addition as proposed. By constructing the proposed addition first, the applicant could live in the existing structure while the addition is under construction, and then move to the addition during renovations needed to the existing structure, minimizing the time the applicant may be required to vacate the residence entirely during construction. The applicant did not provide a construction phasing plan, but this could reasonably be accomplished from an engineering perspective, and would be supported by staff if proposed to be constructed in this above mentioned sequence. Regarding this point, the Commission's Coastal Engineer's memo states: "*The disturbance from this construction should be no greater than disturbance from construction of the addition. Some days may require the owner to leave the residence, but vacancy of the entire building for a long time would not be any different from the addition.*"

The Commission's Senior Coastal Engineer's memo concludes: "*Finally, I am not able to compare the costs of a new building with the required setback to modifying the existing building to meet the required setback, but expect that they might be similar.*" Commission staff acknowledges conforming development at the subject site to the recommended five foot seaward setback could increase the cost of the overall project and would be a significant and complicated undertaking. While it may be inconvenient for the property owners, the consulting engineers have not demonstrated that removal of the 5-foot seaward portion of the structure is infeasible. Due to the impacts to public access (described below) from retaining the near zero setback from the public beach, and due to the precedential nature of this project, the Commission finds this development must conform to at least a minimum setback from the seaward property line in order to find that the proposed development is in conformance with the public access policies of the Coastal Act. If a minimum seaward setback is not imposed with the proposed development at this time on this property, then it will be difficult to impose the setback on future projects. Future projects could also propose to retain the non-conforming portion of the existing structure, in an effort to circumvent accommodating a seaward setback.

### **C. PUBLIC ACCESS**

Coastal Act Section 30210 states:

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

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

*(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

- (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

Section 30221 of the Coastal Act states:

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

Section 30604(h) of the Coastal Act states:

*When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.*

### **Development Setback**

The project site is a beach fronting lot located within a row of beach fronting, residentially developed lots along South Pacific Avenue. Vertical access from South Pacific Avenue to the public beach is available immediately adjacent to the northwest/upcoast of the subject site at the end of 20<sup>th</sup> Street and approximately 150 feet southeast/downcoast of the site, at the end of 19<sup>th</sup> Street. Sunset Beach is popular with surfers, swimmers, walkers and joggers, for watching sunsets, or for a family day at the beach. Free parking is available just steps from the sand, the entire length of Sunset Beach, along the “greenbelt” that runs between North and South Pacific Avenue, with additional parking available in the lot at the southern/downcoast end of the greenbelt. A playground for youngsters is available in the greenbelt, adding to the fun of a family day at the beach here. Also within the greenbelt area are public restrooms, adding to the convenience of visiting the beach here. Just one block inland, up and down Pacific Coast Highway, are many restaurants, handy for dining breaks during or following a visit to this beach. While the parking is free, it is relatively limited, adversely affecting access to the beach by the public, though weekdays and early morning, parking is usually readily available.

Alternate transportation serving the Sunset Beach area includes bicycle paths and public transit. In this area there is a “sharrow” bicycle path along North and South Pacific Avenue, meaning bicycles may use the full lane along with cars. This lane links to the off-street, Class One (meaning the bike lane is completely separate from car traffic) beach bicycle path to the south, which extends from Bolsa Chica State Beach (adjacent to Sunset Beach) all the way to the City of Huntington Beach’s southern border. The beach bike path may be accessed from inland via the striped, on-street bicycle lanes along Warner Avenue, Sea Pointe Street, Goldenwest Street, or from the Class One off-street bicycle path along the Santa Ana River. The Sunset Beach area is also served by the Orange County Transit Authority, including Route 1 which runs the length of Pacific Coast Highway from Long Beach to San Clemente, as well as by routes from inland. Although more remains to be done to promote access via bicycle and public transit, these bike lanes and bus routes do provide alternative

transportation options for visitors from outside Sunset Beach.

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

Section 30214 of the Coastal Act recognizes the inherent conflicts likely to arise when private property abuts public use areas, but the Act prioritizes public access needs. This means that the private property owner's need for privacy is rightly accommodated on the private property itself, not by burdening the increasingly limited public beach area. When such conflicts are not addressed at the planning/permitting stage of development, and adjacent residential development is allowed too close to public beach areas (as is proposed in this inches to one foot setback case), the resulting lack of privacy could lead to future demands by residents to curtail public use of the public area in order to afford privacy. Indeed, in this case it has led to the property owner privatizing the area of the public beach extending 37 feet from the residence onto the public beach. Sunset Beach is a public beach, and new development adjacent to the public beach should be constructed in a manner that retains the ability of the homeowner to maintain privacy on his/her own property, so as not to interfere with the adjacent public land consistent with Chapter 3 policies.

Although the sandy beach in this area is currently a wide beach, the width is expected to become more and more narrow as the sea rises. The best available regional sea level rise modeling tool for this area is USGS's CoSMoS. As reflected in the CoSMoS modeling, Sunset Beach is very vulnerable to impacts of sea level rise. Review of CoSMoS modeling in the immediate project vicinity indicates the currently wide sandy beach will likely narrow significantly over the 75-year life of the proposed residential development (Exhibit 8). Even though, at this time, it appears that the greatest and earliest threat to existing development in Sunset Beach may come from the harbor inland of the subject site rather than the ocean, the threat to the *size and extent of the public sandy beach* from the ocean is significant. Generally, the beach in Sunset Beach ranges in width (depending on season and location, and the time elapsed from the last USACOE nourishment activity) from approximately 350 to 400 feet. The Coastal Hazards Analysis prepared for the subject site indicates the beach in front of the site is currently about 425 feet wide (in January 2018).

The exact extent of loss of sandy public beach is not known with certainty, but CoSMoS modeling indicates that the beach will virtually disappear with 6.6 feet of sea level rise and no storm event. Even with only 3.3 feet of sea level rise and no storm event, CoSMoS modeling indicates the beach in this area will narrow to roughly 50 feet. If storm events, which are expected with greater frequency and intensity with on-going climate change, are also factored in, the beach will narrow even more quickly. With 3.3 feet of sea level rise and a 100 year storm event, CoSMoS modeling indicates the beach would narrow to approximately 35 feet, which more or less leaves only the area

of beach currently occupied with the applicant's beach encroachments. With 6.6 feet of sea level rise and a 100 year storm event, CoSMoS modeling indicates that all of Sunset Beach will be flooded.

In addition, impacts to the area of sandy beach should the USACOE-led beach replenishment project cease or become less frequent or less effective could worsen this loss of sandy beach scenario. There is no guarantee that the Army Corps-led sand replenishment project, upon which the beach width is dependent, will continue for the entire 75 year life of the proposed project. The applicant's coastal hazards analysis has suggested that because the sand replenishment is an Army Corps-led project, it will certainly be in place for 75 years into the future; however, the ability to sufficiently replenish and maintain a public beach at this location will become more and more difficult (and expensive) as sea levels rise and demand increases for sand to replenish diminished beaches all along the coast. Sand and gravel are mined worldwide for all kinds of uses, including construction and beach replenishment, but there is concern that it is now being extracted at a rate faster than new sand and gravel form through erosive processes. Worldwide, sand sources are becoming scarcer, a phenomenon which may eventually lead to increased costs for sand. A similar situation may occur in California, and across the United States in general, as current sand sources are depleted, particularly with increased use of beach nourishment as a strategy to temporarily protect against the impacts of rising sea levels. In addition, as nearby sand sources are depleted, alternative sand sources will need to be used, increasing extraction and transport costs. At the same time, rising sea levels will mean that beach replenishment projects will need to be larger and/or more frequent to keep up with increased erosion. For purposes of this permit application, therefore, it cannot be assumed that beach replenishment at this particular location will continue for the entire economic life of the structure.

This is all to say that as the beach width narrows with sea level rise, greater pressure will be put on the limited area of public sandy beach that does remain, especially when taken together with expected continued population growth<sup>3</sup>. Development allowed (or in this case allowed to remain) too close to the public sandy beach area (one foot to within inches of the seaward property line) would have the effect of further constraining areas of sandy beach available for public use, for the reasons described below. This reinforces the need to increase the seaward setback as necessary to maximize public use of remaining sandy beach area available to the public for as long as possible as the beach narrows due to sea level rise.

While it is true that most beach-goers prefer to congregate closer to the ocean and prefer to look toward the ocean and not inland, as the beach narrows, which it will do with future sea level rise, beach-goers will be forced closer and closer to the private development. This public/private tension is aggravated by the current pattern of seaward development in Sunset Beach. The majority of homes have been built with zero or very minimal setbacks from the public beach. Moreover patios and decks have encroached seaward of the residences in this area, onto the public beach itself. By allowing development immediately at the private property line, rather than setting private

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<sup>3</sup> According to the US Census, the US population is expected to grow by 2.3 million people per year between 2017 and 2030. <https://www.census.gov/programs-surveys/popproj/about/faq.html> In California, while the rate of increase is expected to slow compared to past years, the population is still expected to grow by 340,000 people per year [https://www.ppic.org/content/pubs/report/R\\_116HJ3R.pdf](https://www.ppic.org/content/pubs/report/R_116HJ3R.pdf), totaling an additional 6.5 million people by 2030. [http://www.dof.ca.gov/Forecasting/Demographics/Projections/documents/P\\_PressRelease.pdf](http://www.dof.ca.gov/Forecasting/Demographics/Projections/documents/P_PressRelease.pdf)

development back at least a small distance, the burden of the public/private conflict falls to the public, which is not consistent with the Coastal Act mandate to maximize public access.

The existing residence is located from one foot to within inches of the seaward property line across all three levels (Exhibits 3a and 3b). The subject residence is located immediately adjacent to the public beach, with doors opening directly onto the public beach. No change is proposed to the seaward location of the existing development. However, although minimal work is proposed to the existing residence in the area at the seaward property line, as discussed earlier, the scale and scope of the overall project mean that it must be considered *new* development, and as new development must conform to the Coastal Act's public access and recreation policies, including the need to protect public beach access by setting private development back from the beach. Additionally, the private development that encroaches onto the public beach in this area makes impacts to public access even worse.

