

**CALIFORNIA COASTAL COMMISSION**

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



# Th17a

Filed:	4/19/19
180th Day:	10/16/19
Staff:	MV-LB
Staff Report:	7/25/19
Hearing Date:	8/8/19

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-18-0642

**Applicant:** Leonard Julian Sunset Beach, LLC

**Agents:** Lawrence Lazar, Pacific Edge Real Estate  
Cliff Neiman, Neiman Group Architects  
Susan McCabe & Anne Blemker, McCabe & Company

**Location:** 17145 Pacific Coast Highway, Sunset Beach  
City of Huntington Beach, Orange County  
(APN: 178-551-31)

**Project Description:** Demolition of a commercial car wash and construction of a three story, 35 foot high mixed use structure consisting of a moderately priced 12-unit hotel with eight 3 bedroom units and four 4 bedroom units, and 1,800 square feet of retail space located on the ground floor level. The entire structure is proposed to be 25,950 square feet including a 6,117 square foot garage with 32 parking spaces. The project also includes a tentative parcel map to consolidate seven parcels into a single parcel.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION:

The proposed development would occur on an inland (not ocean or harbor front) lot in the Sunset Beach area of the City of Huntington Beach. The applicant is proposing to construct a mixed use development consisting primarily of a moderately priced twelve unit hotel (3 and 4 bedroom units), with 1,800 square feet of retail space, and 32 on-site parking spaces. Because of the unique multi-bedroom guest rooms and hotel amenities such as full kitchens and laundry facilities in every unit, free wi-fi, and free parking, when considered on a per person per night basis, the project will

provide moderate cost overnight accommodations. **Special Condition No. 1** requires that the proposed development be implemented as proposed.

Although the subject lot is not a waterfront lot, the “Sea Level Rise Discussion” prepared by the project applicant, as well as current best available sea level rise science, indicate that the site may become threatened by coastal hazards prior to the end of its expected 75 year life. For this reason, staff is recommending **Special Condition No. 4**, which requires that adaptation measures applied to the proposed development include the requirement to remove the proposed structure if it becomes threatened by coastal hazards, if a government agency orders it not be occupied due to coastal hazards, if essential services to the site can no longer be feasibly maintained, if removal is required by LCP SLR adaptation planning, or if a shoreline protective device is required to prevent any of the above. **Special Condition No. 4** also requires the applicant to acknowledge that the project is new construction for which there is no right to construct shoreline protective devices and further stipulates that no future shoreline protection device be allowed to protect the structure.

Staff is recommending **approval** of the proposed coastal development permit with **nine (9)** special conditions. The special conditions require: 1) implementation of the project as proposed to include multi bedroom units with full kitchens and laundry, and other amenities that contribute to the moderate cost as proposed by the applicant; 2) retention of proposed on-site parking; 3) development not interfere with on-street public parking on Pacific Coast Highway; 4) no future shoreline protection device and removal of development if threatened and under other specific circumstances; 5) submittal of a revised drainage plan; 6) submittal of a Transportation Demand Management Program; 7) future development will require a CDP; 8) that the applicant assume the risk of site development and waive liability and indemnity; and 9) recordation of a deed restriction referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

The motion to accomplish the staff recommendation is found on page 4.

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### APPENDICES

Appendix A - Substantive File Documents

### EXHIBITS

- Exhibit 1 - Vicinity Map
- Exhibit 2 – Project Plans
- Exhibit 3 – CoSMoS Hazards Maps
- Exhibit 4 – Overnight Accommodations Analysis
- Exhibit 5 – Project Description

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-18-0642 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. Implement Project As Proposed