In addition to raising privacy issues, the one foot and less beachfront setback makes it impossible for the owner of the private residence to conduct normal maintenance activities typically necessary to maintain a residence without encroaching onto the public beach. For example, as proposed, the owner of the proposed residence would not be able to wash or repair the windows or paint or repair the residence on its seaward side, or other typical maintenance activities, without performing such work from the public sandy beach. Moreover construction activities at the site would also require incursion onto the public beach. As this is a three story, 35-foot high structure, these simple construction and regularly required maintenance activities would likely require construction scaffolding on the public beach in order to access the proposed three-story, minimally set back structure. Furthermore, to exit the home on its seaward side, a resident would step directly onto public beach. Currently, there is no space for the homeowner to enjoy the outdoor space or to construct a deck or patio on his own private property on the seaward side. In this case, a portion of the structure is located within inches of the property line. There would be insufficient room for the homeowner to construct even a simple fence demarcating the private property.

Moreover, generally, without a clear marker of public land (a beach trail, a public patio, etc.) members of the public are uncomfortable congregating on the sand in areas too close to private residential development for fear that they may encroach into an unmarked private space, effectively creating self-imposed buffer distances between themselves and the perceived private land, even though the entire area in question is public. When the public land is illegally marked private (either with signs or with a homeowner's personal furniture or a deck) members of the public would presume they could not use that space and self-impose a buffer even farther out onto the beach away from the improperly privatized land. Under current conditions and as proposed, there will be virtually no area on the private parcel that will function as a privacy buffer between the three-story residence and the public beach. The three-story, 35-foot height of the structure so close to the seaward property line creates a looming presence, further aggravating the likelihood and expanse of a self-imposed buffer. Without an adequate setback imposed on the private property, the close proximity of the residence effectively privatizes the public beach in front of the residence because the public is uncomfortable being so close to the private residential structure and will not use that portion of the beach. The sense of privacy extending over an area that is actually public beach is further exacerbated by the fact that residents would step directly onto the public beach in exiting the seaward side of the home and with construction and maintenance activities also occurring from the

public beach. Although the inferred sense that a public area is private might occur to some extent even with a minimum setback, if there is no setback at all, the perceived public/private boundary moves even further seaward, effectively reducing usable public beach area.

These conflicts between public and private use of the public beach are further aggravated by the presence of private encroachments seaward of most residential properties fronting on the beach in Sunset Beach, including the subject residence. Typically, the encroachments extend 20 feet seaward of development, but it is not uncommon for the private encroachments to extend even further onto public beach. At the subject site, private encroachments extended 37-feet seaward of the property line onto the public beach. Until it was removed by the applicant without the benefit of a CDP, the encroaching development included a 20' by 40' wood deck with 5-foot high glass windscreen adjacent to the residence, and a 3-foot high wall and steps made of stone pavers and a fire pit located within the area 17-feet seaward of the wood deck (Exhibits 3b and 6). With these type of Sunset Beach encroachments, the development not only creates the *impression* that the public beach area is private, it actually, *physically excludes* the public from the public beach. In early April 2019, just prior to the first Coastal Commission hearing on this project (which was continued), the applicant removed the unpermitted development. As explained in more detail later in this staff report, in the subsection titled *Encroachments*, removal of these encroachments also required approval of a coastal development permit. All unpermitted development that has occurred at the site is being reviewed by the Commission's enforcement division. Regardless, the status of the unpermitted development, it cannot be relied on to allow new development to be sited an insufficient distance from the applicant's seaward property line, which would continue to exacerbate impacts to public access and recreational use of the public beach.

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

It is important to note that the intent of imposing a seaward setback is to, among other things, preserve public access opportunities as sea level rises. The purpose of the five foot setback is not intended to make the project safe from hazards associated with sea level rise, but rather to recognize that sea level rise will reduce the width and area of sandy beach available for public use, which will only intensify the conflict between the public's right to use the beach area and the residents of private development constructed too close to that beach area.

The City requires no setback from the seaward property line. This insufficient setback standard was carried over from the previously certified, now lapsed, County LCP for the area. This problematic setback represents one of the issues, among others, with the formerly certified LCP that will need to be addressed when the City submits an LCP amendment, for Commission review, to incorporate the Sunset Beach area into the City's otherwise certified LCP. Sea level rise is one factor to be considered now that was not a factor when the Commission certified the County's LCP for Sunset Beach (originally certified in 1982, with a comprehensive update approved in 1992). Current understanding of sea level rise is discussed in far greater detail in the following section of this staff



report. As described there, scientific opinion overwhelmingly accepts that the seas are rising and that such rising will have significant impacts on existing, low-lying, coastal communities such as Sunset Beach. The only real sea level rise questions are not whether the seas are rising but by how much and how soon. Omitting a reasonable setback on beach fronting properties in Sunset Beach for coastal development permits now, would prejudice the ability of the local government to prepare an LCP for Sunset Beach that is in conformity with the provisions of Chapter 3 of the Coastal Act.

The Commission recognizes the historic pattern of development on beach fronting properties in Sunset Beach over the last few decades has been to allow a zero or minimal setback from the seaward property line. Many homes have been constructed with no or very minimal beachfront setback, including a number approved by the Commission since re-assuming permit issuing authority. However, this pattern of development has allowed for extensive private use of the public beach area in Sunset Beach, which has hindered public use of the beach by non-residents, and will increase these limitations on public recreational use of the beach as sea levels rise.

The Commission re-assumed permit issuing authority for the Sunset Beach area following its annexation into the City of Huntington Beach in 2011, and the resultant lapse of the County LCP for the area. Since that time the Commission has approved six projects with zero or minimal (less than 2 foot) setbacks from the seaward property line. In addition, the Commission also approved one project with a seaward setback ranging from 2'9" to 6'3".<sup>4</sup> Additionally, numerous projects were approved by the County under its nearly 30 years of LCP authority. The County's certified LCP also allowed limited encroachments onto the public beach area, further contributing to the issues raised by inadequate seaward setback requirements.

The zero seaward setback has been allowed in Sunset Beach for decades, and that has been compounded by private development encroachments directly on to the public beach, also for decades. As happens when private development is allowed too close to and on the public beach, the public beach has become essentially privatized. In Sunset Beach the potential to privatize the beach with development too close to the property line is not theoretical. It is factual. The residents of the beach-fronting properties have come to think of and act as if the public beach is private property. And the public, too, tends to react this way, because without proper signage demarking the public land, they have no way of knowing which areas are in fact public when they are treated as private. All up and down Sunset Beach, existing residential development extends to the private/public boundary, often with additional, accessory development extending 20 feet seaward of that, and sometimes, as in the subject case, even beyond 20 feet. If this development pattern is allowed to continue unchecked, as sea level rises and the beach narrows, the public will be deprived of use of beach area that is actually public. Because development exists right up to the property line with no setback, and seaward of that are private decks and patios, the area is erroneously assumed to be private. When the beach is 350 to 400 feet wide, the impacts are less noticeable, though still problematic. But when the beach begins to narrow, due to erosion from sea level rise, the impacts to public access become stark.

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<sup>4</sup>5-17-0017 (Redhill) zero foot setback; 5-16-0419 (Von Blasingame) zero foot setback; 5-15-1294 (Bassaly) zero foot setback for two new residences; 5-13-0685 (Senn) setback ranges from 4" – 1'6"; 5-13-065 (Valenzuela) setback ranges from 2'9" – 6'3"; 5-12-014 (Small) setback ranges from 7" – 1'.

Since the Commission re-assumed permit issuing authority in 2011, nineteen coastal development permit applications have been processed for projects on the beachfront in Sunset Beach. This works out to between two and three per year. It is expected that this pace will continue into the future. Each new application going forward will present an opportunity to correct the current pattern of development in favor of preserving the public beach for the public, rather than continuing to gift the public beach for private use.

Ensuring a setback that will protect public access will not impose a hardship on the private residential lots. Even with a five foot setback from the seaward property line, homes on the order of 5,000 – 6,000 square feet could still be accommodated on most lots. As currently proposed by the applicant, the subject residence would be 6,859 square feet and 3 stories. Patio/beach furniture and BBQs could be accommodated within the boundaries of the private lot, rather than on the public beach, by converting some of that ample interior square footage to outdoor space. This could be accomplished by setting the development back, as is recommended, by five feet or even more. The recommended five foot setback would still allow an approximately 6,310 square foot<sup>5</sup> home at the site, which is not an insignificant space. According to 2010 U.S. Census data, the average size home in the U.S. is 2,169 square feet and in the western U.S. the average size home is 2,143 square feet.<sup>6</sup> An October 15, 2017 article in Business Insider magazine found that the average size of new single-family homes sold in the U.S. peaked in 2015 at 2,520 square feet.<sup>7</sup> With the recommended five foot setback from the seaward property line, the applicant could still enjoy a home nearly three times the size of an average U.S. home, while also being able to accommodate an outdoor patio area on his own private property.

Some applicants have expressed concerns that imposing a five foot setback will result in a “tunnel” view from the home when existing adjacent development will extend five feet beyond their set back development. However, a setback of five feet will result in little material change, the ocean views will still be remarkable, though slightly narrowed. Furthermore, as more homes are set back to comply with Coastal Act requirements, even the “tunnel” would disappear. Moreover, this particular site abuts a public street end, where there is no home immediately adjacent, so a seaward setback in this location would not result in a “tunnel view.” Additionally, the view protection policies of the Coastal Act do not protect private views. Even with a setback, residents would still be afforded the benefits of beach front living including ocean views and easy beach access. Whereas, if at least a five foot setback is not imposed, starting now and going forward, the public will lose out on use of this area of sandy beach, which eventually, with sea level rise, will become the only area of sandy beach available.

Although only two projects in Sunset Beach (heard jointly) have come before the Commission where the seaward setback issue has been raised, and those two were approved with a compromise setback solution, the Commission made it clear at the August 10, 2018 hearing that imposition of a minimum five foot setback (on all levels) for projects going forward was necessary and appropriate to protect public access, especially with the future loss of sandy beach due to sea level rise. In those first two cases, 5-17-0678 & 5-17-0680 (Bassaly), the Commission found that, because those two

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<sup>5</sup> As proposed, the structure would be 6850 square feet. The recommended 5 foot setback on all three levels would reduce the proposed structure by: 5' x 36' (width of structure) = 180 sq. ft. x 3 (number of floors) = 540 sq. ft.; 6850 sq. ft. – 540 sq. ft. = 6310 square feet allowed for the modified residence.

<sup>6</sup> <https://www.census.gov/const/C25Ann/sfttotalmedavgsqft.pdf>

<sup>7</sup> <https://www.businessinsider.com/us-new-home-sizes-are-shrinking-2017-10>

projects were the first instance of imposition of the setback, a compromise solution was fair. In discussing imposition of the seaward setback at those two sites, all of the Commissioners who spoke supported the minimum five foot setback from the seaward property line for future projects. Since Commission action on that case, this project is the third Sunset Beach beachfront project put forward. Two others were submitted for Commission review, and agendized for Commission action at the October and December 2018 Commission hearings, but each time the projects were postponed at the request of the two applicants (5-18-0241, Poulis; 5-18-0295, Senn). In each of those cases, staff was recommending a minimum five foot seaward setback rather than the zero foot setback proposed by the applicants. Those two projects have since been withdrawn, and it is not currently known when they may be re-submitted. In addition, one new project was submitted in 2019 and is currently incomplete. That project proposes a new residence with a seaward setback ranging from zero to six inches. So it appears that the pattern of proposing zero foot setbacks will continue until it becomes clear by Commission actions that such inadequate setbacks will not be approved by the Commission because they are inconsistent with the Coastal Act. This underscores the importance of imposing a five foot setback starting now with this project.

In order to correct this historic pattern of development, it is important that when development is extensive enough to constitute “redevelopment” of a residence, as is proposed here, even when much of an existing structure will remain, that the entire redeveloped structure must comply with the Coastal Act. Although the work proposed to the *existing* structure is less than what would typically be considered new development, it must be recognized that the *project as a whole* will effectively result in construction of an entire new ocean-fronting house. An addition of 81% of an existing structure effectively re-starts the life of that residence, and thus likewise extends the expected duration of the inadequate setback and related impacts to public use of the beach, which will intensify over the life of the structure as sea levels rise. As explained in greater detail above, the proposed project is of such a magnitude that it must be considered new development. As such, the requirement to bring non-conformities, such as the current insufficient seaward setback, into conformance is triggered. The impending narrowing/loss of the public beach due to sea level rise makes correcting this inadequate setback sooner, rather than later, imperative.

Moreover, if this project at this time is not required to remove development from the seaward setback area, the project would establish a precedent that would encourage similar proposals all along Sunset Beach, where applicants could propose retaining the seaward-most footprint of a structure as a means to maintain non-conforming seaward setbacks, even while essentially rebuilding a residence. This would be a problematic precedent for years to come, and one that would make it difficult to correct the current pattern of development that has effectively privatized the public beach area ranging from 20 to 40 feet seaward of the private property along the beachfront. Meanwhile, the area of the public beach will become smaller and smaller.

Also, although not the standard of review for this project, the City of Huntington Beach’s certified LCP (which does not currently apply to Sunset Beach) may be used as guidance. The City of Huntington Beach LCP includes policies addressing non-conforming structures. Section 236.06 of the LCP’s Implementation Plan allows for the construction of additions to non-conforming structures; however, the policy requires that the “area of enlargement to a nonconforming structure in any five-year period shall not exceed 50% of the area of the structure as it exists on the effective date of this ordinance.” Thus, rather than require a redeveloped structure to be brought into

conformance with the certified LCP, this IP policy would simply prohibit proposed development that would enlarge a non-conforming structure (such as a structure that does not adhere to appropriate setbacks) more than 50% of the area of the structure that existed on the effective date of the ordinance.

As vulnerability to sea level rise has been documented, the Commission has been imposing yard setbacks on the seaward side of parcels in areas where they had not done so previously. For example, the City of Newport Beach Implementation Plan, which was recently approved by the Commission, requires minimum beachfront setbacks of 20 feet from the seaward property line. The City of Newport Beach certified Implementation Plan (IP) includes the following sections: Section 21.18.030 *Residential Coastal Zoning Districts General Development Standards*, Table 21.18-2 *Development Standards for Single-Unit Residential Coastal Zoning Districts* requires a 20-foot setback from the front (seaward) property line for primary structures; Section 21.30.015 *General Site Planning and Development Standards*, Subsection 21.30.015 D.2.d states: “2. *Considerations. In reviewing a coastal development permit application for development along the waterfront, the review authority shall consider the following: ... d. The development’s ability to enhance public access to State tidelands and shoreline areas through project siting and design or conditions of approval; ...*” The beach in Newport Beach, similar to Sunset Beach, is also currently fairly wide. The Commission’s recent (9/8/16) action on the Newport Beach LCP IP represents a recent Commission action on an appropriate seaward setback requirement for residential development adjacent to a sandy public beach. Although the smaller lot sizes in Sunset Beach would likely require some adjustment to the actual minimum setback requirement, this recent IP action supports the likelihood that a minimum setback of at least five feet would be appropriate when the City of Huntington Beach amends its LCP to include the Sunset Beach area. The City of Newport Beach is the downcoast, adjacent neighbor of the subject City of Huntington Beach, both in Orange County.

An example of where the Commission imposed a five foot seaward setback where limited setbacks had been accepted in the past by both the local government and the Commission is 5-16-0757 (Greene). The Greene project location also fronts on a wide, sandy public beach, but in Playa del Rey, in Los Angeles County. The Greene project proposed a one and a half foot setback on the ground level and zero foot setback for the upper level deck from the seaward property line. In that case, even though reduced setbacks from the seaward, beachfront property line had historically been approved by the Commission and local government, the Commission imposed a minimum five-foot setback from the seaward property line. The Commission made similar findings in that case as described above.

Except for Sunset Beach, virtually all coastal jurisdictions require a setback from the seaward property line, including the Orange County coastal jurisdictions of Seal Beach, Newport Beach, Laguna Beach, Dana Point and San Clemente. In Huntington Beach, other than Sunset Beach, residential development is located inland of Pacific Coast Highway (with the unique exception of a pre-coastal condominium development). Development fronting on Huntington Harbour is required to be set back 10 feet. The practice in Sunset Beach of allowing zero seaward setbacks is the anomaly.

Moreover, setbacks are almost always required from neighboring development and from streets. A setback that protects the public right to use of the sandy public beach is no less important than protecting vehicular street access (public right of ways) and protecting neighbors’ privacy. In this

area of Sunset Beach, the City requires that residential development be setback 3 feet from other residentially zoned lots. The three-foot setback from the property line adjacent to other residential development represents the minimum necessary to accommodate privacy and the ability to conduct routine maintenance without spilling beyond the private property lines onto a neighbor's lot. Taken together, the two residential structures are setback six feet from each other. Development adjacent to a public sandy beach should be setback approximately as much as private residential developments are setback from each other because the need for residential privacy would be greater from a public beach due to: greater exposure along the entire seaward side of the residence which is visible to the public; no walls or fences or private landscaping could be accommodated on-site due to the absence/narrowness of the setback; and, due to the greater number of people using the public beach compared to the number of people within setbacks between residential developments.

The need for the public to use this area closest to the residential development, while appropriate, is not as urgent while the beach is 350 feet wide. However, this width will not last. The area immediately seaward of the beachfront properties in Sunset Beach is somewhat separated from the area of primary sandy beach use by the public due to the presence of a vegetated berm/sand dune located within the area approximately 40 feet seaward of the private property lines. It is this berm area within which the encroachments exist. In fact, in some cases including the subject case, adjacent residents, associated with their encroachments, have leveled or effectively lowered this berm. It was constructed by the County in the early 1980s following severe ocean flooding in Sunset Beach due to El Nino storms and, although unpermitted, it has been in place ever since. Even though it is public beach, due to the insufficient historical setbacks and encroachments typically allowed in Sunset Beach, the berm and area landward of the berm has come to be viewed as the private yard area of the adjacent residences.

However, with sea-level rise, at some point, the area between the berm and residential development may be the only public beach remaining in this area. As noted, according to CoSMoS sea level rise modeling tool, with 3.3 feet of sea level rise the beach is expected to recede to 50 feet from the homes. The berm extends more or less 40 feet from the homes. Availability of the public to use the area will become more necessary, as it will be virtually (and eventually, literally) the only beach area available. However, this area would become even more limited by continuing to allow private use of beachfront areas due to lack of adequate setbacks and on-going encroachments. More recently, applicants for development on beachfront lots in these areas have removed existing encroachments and new encroachments have not been proposed.<sup>8</sup> As noted however, the current applicant initially refused to include removal the encroachments associated with this property as part of this proposed project, even though the encroachments were not permitted. However, the applicant has since removed the encroachments without benefit of the required coastal development permit. The unpermitted development is being reviewed by the Commission's enforcement division. Even with removal of the private encroachments from the public beach, a minimum seaward setback of five feet is required to preserve the public beach area for the public. As described elsewhere, with minimal setbacks such as with the proposed project, the applicant will exit from the home directly onto public beach. Routine maintenance and construction will need to occur from the public beach. Adequate privacy buffers could not be provided on the private

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<sup>8</sup> 5-17-0017 (Redhill); 5-17-0524 (Perricone); 5-17-0678 (Bassaly); 5-17-0680 (Bassaly); 5-16-0419 (Von Blasingame); 5-13-0678 (Senn); 5-13-0650 (Valenzuela); also 5-15-0420 (Smith-Alakor) did not have existing encroachments and no new encroachment was proposed.

property, encouraging residents to establish privacy buffers on the public beach instead, compounding impacts to public access.

In any case, the Commission is not bound by past decisions that do not stand up under current information and conditions. In light of sea-level rise, the Commission has become increasingly concerned by the impacts of reduced setbacks on public access when reviewing proposed projects. As described previously, in the Bassaly projects, the Greene project, and the City of Newport Beach LCP IP, all recent Commission actions, the Commission has found that public access is not maximized with insufficient setbacks. Rather, the Commission has, most recently, required a minimum of five-foot seaward setback with the Bassaly (first floor) and Greene projects and 20-foot seaward setback in the Newport Beach LCP. There is no valid reason to maintain an inadequate setback standard simply because it has been allowed in the past.