- A. By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that the moderately priced twelve hotel units that are authorized by this permit shall remain in substantial conformance with CDP No. 5-18-0642 as conditioned for the life of the project, including by providing the following amenities proposed by the applicant:
  1. The twelve hotel units shall include four hotel units with four bedrooms each and eight hotel units with three bedrooms each;
  2. Each of the twelve hotel units shall include a full working kitchen and eat-in dining area;
  3. Each of the twelve hotel units shall include full laundry facilities in each guest room;
  4. Free Wi-Fi shall be available in each room and common area;
  5. A minimum of two free on-site parking spaces shall be provided per guest room.
  6. The twelve hotel units shall not be converted to allow long term (thirty (30) consecutive days or more) stays or otherwise be converted to residential use for the life of the subject development.
  7. The twelve hotel units shall not be converted to timeshare or other fractional ownership and shall remain available equally to any member of the general public.
- B. By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that the 1,800 square foot retail space shall be occupied by the Commercial Visitor (CV) uses of the Land Use Plan/Coastal Element and the CV Visitor Commercial District uses of the Implementation Plan/Zoning Code as defined in the City of Huntington Beach certified Local Coastal Program.
- C. The permittee shall undertake development in accordance with the project plans dated 6/5/2018. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### 2. Retention of On-Site Parking

- A. By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that 32 on-site parking spaces shall remain available exclusively to serve the 12 hotel units and 1,800 square foot retail commercial space for the life of the subject development.
- B. The required and proposed on-site parking described in subsection A of this special condition is depicted on the project plan Sheet A1.0 Ground Floor Plan, attached to this staff report as Exhibit 2.1.

**3. On-Street Public Parking**

By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that the subject development shall provide on-street public parking along Pacific Coast Highway adjacent to the subject site in conjunction with construction of the sidewalk, curb and gutter, including but not limited to the area of the existing driveway that will be removed with the subject development. With the exception of one vehicular driveway access as depicted on Plan Sheet A1.0 Exhibit 2.5, all on-street public parking spaces along Pacific Coast Highway shall be available to the general public and shall remain unobstructed by the subject development.

**4. No Future Shoreline Protective Device.**

**A.** By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-18-0642 including, but not limited to, the hotel and retail structure, garage, foundations, and any future improvements, in the event that the development is threatened with damage or destruction from flooding, waves, erosion, storm conditions, sea level rise, or other natural hazards in the future. By acceptance of this permit, the applicant acknowledges that the project is new construction for which there is no right to construct shoreline protective devices, and hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.

**B.** By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the hotel and retail structure, garage, foundations, utility connections, 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) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (d) the development would require a shoreline protection device to prevent a-c above. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required. This permit does not authorize encroachment onto public trust lands and any future encroachment onto public trust lands must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval.

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

**5. Revised Drainage 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

drainage plan that shall conform with the drainage plan proposed by the applicant (Plan Sheet C1.0 of the proposed plans dated 11/16/18), including that site drainage will be directed to flow through planter boxes and that a six-inch trench drain with filter will be placed in the rear (No. Pacific Ave.) vehicular access driveway, except the revised drainage plan shall also depict a six-inch trench drain with filter that will be placed at the vehicular access driveway from Pacific Coast Highway. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

- B. The revised plan shall be prepared and certified by a licensed professional as applicable (e.g. registered 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.

**6. Transportation Demand Management Program.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide for review and written approval by the Executive Director, a Transportation Demand Management Program incorporating the following:
  - 1. Maintain a minimum of eight (8) bicycles on-site for the free use of hotel guests.
  - 2. Provide bicycle parking on the property (e.g. bicycle racks or secure storage area) to accommodate a minimum of 16 bicycles, free of charge, for use by hotel guests, retail patrons, and hotel and retail employees. The location of the bicycle parking shall be depicted on project plans.
  - 3. Make readily available information regarding bike routes, bike rental shops and bike share facilities to hotel guests.
  - 4. Provide a minimum of two electric vehicle charging stations on-site. The location of the electric vehicle charging stations shall be depicted on project plans.
  - 5. Facilitate the use of OCTA (Orange County Transit Authority) transit by hotel guests and site employees by prominently displaying and providing detailed information on fares, schedules, and single day passes.
  - 6. Provide walking and jogging maps to hotel guests.
  - 7. Provide assistance to hotel guests for booking shuttle services, bike rentals, and similar alternatives.