The existing structure's setback from the seaward property line ranges from only one foot to just a few inches. According to the demolition plans submitted by the applicant, the proposed project involves only limited changes to the existing structure and no change to the existing seaward five feet of the existing residential structure (described in greater detail earlier). The Commission notes that in this case imposition of a five-foot setback from the seaward property line would require removing the seaward five feet of the existing structure even though minimal changes are proposed in that area. As described previously, now is the time to impose a minimum five foot setback from the seaward property line because the proposed project constitutes redevelopment of the entire residence. Even if imposing the setback would require the applicant to remove the seaward five feet of the existing structure, even though doing so was not part of the proposed project, if the setback is not imposed now, the result would be that subsequent applicants would see this as a means to retain their existing one-to-zero foot setback, just by proposing to leave intact the seaward wall or seaward portion of an existing home. This would not address the pattern of development fronting on Sunset Beach that effectively privatizes public beach, thereby failing to maximize public access as required by the Coastal Act.

In this case, the proposed development would add approximately 81% of new square footage and more than 100% of new foundation area, adding well over 50% of the existing floor area to the residence and, therefore, resulting in a redevelopment or replacement home that must comply with the Coastal Act. Even though conformance with a seaward setback would require the applicant to conduct significant additional work beyond what was proposed, such work could reasonably be accomplished. Otherwise, existing non-conformities at this site ***and at virtually all future beachfront properties in Sunset Beach*** may never be addressed, even though the structure has essentially been rebuilt and its expected life re-started.

Regarding development that has the potential to threaten coastal resources, such as public access, as a result of sea level rise (as is the case here), the Commission's Adopted Sea Level Rise Policy Guidance states:

*The best way to minimize risks to development and coastal resources is to avoid areas that are or will become hazardous as identified by the sea level rise scenarios analysis in the previous steps. Such avoidance often includes changes to the proposed project to bring the size and scale of the proposed development in line with the capacity of the project site. However, if it is not feasible to site or design a structure to completely avoid sea level rise impacts, **the applicant***

*may need to modify or relocate the development to prevent risks to the development or to coastal resources. Some changes, such as the use of setbacks, may be necessary at the outset of the project. Other changes, such as managed retreat or added floodproofing, may be useful as adaptive strategies that can be used after the initial project completion. [Emphasis added.]*

The SLR Guidance cited above recognizes that when it is not possible to avoid impacts from SLR, the applicant may need to modify development to prevent risks to coastal resources. In this case, the risk from SLR to coastal resources is to the public's ability to access and use the sandy beach. As SLR increases, the sandy beach narrows, reducing the amount of sandy beach available for public use. As described above, this will increase the conflicts with beach fronting private development and the public. By conforming to a minimum five foot setback, the project would reduce the adverse impacts to public coastal access, for the reasons described above.

The Commission finds that because the project consists of "new development," as discussed above, the project must comply with Coastal Act public access policies, which require compliance with a seaward setback for development in this area of a minimum of five feet from the seaward property line.

As proposed, the project would not maximize public access as required by Section 30210 of the Coastal Act. In addition, Coastal Act Section 30221 requires that oceanfront land suitable for recreational use shall be protected for recreational use. With expected future sea level rise, the area of sandy beach available to the public will decrease, while population and demand will only increase. The proposed project will not protect land suitable for recreational use (the sandy public beach area), inconsistent with Section 30221. Finally, the proposed project will not balance the competing demands of public use and privacy in a manner that emphasizes public recreation and access, as is required by Section 30214 of the Coastal Act. Therefore, as proposed, the project is inconsistent with Sections 30210, 30221, and 30214 of the Coastal Act. However, if the proposed project were to be modified to include a minimum of five (5) foot setback from the seaward property line, some of the pressure due to the public/private interface described above would be reduced. A minimum five-foot structural setback from the seaward property line would allow the applicant to conduct routine maintenance on the structure from within the private property lines, without encroaching onto public beach area. Additionally, a five-foot seaward setback would provide space that could provide a degree of privacy for residents of the proposed structure. Moreover, the effects of the "self-imposed" buffer would also be reduced. Impacts to public access from private development adjacent to the beach will be aggravated with sea level rise. Re-design of the proposed project to include the five foot seaward setback will lessen these impacts and reduce adverse impacts to public access.

Therefore, the Commission imposes **Special Condition 1**, which requires that the proposed project be re-designed to incorporate a minimum five-foot setback from the seaward property line on both the ground floor and all upper levels (including balconies), and that prior to the issuance of the permit, the applicant submit revised plans reflecting these required changes, for review and approval by the Executive Director. At grade, ground-level decks would be allowed within the setback area. In this case, imposition of a minimum five-foot setback from the seaward property line should be considered the minimum setback necessary to allow for normal construction, repair and maintenance activities of the residence on site to occur on the applicant's property without

requiring encroachment into public beach, provide a minimum privacy buffer, avoid the appearance of privatization of the public sandy beach area, and generally help to minimize potential conflicts between private property owners and members of the public visiting Sunset Beach. Only as conditioned, can the proposed development be found to be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

### **Environmental Justice**

Ensuring private development is sited such that it does not encourage privatization of adjacent public beaches is consistent with environmental justice principles reflected in the Coastal Act. Section 30604(h) states that: “When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.”<sup>9</sup> The Commission adopted an environmental justice policy in March 2019 committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency’s decision-making process. In approving the policy, the Commission recognized that equitable coastal access is encompassed in, and protected by, the public access policies in Chapter 3 of the Coastal Act by finding that:

*The Commission reaffirms its long-standing commitment to identifying and eliminating barriers, including those that unlawfully privatize public spaces, in order to provide for those who may be otherwise deterred from going to the beach or coastal zone. The coast belongs to everyone, and access cannot be denied or diminished on the basis of race, ethnicity, income socio-economic status, or place of residence or other factors listed in the Policy Statement.*

Allowing a few, coastal property-owners exclusive use of public beach spaces is antithetical to environmental justice principles, burdening non-coastal communities that already face numerous barriers to accessing the coast by limiting areas of the beach available to the general public for recreation. The burdens of restricted coastal access, which are disproportionately borne by low-income and minority communities, will worsen as public beaches narrow over time due to sea level rise and less and less beach area is available for public recreation. While requiring a five-foot setback in this case may seem minor in the context of all of the threats to public beaches and equitable public access, it would be an important step in the right direction towards correcting a pattern of development in Sunset Beach that, if allowed to continue, would likely lead to significant disparities in who is able to recreate on this beach.

Therefore, the Commission finds that consideration of environmental justice principles further supports conditioning the proposed project to require the redeveloped residence to comply with a five-foot setback from the seaward property line.

### **Encroachments**

Unpermitted private development that encroached beyond the applicant’s seaward property line was present until early April 2019, just prior to the first Coastal Commission hearing (continued) on the proposed project. These private encroachments included a 40-foot wide wood deck that encroached

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<sup>9</sup> Government Code Section 65040.12(e) defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”



20 feet (totaling 800 square feet) beyond the property line. Private articles associated with the encroaching wood deck included a 5-foot high glass windscreen, accessory furniture, a concrete fire ring, barbeque, space heaters, and patio furniture. And, approximately 17 feet seaward of that, and 40-feet wide (totaling an additional approximately 680 square feet), well beyond the encroachment area previously allowed under the County's LCP, additional encroachments present at the site included a three foot high wall comprised of stacked paver stones, a concrete fire pit, stairs also comprised of paver stones, and beach furniture. This private development on the public beach was associated with the subject residential development. No fee of any kind for the private use of public beach was ever assessed for these encroachments. In addition, although requested by Commission staff, the applicant had previously declined to address these private encroachments as part of the proposed project's coastal development permit review. Nevertheless, the applicant removed the unpermitted encroaching development without benefit of the required coastal development permit.

The development is unpermitted because no coastal development permit was ever obtained for construction of the deck and additional encroachments. Furthermore, the removal of these encroachments was also unpermitted. Although the applicant had been made aware that removal of the encroaching development would require approval of a coastal development permit, and that such removal could be enfolded into the proposed residential project's coastal development permit review, the applicant nevertheless declined to include removal of the encroachments in the CDP process. Instead the applicant subsequently chose to remove all encroachments without benefit of a coastal development permit. A coastal development permit for the removal is required because the removal constitutes development as defined in the Coastal Act<sup>10</sup> and it is not exempt pursuant to the California Code of Regulations Section 13253(b)(1) due to its location on a beach. This removal was discovered at the Coastal Commission hearing on this applicant's proposed project on April 12, 2019, when the applicant showed pictures of the area of the removed deck and additional encroachments. So – installation of the encroachments was unpermitted and removal of the encroachments was also unpermitted. At the April 12, 2019 hearing, the applicant agreed to restore the area of unpermitted development in an effort toward resolving these violations. Subsequently the applicant submitted a *Revegetation and Landscape Maintenance Plan* for the area of the removed unpermitted encroachments.

Seaward of all the beach-fronting residences in Sunset Beach is a berm that was constructed by the County of Orange sometime in the early 1980s to protect development in Sunset Beach following severe flooding resulting from the 1982/83 El Nino. The berm has remained in place ever since and has contributed to the absence of flooding from the ocean in the area according to numerous wave runup and coastal hazards studies submitted over the years for development in this area, including the Coastal Hazard Study submitted for the proposed development. Over time, the berm has come to function in the manner of a natural, though degraded, dune. This dune is degraded due to the lack of native dune plants and coverage by non-native species such as Hottentot-fig, crystalline ice plant, small flowered ice plant, natal plum, and baby sun rose. Notwithstanding its degraded state, the dune exhibits dune morphology and dune substrate. Moreover, the memorandum prepared by the applicant's biological consultant (by LSA, dated 5/9/2018 (Exhibit XX) submitted in conjunction with the subject coastal development permit application) recognizes southern foredune in the encroachment area (Figure 3 *Land Cover Types* of LSA Memo, 5/9/2018,). The LSA Memo

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<sup>10</sup> Section 30106 defines development to include demolition of any structure.

describes the southern foredune area as: “*unstabilized dunes with sparse vegetation cover, typically inland of the open beach.*”

Coastal dunes form in areas of the California coast that have ample sand supplies, strong winds and relatively flat topography. In these places, plants growing along the coastal strand slow the movement of blowing sand. The plants grow taller as sand deposits build up around them and eventually small foredunes are created. Three native plant species are considered to be important in the early phases of this process: beach saltbush (*Atriplex leucophylla*), beach bur (*Ambrosia chamissonis*) and red sand verbena (*Abronia maritima*) Over time, more sand may be trapped and the foredunes can build up and coalesce to form more stable dune ridges that are often seen windward of backdune or dune swale areas. Once the system shifts from an unstable sheet of sand (subject to rapid movement under the influence of strong winds) to a vegetated habitat with dune topography, a number of other native dune plants can colonize the habitat including beach evening primrose (*Camissonia cheiranthifolia*), beach morning glory (*Calystegia soldanella*), and several species of shrubs.<sup>11</sup>

In addition to discussion on dunes, the LSA Memorandum indicates that surveys within 100 feet of the area of the unpermitted encroachments were conducted for the presence of the western snowy plover and found no western snowy plovers located within the study area. The LSA Memorandum did state that there is marginally suitable habitat for snowy plover foraging or roosting, but that the species was not expected to occur as the area is highly disturbed. Nevertheless, western snowy plovers are known to be present in Sunset Beach area. They are listed as federally threatened and are also a California Species of Special Concern. The most recent sighting of the western snowy plovers in the area was on April 15, 2018<sup>12</sup>, when 17 western snowy plovers were spotted at Sunset Beach. The LSA Memorandum acknowledges that the western snowy plover may occasionally migrate through the area, but concludes that it is not expected to utilize beach or foredune habitat seaward of the project site for nesting or substantial foraging due to beach maintenance and daily human activity.