8. Encourage and provide incentives for hotel guests to utilize other alternative transportation, including the City of Huntington Beach free summer weekend shuttle (Surf City USA Shuttle Huntington Beach), public taxis, mobile rideshare applications, and any future bike share locations.
  9. Information regarding the alternative transportation options and incentives shall be featured prominently in a common area of the hotel and on the hotel's website, and all hotel guests shall be made aware of their availability upon registration and again upon arrival. The on-site concierge shall be well informed of and be available to answer questions and assist with the required measures to promote alternate forms of transportation.
  10. Provide incentives for employees to carpool, bike and/or ride public transit to and from work. All retail and hotel employees shall be offered partial or full reimbursement for public transit fare to and from work. As applied to the 1,800 square foot retail space, this provision shall apply upon entering into and renewal of any lease.
  11. The hotel and the retail space tenant shall not advertise or otherwise direct guests and/or employees to park at offsite public parking areas, including but not limited to the public parking spaces located along the greenbelt and on Pacific Coast Highway.
- B. The applicant and its successors and assigns shall implement the approved Transportation Demand Management Program for the life of the subject development. Any proposed changes, including but not limited to, change in the number of parking spaces, hotel rooms, the number of hotel bedrooms, or operation of the hotel, or change in use, including retail space, shall be submitted to the Executive Director. No such change shall occur without an amendment to this permit unless the Executive Director determines that no amendment is legally necessary, pursuant to the requirements of the Coastal Act and the California Code of Regulations.
7. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-18-0642. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use of land, or change from the project description as proposed by the applicant, shall require an amendment to Permit No. 5-18-0642 from the California Coastal Commission or shall require an additional coastal development permit.
  8. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards including, but not limited to, erosion, flooding, wave uprush, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the



Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

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

#### **IV. FINDINGS AND DECLARATIONS**

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

The applicant is proposing to demolish a commercial car wash and construct a three story, 35 foot high, mixed use structure consisting of a moderately priced 12-unit hotel with eight 3 bedroom units and four 4 bedroom units, and 1,800 square feet of retail space. The entire structure is proposed to be 25,950 square feet, including a 6,117 square foot garage with 32 parking spaces. The project is proposed with mat foundations. The hotel rooms will be located on the second and third floors. A pool, fitness center, and hotel lobby with concierge desk are also proposed on the second floor. Each hotel room will include in-unit kitchens and laundry facilities. The retail space will be located on the ground floor, but elevated two feet above the level of the parking garage. Parking for hotel guests will be free in the proposed on-site parking garage. Also proposed are five bicycle racks which together will accommodate a total of 16 bicycles, bicycles available for use by hotel guests, and two charging stations for electric vehicles. A Tentative Parcel Map is proposed which will consolidate the seven underlying parcels into one single, 18,032 square foot parcel.

The twelve hotel units are proposed as traditional hotel units including limiting guest stays to less than thirty (30) consecutive days. The hotel units are also proposed as traditional hotel units and not as timeshare or other fractional ownership units, meaning they will be available equally to any member of the general public. In addition, the hotel units are proposed by the applicant as *“prohibited from being converted to multi-family residential per the Conditional Use Permit with the City of Huntington Beach, and applicable zoning codes of the Sunset Beach Specific Plan.”* These aspects of the proposed hotel are reinforced by the Conditional Use Permit approved by the City (CUP 15-038), which requires (Special Condition 2b) *“Hotel units shall be rented to the*

*general public for transient lodging (less than 30 days only) and shall not be converted into multifamily residential units.”*

Also, consistent with the City’s approval of CUP 15-038, the applicant proposes to maintain on-site hotel staff every day between 7 am and 10 pm, during which time a hotel concierge shall be available to assist hotel guests. Also, consistent with the City’s approval of CUP 15-038, the applicant proposes to have an on-site property manager or security staff between the hours of 10 pm and 6 am every day between Memorial Day Labor Day weekends.