In conjunction with the unpermitted removal of the private encroachments from the public beach, it is important that the area of the unpermitted development be returned to its former state. In addition to re-creating the previous dune/berm contours, it is important that the restored dune/berm topography be planted. Simply constructing the berm would not establish the berm in the long term. On shore wind and storms would blow the sand away, causing the restored berm to deplete and erode as well as creating issues for the adjacent residents from blown sand. Therefore, once the berm is restored to its former topography, it must be planted to provide long term stability. Most of the dune/berm along Sunset Beach is vegetated with primarily ice plant and other non-natives. However, a better solution for re-vegetating the reconstructed berm would be to plant dune plants native to coastal southern California. This would have the dual benefit of stabilizing the berm and, potentially, increasing the habitat value. Moreover, native dune plants would be more visually pleasing than ice plant, which is important in this public area.

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

<sup>12</sup> The LSA Memorandum is dated 5/9/2018, so the referenced sighting of 17 western snowy plovers was within one month of that report. That is the most recent data, however, it is reasonable to assume a similar western snowy plover presence remains in the area today in May of 2019.

In an effort to offset impacts due to the unpermitted development, the applicant is proposing a Revegetation and Landscape Maintenance Plan (prepared by LSA, Inc., dated 5/2/2019) which proposes to re-contour and re-vegetate the area of the removed encroachments. Regarding recontouring the dune area, the Revegetation and Landscape Maintenance Plan (Plan) proposes: *“to import approximately 1,632 cubic feet of appropriately-sourced sand for installation in the “Dune Recontouring” areas shown on Figure 3 (the two areas measure 16-foot by 20-foot and 16-foot by 14-foot, totaling 544 square feet). This would provide enough sand to match the existing 3-foot height of the existing dune located seaward from the subject property, tapering downward to grade at 20 feet from the subject property (where the sandy beach area begins), with matching contours within the sandy beach maintained access route located seaward from the subject property.”*

However, this proposal is not specific enough to determine whether the restoration as proposed would be adequate to establish a functional dune and adequately offset the impacts created by the unpermitted development. For example, the Plan proposes to import “appropriately-sourced sand” without identifying what that means. It is important that the imported sand match the sand present at the site in terms of grain size and chemistry. In order to obtain this level of detail, the grain size and chemistry of the on-site sand as well as the import sand, must be analyzed. This would be achieved via sampling and analysis of the sand at the subject site, as well as at the source site. Thus, a number of sand samples would need to be taken. These samples would need to be analyzed for grain size and chemistry. For information regarding methods of this type of testing, the US Army Corps of Engineers and US Environmental Protection Agency established protocols as outlined in the Inland Testing manual (USEPA and USACE 1998)<sup>13</sup> should be consulted. In addition, information in the Sand Compatibility Opportunistic Use Program (SCOOP) guidelines (Moffat & Nichol 2006)<sup>14</sup> may be useful as well. Only imported sand that matches the on-site sand in grain size and chemistry, based upon these analyses’, may be used at the site to reestablish a sand dune as proposed within the impacted area.

In addition, the Plan proposes to *“match the existing 3-foot height of the existing dune seaward from the subject property.”* However, the proposed Plan suggests matching the existing “3-foot height,” but does not establish a reference from which the proposed 3-foot height is to be measured. The Coastal Hazard Studies prepared for projects on the beachfront in Sunset Beach, including the one prepared for the proposed project, typically use NAVD 88<sup>15</sup> as the elevation reference. In addition, NAVD 88 is a universally applicable and universally recognized elevation reference.

Moreover, it appears, based on aerial photos and an informal staff site visit, that the berm in the encroachment area has been reduced in elevation to accommodate the private development on the public beach (since removed by the applicant). It is important that the site be restored to the former berm/dune topography, similar to the berm in front of other homes in the area. Based on information submitted with other projects the Commission has reviewed in the area, the berm in front of Sunset Beach homes ranges in elevation between approximately 14 feet NAVD 88 to 17

<sup>13</sup> [https://www.epa.gov/sites/production/files/2015-08/documents/inland\\_testing\\_manual\\_0.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/inland_testing_manual_0.pdf)

<sup>14</sup> [https://www.spl.usace.army.mil/Portals/17/docs/publicnotices/Draft%20EA\\_Surfside\\_Stage13.pdf?ver=2018-09-04-180816-370](https://www.spl.usace.army.mil/Portals/17/docs/publicnotices/Draft%20EA_Surfside_Stage13.pdf?ver=2018-09-04-180816-370)

<sup>15</sup> North American Vertical Datum of 1988 (NAVD 88) consists of a leveling network on the North American Continent, ranging from Alaska, through Canada, across the United States, affixed to a single origin point on the continent.

feet NAVD88. For purposes of flood protection as well as to mimic a natural dune and for aesthetics, the proposed dune/berm should be restored to a height consistent with the original berm and to match existing berm/dune topography along the whole stretch of dune/berm along Sunset Beach. Thus, the restored dune topography should be designed to an elevation of approximately 14 to 17 feet NAVD 88, tapering to meet adjacent beach levels. In addition to the height of the restored dune, it is also important that the restored dune configuration mimic that of a natural dune, with hummocks and mounds. As proposed, the Plan does not include a topography map of either existing site conditions or proposed site conditions. In addition, profiles/cross sections of the existing restoration site topography and restored site topography are not included in the proposed Plan. Without these topography maps and profiles/cross sections, it cannot be determined what precisely the final design for the restored dune configuration would be. An existing topography map and profiles/cross sections are needed for reference and comparison to the final restored dune configuration.

The proposed plan includes a six foot wide area labeled “maintained beach access,” shown in the middle of the area labeled “dune recountouring” (Figure 3 of the Plan, Exhibit 12, page 10). This should be eliminated and the area incorporated into the topographical re-contouring and the revegetation restoration area. The strip of land within the restoration area shown adjacent to but outside and north of the dune recontouring area on Figure 3 of the Plan, must also be included in the dune recontouring area.

Temporary wooden sand fencing (installed perpendicular to the prevailing wind direction) must be installed to slow wind-driven movement of sand through the site, reduce sand encroachment, and allow native hummock-forming dune plants to establish. This wooden sand fencing will help the dune to establish, but should eventually be removed in order to allow the restored dune to function as naturally as possible. In addition, straw bundles (made from a weed-free straw material) may be employed to slow sand movement and provide sheltered planting locations. These measures will help to advance the long term viability of the proposed restored sand dune.

The Plan also proposes to remove non-natives from the restoration area. However, no details are provided as to how this would be accomplished. Due the sensitive nature of the general vicinity, including berm/dune morphology in the general area and the fact that the restoration will be occurring on a public beach, it is important to know how the removal will occur in order to assure that impacts to habitat as well as to public access are avoided. It is also worth reiterating that Western snowy plovers are known to be present on Sunset Beach, as was mentioned earlier. The Plan must be revised to describe the specific removal methods proposed, including, but not necessarily limited to, type(s) of equipment to be used, timing of activity, and disposal of removed materials.

The Plan also includes, on Tables A and B, proposed specific revegetation plants. These include Mesa horkelia (*Horkelia cuenata*) and Sand Aster (*Corethrogyne filangifolia*). These are not optimum choices for this project, and thus must be eliminated from the list. A more desirable southern California native dune plant for this site is saltbush (*Atriplex leucophylla*). Saltbush must be added to the list (Tables A and B of the proposed Plan) to be included in the restoration revegetation plant list. The beach saltbush plants may be from either seed or container plant. In addition, the location of the initial native dune plantings (both seed and container plantings) are not shown in the proposed Plan. It is important to know where these plants will be placed in the

restoration area to better understand and assess the overall Plan. Thus, the locations of the plantings must be depicted graphically on restoration plans.

In addition, the proposed Plan does not include a description of success criteria. Detailed, specific success criteria are necessary to assess the ultimate success of the proposed restoration. Success criteria should include 1) native dune plant coverage of 35% absolute cover, 2) species richness equal to or greater than 5, and 3) no more than 5 % absolute cover of invasive non-natives of the dune restoration area (as shown on Figure 3 of the Plan, as modified herein). In addition, regular plant surveys (at least bi-annually) of the restoration area shall be conducted to identify invasions of non-native plant species. Invaders will need to be removed by hand for the duration of the restoration project (i.e. until success criteria are met or five years whichever is longer). The Plan must also be revised to clarify that use of irrigation shall be avoided to the extent feasible. Hand watering with private hose is preferred, with care to avoid trampling the plantings. Any irrigation system that may be installed must be removed within a maximum of two years from the date of planting. The Plan must be revised to incorporate these requirements.

To protect the restoration area during establishment, limited fencing (e.g. short, no more than 3 feet high poles with rope strung between) shall be placed around the perimeter of the restoration area. The specific type and location of protective fencing, as well as the timing of removal of the fencing, must be identified in the Plan.

Additionally, the proposed restoration must be revised to include a requirement to monitor the restoration for a minimum of five years or until success criteria are met, whichever is longer. The area between the applicant's seaward property line and the dune recontouring area (20 feet seaward of the applicant's seaward property line) as shown on Figure 3 of the Plan shall be maintained free of invasive and non-native plant species. No native dune species that establish within this area shall be removed or harmed. In addition, it must be made clear that future private encroachments including any placement of any items not needed for the restoration, are prohibited in the area seaward of the private property, including within the entire restoration area. And, it is important that the dune restoration occur within a timely manner to encourage the impacts from the unpermitted encroachments to be offset in as timely a manner as possible. All of the above requirements must be incorporated into the applicant's revised dune restoration plan in order to assure that the Plan will effectively restore the dune area that was disturbed by the private encroachments.

The applicant is also proposing to remove non-native plants from the area adjacent to and immediately northwest the subject site, within the 20<sup>th</sup> Street public accessway and to post a public access sign in the same area. Currently this area is overgrown with non-native Natal plum and ice plant, which intrudes onto and impinges upon public use of the public beach accessway. The applicant is proposing to remove the encroaching non-native vegetation such that a clear path, eleven (11) feet in width is maintained for public access use. The 20<sup>th</sup> Street street end accessway leads to the public beach area seaward of the subject site.

An email dated 5/16/2019, from the City of Huntington Beach Maintenance Operations Manager, Public Works Department indicates that the City does not object to the applicant carrying out the

restoration work and public access vegetation removal as described in the proposed Revegetation and Landscape Plan (Exhibit 14).

For the reasons described above, the Commission imposes **Special Condition No. 3** which requires the applicant to submit a revised restoration plan that incorporates all the changes described above. **Special Condition No. 4** requires the applicant to submit a Public Beach Access Improvement Plan which will provide more specific details for the public access improvements proposed by the applicant. In order to assure that the proposed restoration area is protected and to assure no further private use of public beach area occurs, the Commission also imposes **Special Condition No. 8** which prohibits any future private encroachments onto the public beach (other than as necessary to carry out the approved revised restoration plan).

The proposed development, as conditioned by **Special Conditions 1, 2, 3, 4, and 8** will protect the public's ability to gain access to, and to use the public beach area and will protect and enhance sensitive habitat. Furthermore, as conditioned to require a waiver of future shoreline protection (**Special Condition 6**), approval of the proposed development further ensures protection of coastal public access by avoiding potentially significant adverse impacts to the beach which are generally known to occur with placement of shoreline protective devices on or near the beach. (See discussion above.) Therefore, the proposed development, as conditioned, conforms to Section 30210 of the Coastal Act. The Commission hereby finds that the proposed development, as conditioned, is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

#### **D. HAZARDS**

Coastal Act Section 30253 states, in pertinent part:

*New Development shall do all of the following:*

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Due to its low-lying location between the oceanfront and the harbor, an inherently dynamic and potentially hazardous area, the project site must be examined for the potential for erosion, flooding, wave attack and wave runup hazards, including consideration of potential impacts due to severe storm events. Moreover, these hazards may be exacerbated by expected future sea level rise, which must also be considered. In this geographic area, the main concerns raised by development are potential exposure of the proposed development to coastal flood and/or erosion hazards and whether future hazardous conditions (including the possibility of flooding from either the beach or harbor) might eventually lead to a request to build a shoreline protection device to protect the proposed development. Flooding from the harbor inland of the subject site may actually occur earlier than beach flooding and erosion from the ocean. This inland flooding could impact roadways and other infrastructure, limiting access to the residence and damaging necessary public services (such as roads and utilities). Sea level rise models suggest the site will likely become at risk within the expected 75-year life of the proposed residence (Exhibit 8). To address questions raised by these issues, the applicant's coastal engineer provided a Coastal Hazard Study (Priority Engineering

Group, 2/2/2018; Coastal Commission Review Response, GeoSoils, Inc., 3/26/2018; Second Coastal Commission Review Response, GeoSoils, Inc., 7/16/2018).

The Sunset Beach community, where the subject site is located, has historically been subject to flooding and damage resulting from wave action during storm conditions, as well as flooding from the harbor area during high tides, which worsens under storm conditions. Past occurrences of ocean flooding and storms have resulted in public costs for public service (including the USACE led periodic beach replenishment program that is on-going for more than 50 years; annual construction of a seasonal berm across the beach, originally constructed by the County, and now by the City of Huntington Beach) in the millions of dollars. Specifically, the El Nino storms of 1982/83 caused significant damage in both Sunset Beach and neighboring Surfside, both from the ocean and from flooding from the harbor. Indeed, it was the damage resulting from this storm that resulted in annual construction (without benefit of a CDP) of the seasonal berm across Sunset Beach, and in the one-time construction of the “vegetated berm” (also without a CDP) located just seaward of the beachfront residential development in Sunset Beach. Moreover, flooding of areas along Pacific Coast Highway from Huntington Harbour occurs in Sunset Beach now with extreme high tides. This flooding is worsened when high tides occur together with storm activity. Moreover, USGS CoSMoS, the best available regional sea level rise modeling tool, shows that the subject site and surrounding area may be significantly impacted by future sea level rise (see Exhibit 8) and related flooding. Impacts due to expected future sea level rise flooding will be worse when storm activity is also factored in. Public costs are incurred with each incident, including for pumping flooded areas, clearing blocked storm drains, and clean up.

### Sea Level Rise

Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years.<sup>16</sup> Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, the best available science demonstrates that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In April 2017, a working group of the Ocean Protection Council’s (OPC) Science Advisory Team released *Rising Seas in California: An Update on Sea-Level Rise Science*.<sup>17</sup> This report synthesizes recent evolving research on sea level rise science, notably including a discussion of probabilistic sea level rise

<sup>16</sup> <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>

<sup>17</sup> 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.

projections as well as the potential for rapid ice loss leading to extreme sea level rise. This science synthesis was integrated into the OPC's *State of California Sea-Level Rise Guidance 2018 Update*.<sup>18</sup> This Guidance document provides high-level, statewide recommendations for state agencies and other stakeholders to follow when analyzing sea level rise. Notably, it provides a set of projections that OPC recommends using when assessing potential sea level rise vulnerabilities for various projects. Taken together, the Rising Seas science report and updated State Guidance account for the current best available science on sea level rise for the State of California. The updated projections in the 2017 Rising Seas report and the 2018 OPC Guidance suggest sea levels could rise between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge<sup>19</sup>, depending on future greenhouse gas emissions.

The OPC Guidance recommends that development of only moderate adaptive capacity, including residential development, use the high end of this range, 6.7 feet, to inform decisions regarding development. The updated Rising Seas science report and OPC Guidance also include an extreme scenario (termed the "H++" scenario) of 9.9 feet of sea level rise by 2100 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss. These projections and recommendations are incorporated into the 2018 update of the Coastal Commission Sea Level Rise Policy Guidance<sup>20</sup>.

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

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<sup>18</sup> OPC State of California Sea-Level Rise Guidance, 2018 Update: [http://www.opc.ca.gov/webmaster/ftp/pdf/agenda\\_items/20180314/Item3\\_Exhibit-A\\_OPC\\_SLR\\_Guidance-rd3.pdf](http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf)

<sup>19</sup> The OPC Guidance provides sea level rise projections for 12 California tide gauges, and recommends using the projections from the tide gauge closest to the project site. The projections for the LA tide gauge can be found on page 72 of the OPC Guidance.

<sup>20</sup> <https://www.coastal.ca.gov/climate/slrguidance.html>



more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

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

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

The Coastal Act discourages shoreline protection devices because they generally cause significant impacts on coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. This is expected to be exacerbated with future sea level rise. Adverse impacts associated with shoreline protection devices include: as a sandy beach erodes, the shoreline will generally migrate landward, toward the structure, resulting in reduction and/or loss of public beach area and in some cases, public trust lands, while the landward extent of the beach does not increase; oftentimes the protective structure is placed on public land rather than on the private property it is intended to protect, resulting in physical loss of beach area formerly available to the general public; the shoreline protection device may actually increase the rate of loss of beach due to wave deflection and/or scouring (this is site-specific and varies depending on local factors); shoreline protection devices cause visual impacts and can detract from a natural beach experience, adversely impacting public views; and, shoreline protection devices can lead to loss of ecosystem services, loss of habitat, and reduction in biodiversity compared to natural beaches.<sup>21</sup> All of these impacts are likely to occur as a result of a shoreline protection device being constructed at this beach (Sunset Beach, which is immediately adjacent to the subject site). With expected sea level rise and related erosion and flooding, the beach area between the subject site and ocean waters is expected to narrow with time. Likewise, flooding from the harbor is expected to approach the subject site more and more in the future, raising the question of potential impacts to the subject site due to these coastal hazards, which in turn raises the question of a possible request for future shoreline protection at the site.

Shoreline protective devices, by their very nature, tend to conflict with various Commission approved LCP and Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the

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<sup>21</sup> Summarized from <http://www.beachapedia.org/Seawalls>

loss of beach. Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could “...create [or] contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”<sup>22</sup>

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

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

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

Interference by shoreline protection devices can result in a number of adverse effects on the dynamic shoreline system and the public's ability to access the beach. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm

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<sup>22</sup> However, section 30235 of the Coastal Act recognizes that “existing” development may be protected by a shoreline protective device subject to certain conditions. Section 30235 does not apply here because the proposed project is significant enough to be considered new development. Even if the project was not considered new development, the new additions and improvements would not be entitled to shoreline protection and would need to be designed in such a way as to not rely on shoreline protection. Because the additions are proposed toward the landward side of the property, that is infeasible. The existing structure, if given the benefit of shoreline protection on the seaward side, would undoubtedly also protect the new development on the landward side, and thus protect the new development. As such, the entire structure, because of the proposed new additions, must be condition for “no future shoreline projection”.

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

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

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

Moreover, private residential uses are not public trust uses and the existence of private residential uses, such as the proposed project, on future public trust lands likely would conflict with the

public's right to use and enjoy such lands. In addition, private development on public beaches creates conflicts with the public access and recreation policies of the Coastal Act. Thus, the Commission's action on this project must consider the effects on loss of public beach, public trust lands, natural shoreline processes, loss of ecosystem services, and public access under current conditions, and under future conditions, when it is likely that the sandy beach adjacent to the subject site may erode and move inland, up to or past the subject site, and/or that flooding from the harbor, currently located approximately 600 feet inland, may result in inundation of the subject site. Rather than contemplate shoreline protection devices to protect new development in the future, current development proposals must consider adaptation measures that could be implemented should development become threatened.