The 18,032 square foot (to be) consolidated lot is located at 17145 Pacific Coast Highway, in the Sunset Beach area of the City of Huntington Beach, Orange County (**Exhibit 1**). Sunset Beach is located on a low-lying, relatively narrow strip of land between two water bodies—the ocean (approximately 250 feet to the west) and Huntington Harbour (approximately 500 feet to the east). The project is located within an existing urban area, on an interior (non-waterfront) lot.

Sunset Beach is an area that was formerly unincorporated Orange County area. Under the County’s jurisdiction, Sunset Beach was subject to a certified Local Coastal Program (LCP). The former County LCP for the area was effectively certified in 1982 and last updated in 1992. However, in August 2011, Sunset Beach was annexed by the City of Huntington Beach, resulting in the lapse of a certified LCP for Sunset Beach. The Sunset Beach area has not yet been incorporated into the City of Huntington Beach LCP. Therefore, the Commission is the permit-issuing entity for the proposed project and the Chapter 3 policies of the Coastal Act are the standard of review. The County’s previously certified Sunset Beach LCP may be used as guidance; however, it should be noted that the previously certified LCP was last reviewed by the Coastal Commission almost thirty years ago and did not adequately address a number of issues of current concern including appropriate development setbacks from the seaward property line of beachfronting lots, private development on the public beach adjacent to beachfronting lots, and sea level rise concerns, which are likely to be significant issues in the new LCP, given the high degree of sea level rise vulnerability in the area.

The City has adopted equivalent land use and zoning designations for the site as those set forth in the former Orange County LCP for Sunset Beach. However, the Commission has not yet certified land use designations or zoning for the Sunset Beach area since it was annexed into the City. Nevertheless, it is worth noting that the proposed project (primarily hotel use, with additional retail area) is consistent with many of the development standards that would have been applicable to the proposed project under the old Sunset Beach LCP, and also the City’s current zoning. The old LCP and current City zoning designate the site Sunset Beach Tourist, which requires uses that cater to the needs of tourists, visitors, and the local community. The proposed development is consistent with this designation. The height of the proposed structure will be 35 feet above the finished grade, consistent with the City’s current height limit for the site and the former County LCP height limit. In addition, the design of the proposed mixed used hotel retail structure is consistent with existing surrounding development along Pacific Coast Highway in Sunset Beach.

## **B. LOWER COST OVERNIGHT ACCOMMODATIONS**

Coastal Act Section 30213 states, in pertinent part:

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

Coastal Act Section 30222 states:

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

Sections 30213 and 30222 of the Coastal Act establish a higher priority for visitor serving and recreational uses over lesser priority uses such as residential, industrial, or general commercial. These policies prioritize visitor serving uses within the coastal zone. Section 30213 requires permitted development to protect, encourage and, where feasible, provide lower cost visitor and recreational facilities. Since its earliest days the Commission has applied this policy to protect and provide lower cost overnight accommodations for the visiting public with new development applications. The general expectation of the Commission is that developers of overnight accommodations will provide facilities that serve people with a range of incomes, including lower economic means, or will otherwise provide for lower cost overnight accommodations.