### **Site-Specific Evaluation**

In order to evaluate whether the proposed development would be consistent with Coastal Act Section 30253's requirement to minimize hazards, the applicant has submitted a Coastal Hazard Study (Priority Engineering, 2/2/18, augmented by GeoSoils, Inc. 3/26/18 and 7/16/18) (Study). The Study concludes:

*In conclusion, coastal hazards will likely (probably) not impact the proposed development over the next 75 years provided sea level rise is about 5 feet or less. The proposed development will neither create nor contribute to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave runoff protection. The development is designed such it would reasonably not require shore protection over the economic life. The proposed project minimizes risks from flooding.*

The Study finds that with sea level rise of five feet or less, the subject site is likely, or probably, not going to be impacted by coastal hazards during the expected 75 year life of the proposed development. The updated projections in the 2017 Rising Seas report and the 2018 OPC Guidance, suggest sea levels could rise between 2.1 and 6.7 feet (within which the consultant's five feet or less range falls) by 2100 at the Los Angeles tide gauge, depending on future greenhouse gas emissions. However, if the Medium-High Risk aversion figures are applied (6.7 feet of sea level rise), the site would not be expected to be safe over its 75 year expected life. According to the 2017 Rising Seas Report (La Jolla tide gauge), 6.5 feet of sea level rise (5% probability) could affect the site by approximately year 2050. The 2018 OPC Guidance and 2018 Coastal Commission Sea Level Rise Policy Guidance, which contain the current best available science on sea level rise, provide that residential structures, such as the proposed development, should examine the sea level rise projections associated with Medium-High risk aversion, which is 6.7 feet of sea level rise. Thus, applying the best available science standard, the proposed development may be threatened prior to the end of its expected 75 year life. In addition, the updated Rising Seas science report and OPC Guidance also recognize the possibility of an extreme scenario (termed the "H++" scenario) of 9.9 feet of sea level rise by 2100 associated with possible future rapid ice sheet loss.

In this case, because with future sea level rise, the subject site may be threatened from both the harbor side as well as the ocean side, consideration of impacts due to protecting the proposed development must be considered not just from the ocean, but from the harbor as well. If the site is threatened by coastal hazards from the harbor side of development, as exacerbated by expected future sea level rise, then impacts will have also occurred to Pacific Coast Highway and the

surrounding streets. This will disrupt the ability of the site to be accessed by essential services such as access by public roads and the ability to be served by public infrastructure in the normal manner. By 2100, much of Huntington Harbour may be inundated, affecting all of the properties along Pacific Coast Highway or accessed via Pacific Coast Highway. Moreover, depending upon the extent of future sea level rise, the subject site may no longer be located on private property due to the migration of the public trust boundary.

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

### **No Shoreline Protection**

As discussed above, an important concern under section 30253 is the potential need for shoreline protection to protect against coastal hazards related to sea level rise, because shoreline protective devices typically conflict with section 30253(b)’s prohibition on new development that either creates or contributes significantly to erosion or destruction of a site. Here, the applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the applicant or a successor-in-interest, could request a shoreline protection device at some point in the future, particularly if the assumptions in the applicant’s coastal hazards assessment turn out to not be accurate. Therefore, because of the numerous adverse impacts to coastal resources caused by shoreline protective devices (discussed above), which are relevant to this project, to comply with section 30253’s prohibition on creating or significantly contributing to erosion and destruction of the site, it must be clear that, as *new* development, the entire development recognized and approved by this permit is not entitled to a shoreline protection device now or in the future. Therefore, **Special Condition 6** is imposed to require the applicant to acknowledge that, as new development, the applicant has no right to a shoreline protective device for the project and, in fact, no future shoreline protective device will be constructed on site to protect the proposed development, including the entire redeveloped house.

### **Removal if Development is Threatened**

Given that coastal hazards may impact the proposed development to some extent towards the end of its economic life as a result of sea level rise, the Commission must also find that the project assures stability and structural integrity and minimizes “risks to life and property” in an area of high flood hazard without a shoreline protective device. Section 30253 does not prohibit development in a potentially hazardous area; rather, an applicant must demonstrate that risks to life and property are minimized. Here, it is important to note that the site is not currently threatened by coastal hazards and is unlikely to be for many years, and has been designed to be stable and structurally sound under current conditions.

However, as discussed, the best available science indicates that sea level rise is occurring and coastal hazards may threaten the project site to some extent before the end of its economic life, although there are uncertainties inherent in predicting exactly how and when the impacts discussed

above will occur. Due to increasing coastal hazards in this area, the redeveloped house may become unstable at some point, posing risks to property and even life, and a shoreline protective device would not be an option for protecting the structure from coastal hazards. If, however, the proposed development (i.e., the entire redeveloped home) were to be removed if threatened, rather than protected by a shoreline protection device, the proposed development may be found to be consistent with the Coastal Act hazards policies, because the structurally unsound or unsafe development would be removed, minimizing risks to property and life.

As discussed, the proposed development constitutes *new* development, rather than a minor remodel or addition, and essentially “re-starts” the life of the project. Consequently, it is important to note that, if the redeveloped home is threatened it must be removed, even though portions of the redeveloped house may currently exist at the site. Thus, **Special Condition 6** is applicable to the entire redeveloped structure, not just the proposed addition and improvements.

Therefore, the Commission imposes **Special Condition 6**, which requires the landowner to remove the development (consisting of the entire redeveloped home, garage, foundations, and any future improvements) if: (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device to prevent a-d above. **Special Condition 6** requires that if any part of the proposed development becomes threatened by coastal hazards in the future, then the threatened development must be removed rather than protected in place. This condition recognizes that predictions of the future cannot be made with certainty, thereby allowing for development that is currently safe and expected to be for approximately 30 years with 6.5 feet of sea level rise and up to approximately 75 years if sea level rise is about 5 feet or less, but ensuring that the future risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of new development, and not the public.

Because of the potential for loss of beach area (and associated public access and recreational resources) as sea levels continue to rise, this project also must be considered in light of sea level rise adaptation actions that may become necessary over time. The City of Huntington Beach may develop sea level rise adaptation strategies and programs through updates to its Local Coastal Program or through other means, which may include provisions on beach width to maintain public access, consistent with the Coastal Act. Such provisions could define minimum beach and/or dune widths that, once reached, could trigger removal or relocation of potentially threatened residences and thus allow the beach and public tidelands to naturally migrate inland. Therefore, **Special Condition 6** requires the land owner(s) to remove the development if required pursuant to LCP policies for sea level rise adaptation planning.

### **Foundations**

**Special Condition No. 6** requires that the landowner remove the subject development when any of the circumstances a through e, identified above, occur. In carrying out this requirement, it is important that the proposed addition be fairly readily removable. The applicant is proposing a foundation system for the addition that would include three, 24-inch diameter piers embedded a

minimum of 22-feet into grade. Piers embedded at that depth would require a great deal of effort to remove. Removal would likely require heavy equipment and result in a significant disturbance to the site and surrounding area. In the event any of the circumstances identified in Special Condition No. 6 a – e (described above) occur, it is important that removal of the addition can be accomplished in a reasonable time frame and in a safe manner, with the least amount of disturbance to the site and surrounding area. Moreover, in the event the subject development must be removed due to threat from coastal hazards, safely removing the piers would become more difficult. The proposed 22-foot deep piers could create a hazard as the area erodes around them, if left in place. It is important that removal of the development subject to Special Condition No. 6 can be accomplished safely to the maximum extent practicable and that the development itself does not become a hazard.

A number of coastal development permit applications for residential development on the beachfront in Sunset Beach have been submitted for Coastal Commission review over the last few years. While not all have gone to hearing and been acted on by the Commission, all the following were proposed on shallow mat foundations, consistent with the recommendation of each project’s engineering consultant. These projects include:

<b>CDP App #</b>	<b>Applicant</b>	<b>Address</b>	<b>Commission Action</b>
5-17-0017	Redhill	16611 So. Pacific Ave.	Approved w/ shallow mat foundations
5-17-0524	Perricone	16995 So. Pacific Ave.	same
5-17-0678	Bassaly	16891 So. Pacific Ave.	same
5-17-0680	Bassaly	16351 So. Pacific Ave.	same
5-18-0241	Poulis	16671 So. Pacific Ave.	Proposed w/ shallow mat foundations, but withdrawn prior to Commission action for other reasons.
5-18-0295	Senn	17005 So. Pacific Ave.	Proposed w/ shallow mat foundations, but withdrawn prior to Commission action for other reasons.

The subject site is located at 16601 South Pacific Avenue, Sunset Beach. Based on the history, number, and location of similar residential projects proposed very near to the subject site, on South Pacific Avenue in Sunset Beach, where the engineering consultants recommended shallow mat foundations, it appears reasonable that the proposed project could also be safely supported on shallow mat foundations, or similar more easily removable foundations (i.e. more easily removed than the proposed 22-foot embedded piers). In recommending the embedded piers, the applicant’s engineering consultant, in a letter dated 6/9/2019, states that the proposed foundations are adequate, but does not address whether shallow mat or similar foundations would also be adequate. Commission staff did request this information in a letter dated March 1, 2018, but to date no response has been received. To date, no information has been received indicating that the proposed embedded piers are necessary and that shallow mat or similar foundations would be inadequate.

Special Condition No. 6, as described above, is necessary to find the proposed development consistent with the requirement to minimize risks to life and property and to assure stability and structural integrity as required by Section 30253 of the Coastal Act. In order to assure that the development can conform to the requirements of Special Condition No. 6, including the requirement to remove the development if threatened, revised foundation plans must be submitted, demonstrating that the proposed addition will be supported on shallow mat or similar, more easily removable foundations rather than the proposed 22-foot embedded piers. However, if it is demonstrated by a qualified licensed engineer that there is something different and unique from the neighboring South Pacific Avenue projects (referenced above) about the subject site that precludes the use of shallow mat type foundations, evidence of that must be submitted for the review of the Executive Director. Therefore, Special Condition No. 2 requires the applicant to submit: revised foundation plans demonstrating the foundations to support the residential addition shall be mat foundation or similar; and that embedded pier foundations shall not be allowed, unless the applicant submits written evidence that an appropriately licensed, qualified engineer concludes, based upon current information and professional standards, that shallow mat or similar foundations are not structurally feasible to support the proposed addition.

### **Assumption of Risk**

The Commission also finds that due to the possibility of storm waves, surges, flooding, erosion and other coastal hazards the applicant shall assume the risks of development in a hazardous area as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 12**, will show that the applicant is aware of and understands the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicant.

### **Conclusion**

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

## **E. WATER QUALITY**

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:



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

The proposed development has the potential for construction and post-construction discharge of polluted runoff from the project site into coastal waters, either directly or via the community's storm drains, which ultimately flow to the sea. The applicant is proposing measures to address these water quality concerns, including directing site drainage, including roof downspouts, to perforated drain pipes in the side yard. The side yard will be composed of pea gravel and the perforated pipes will be placed within the pea gravel.

**Special Condition No. 7** requires the applicant to submit a revised drainage plan that conforms with the required seaward setback, but otherwise continues to conform to the site drainage plan as proposed ([Exhibit 2.e](#)). In addition, the Commission imposes **Special Condition 9** which identifies construction related measures to be incorporated into the project during construction. By incorporating these water quality protection measures into the proposed development, as conditioned, the project minimizes the effect of construction and post-construction activities on the marine environment. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

## **F. DEVELOPMENT**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. Section 30610(a) of the Coastal Act provides that certain improvements to existing single-family homes do not require a coastal development permit, subject to Section 13250 of the Commission's regulations, which lists certain improvements to single-family structures that require a coastal development permit because they involve a risk of adverse environmental effect, including those improvements to a structure that is located on a beach (13250(b)(1)). The Commission finds that exemption from coastal development permit requirements for certain improvements to existing single-family homes per section 30610(a) does not apply to the proposed single-family structure because it is located on a beach. Thus, to assure that future improvements are consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that it is necessary to impose **Special Condition 10** prohibiting the construction of future improvements to the proposed single-family structure without first obtaining an amendment to this permit or a new coastal development permit. Therefore, as conditioned, the development conforms to the Chapter 3 policies of the Coastal Act.

### G. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 13**, requiring that the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability. Therefore, the Commission finds that the proposed development, as conditioned, conforms to the Coastal Act by ensuring that any successors-in-interest have proper notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

### H. UNPERMITTED DEVELOPMENT

Violations of the Coastal Act that are associated with the subject residence have been undertaken by the applicant on the public beach adjacent to the subject property, including placement of private development that encroaches beyond the applicant's seaward property line including a 40-foot wide wood deck that encroaches 20 feet (totaling 800 square feet) beyond the property line. Development associated with the encroaching wood deck includes a 5-foot high glass windscreen, and contains accessory furniture such as a concrete fire ring, barbeque, space heaters, and patio furniture. And, approximately 17 feet seaward of that, and 40-foot wide (totaling an additional approximately 680 square feet), well beyond the previous LCP encroachment area, additional encroachments include a three foot high wall comprised of stacked paver stones, a concrete fire pit, stairs also comprised of paver stones, and beach furniture. This private development on the public beach is associated with the subject residential development.

The formerly certified, now lapsed County LCP for Sunset Beach allowed the following:

*Permanent above-ground structures on the beach and sand areas shall be prohibited, except for:*

- a) *Lifeguard towers.*
- b) *Other facilities necessary for public safety.*
- c) ***Temporary*** *uses and structures accessory to residential development on contiguous SBR [Sunset Beach Residential] properties subject to a Coastal Development Permit and a Public Property Encroachment Permit. [Emphasis added.]*

As noted, the County LCP for Sunset Beach has lapsed and the standard of review is the Chapter 3 policies of the Coastal Act. Thus, the provision cited above is no longer applicable. In any case, a temporary structure that may have been allowed under this provision could only be allowed upon receipt of both a coastal development permit and a Public Property Encroachment Permit, and there is no indication that the applicant received the required coastal development permit for the encroachments. Coastal Commission records indicate that local coastal development permit PA02-0046 was approved by the County in 2002 for "*construction of a three-story addition to the front*

[landward] *of an existing three-story single family dwelling and construction of a ground level deck at the rear [seaward] of the property.*”; however, the encroachments at issue were constructed at least seven years subsequent to the approval of the 2002 permit and do not appear to be associated with the 2002 permit. In addition, the applicant has submitted a plan purported to be approved by the County, but there is no legible date on the plan, including date of the signature on the plan. In any case, the plan shows a different deck footprint (Exhibit 4). The plan provided by the applicant shows a deck that is set back six inches from the extension of the northwest property line. Whereas the *Existing Topography Map* (prepared by George Bach, 12/31/2018) shows the existing deck with zero set back from the extension of the northwest property line. Moreover, the plan, even if approved by the County, is not equivalent to the Coastal Development Permit required for the encroachments under the LCP. Other than this cryptic plan, no other evidence that a coastal development permit and/or a public property encroachment permit was approved for the encroaching development has been provided. The applicant has indicated that all records related to the site were lost in a fire. While tragic, this cannot replace the need to demonstrate that the encroachments were authorized consistent with the requirements at the time.

Moreover, a Google Earth historic aerial photo dated November 2009 shows a much smaller deck, which appears to have been constructed between 2006 and 2008, seaward of the subject site (Exhibit 5). The County’s 2002 permit would not have applied to the existing encroachments, which were built subsequent to November 2009. It is not entirely clear what the County permit approved, as Commission records simply indicate the deck approval allowed “*construction of a ground level deck at the rear [seaward] of the property.*” The Commission’s post certification records for the Sunset Beach area generally and this site specifically do not include project plans. Regarding the history of the deck at the site, the applicant’s representative states, in a letter dated 4/30/2019: “*The homeowner purchased the Sunset Beach property in early 2008. At that time the home had a wooden deck placed at the back [seaward side] of the house to a 20’ encroachment, which was put in place with a County approved permit. After purchase the homeowner hired a contractor to repair the deck to the state it remains in today.*” However, the grant deed submitted with the CDP application as evidence of legal interest in the property indicates the property was purchased by the applicant in December 2009, subsequent to the November 2009 Google Earth historic photo. The statement quoted above, the timing of the purchase of the property, taken together with comparison of the Google Earth historic November 2009 aerial photo and the current Google Earth aerial photo, suggest the deck was re-built after the property was purchased by the applicant. And that the re-built deck was significantly larger than the earlier deck. There is no evidence to support that reconstruction of the deck after 2009 ever received a Coastal Development Permit or a Public Property Encroachment Permit.

Moreover, even though the applicant was informed that a coastal development permit would be required to remove the unpermitted development, and that the removal could be included in the subject coastal development permit application, and even though the applicant refused to include removal of the unpermitted development in the current coastal development permit application, nevertheless, the applicant removed the unpermitted development without benefit of a coastal development permit. Thus, both the encroaching development and the removal of the encroaching development are violations of the Coastal Act.

The applicant is now requesting approval of removal of the encroachments after-the-fact through this application. In an effort to offset some of the adverse impacts from the unpermitted development, the applicant has proposed to restore the area where the encroachments were located, and adjacent public beach, to dune habitat, as discussed earlier in this staff report. In addition, the applicant is proposing to remove ornamental vegetation from the street end and beach adjacent to the property for the purpose of removing impediments to public access, and to install a public access sign, in order to create a more welcoming public accessway adjacent to the site. However, there were additional impacts to public access that occurred for a period of time due to the presence of the encroachments. While the encroachments have been removed and the site will be restored if the application is approved pursuant to the staff recommendation, the permit is issued, and the applicant complies with all of its terms and conditions, the applicant has not proposed an adequate resolution of the temporal public access impacts resulting from the violations, nor the Commission's claims for monetary penalties for the violations. Thus enforcement staff will consider action to address the violations of the Coastal Act, including but not necessarily limited to action pursuant to Coastal Act Section 30821, which authorizes the Commission to impose civil penalties for violations of the Coastal Act's public access provisions, with certain exceptions that do not apply here.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

## **I. LOCAL COASTAL PROGRAM**

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

If the proposed project were approved as proposed with a zero to a few inches setback from the seaward property line, that would prejudice the ability of the local government, the City of Huntington Beach, to prepare an LCP amendment for the Sunset Beach area that is in conformity with the public access and recreation policies of the Coastal Act. A condition is imposed that requires the applicant to revise the project such that the proposed residence will conform to a minimum five-foot setback from the seaward property line. As described in greater detail earlier, such a setback is necessary to protect public beach access adjacent to the subject site and in the project vicinity. An even greater setback than required by **Special Condition 1** may be appropriate in other cases in Sunset Beach which is an issue that should be carefully evaluated as part of the

future LCP amendment anticipated to be submitted by the City of Huntington Beach to incorporate this annexed area into the City's LCP. In addition, a condition is imposed that prohibits a shoreline protection device from ever being constructed at the site and that requires the applicant to remove site development if it becomes threatened by coastal hazards, including sea level rise. Without these, and the other special conditions, the project would prejudice the ability of the local government to prepare an LCP amendment for the Sunset Beach area that is in conformity with the public access and recreation policies of the Coastal Act. Therefore, only as conditioned, can the proposed development be found to be consistent with the Chapter 3 policies of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

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

Section 13096(a) of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

## **APPENDIX A**

### **SUBSTANTIVE FILE DOCUMENTS**

- 1) Formerly Certified County of Orange Sunset Beach Local Coastal Program.
- 2) City of Huntington Beach Initial Plan and Zoning Review No. 17-020 (Nobles), 1/31/18
- 3) Coastal Hazard Study; Priority Engineering (2/2/2018); Coastal Commission Review Response, GeoSoils, Inc., 3/26/2018; Second Coastal Commission Review Response, GeoSoils Inc. (7/16/2018)
- 4) Foundation Plans Review; ZS Engineering, (6/9/2018)
- 5) Findings for the following CDPs: A-5-VEN-17-0009 (Thomas); A-5-VEN-16-0081; (Marciano); A-5-LGB-18-0012 (Bracamonte); 6-18-0182 (Harris); 5-18-0223 (Walsh); 5-13-0678 (Senn); 5-13-0650 (Valenzuela); 5-16-0420 (Smith Alakor); 5-16-0419 (Von Blasingame); 5-17-0016 (Redhill); 5-17-0524 (Perricone); 5-17-0678 (Bassaly); 5-17-0680 (Bassaly); A-3-STC-16-0016 (Honjo); 5-10-031 (Paicius); 5-16-0757 (Greene)
- 6) Engineer's Assessment (letter); Christine R. Silva, P.E., 4/19/2019
- 7) Engineer's Assessment (letter); Castillo Engineering, 4/26/2019
- 8) Coastal Commission Senior Coastal Engineer Memorandum, 5/29/2019