#### Overnight Accommodations Trends

Historically, the Commission has approved new hotel developments along the coastline because hotels are inherently visitor-serving facilities. However, many hotels are exclusive because of their high room rates. Often, the Commission has secured public amenities when approving these hotels (e.g., public accessways, public parking, and open space dedications) to address the Coastal Act priorities for lower cost public access/recreation and visitor support facilities. The Commission has also required mitigation for the use of land that would have been available for lower cost and visitor serving facilities (e.g. NPB-MAJ-1-06A). The expectation of the Commission, based upon several recent decisions, is that developers of sites suitable for overnight accommodations will provide facilities which serve the public with a range of incomes [e.g. HNB-MAJ-2-06-(Huntington Beach-Timeshares); A-6-PSD-8-04/101 (San Diego-Lane Field); A-5-RPV-2-324 (Rancho Palos Verdes-Long Point); RDB-MAJ-2-08 (Redondo Beach); SBV-MAJ-2-08 (Ventura); 5-98-156-A17 (Long Beach-Pike Hotel); LOB-MAJ-1-10 (Long Beach-Golden Shore)]. If the development does not propose a range of affordability on-site, the Commission has required off-site mitigation, such as payment of an in-lieu fee to fund construction of lower cost overnight accommodations such as youth hostels and campgrounds.

As more high-cost hotels are developed, the remaining lower-cost to moderate-cost hotel accommodations in the coastal zone tend to be older structures that become less economically viable as time passes. Further, as more redevelopment occurs, the stock of lower-cost overnight accommodations tends to be reduced, since it is more lucrative for developers to replace these structures with higher-cost accommodations. Commission staff prepared a 2016 study of Low Cost Visitor Accommodations, which reviewed statewide data about overnight accommodations lost in the coastal zone since 1989. In its report to the Commission in November 2016, staff found that out of six “cost” categories ranging from “economy” to “luxury,” a total of 24,720 economy rooms were lost, compared to 11,247 rooms of the remaining five classes. Economy rooms have been lost over the same time period at over twice the rate of all other cost categories combined. Thus, all told,

nearly 70% of all rooms that have been lost since 1989 have been economy rooms, whereas less than 10% of the rooms lost have been in the upscale and luxury categories, and less than 0.2% have been lost in the luxury category. Such trends have made it that much more difficult for visitors of lower economic means to access the coast. This is particularly true for visitors traveling from inland locations that cannot easily make the trip to the coast and back home again in a single day.

Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that low-cost motels, camping, and hostel opportunities are in high demand in coastal areas, and that there is an on-going need to provide more lower-cost opportunities along California's coast. For example, the Santa Monica hostel peak season occupancy rate rose from 92% in 2013 to 97% in 2015, despite the yearly average overall occupancy of 85% remaining roughly even.

The reduction in low- and moderate cost overnight accommodations in the coastal zone is an environmental justice issue. The Commission's Environmental Justice Policy, adopted in March 2019, states "the conversion of lower-cost visitor-serving facilities to high-cost facilities is also a barrier to access for those with limited income, and contributes to increased coastal inequality." In light of the trend in the market to provide luxury hotels, as well as the demolition of existing lower-cost hotels and motels along the coast, it is becoming increasingly important to protect and provide more moderate- and lower-cost overnight accommodations in the coastal zone as required by Section 30213 of the Coastal Act. With fewer moderate-cost and far fewer low-cost lodging facilities, a large segment of the population will be effectively excluded from overnight stays at the coast. "Financial reasons" was listed as the number one barrier to staying overnight at the coast, as identified by respondents to a State Coastal Conservancy-commissioned survey in 2017. By forcing this economic group to lodge elsewhere (or to stay at home), there would be an adverse impact on the public's ability to access the beach and coastal recreational areas. Therefore, by protecting and providing moderate and low-cost lodging for the price-sensitive visitor, a broader segment of the population will have the opportunity to visit the coast.

In order to protect and provide for lower-cost visitor-serving facilities, the Commission has imposed in-lieu mitigation fees on development projects that remove existing facilities and/or propose only new high cost overnight accommodations, or change the land use to something other than overnight accommodations. By requiring such mitigation, a method is provided to assure that at least some lower-cost overnight accommodations will be protected and/or provided.

As the trend to demolish or convert low-cost hotels/motels continues, and most newly constructed hotels are designed and marketed as high cost products, persons of low and moderate incomes will make up fewer of the guests staying overnight in the coastal zone. Without more moderate and low-cost lodging facilities, a significant segment of the population will be excluded from overnight stays at the coast. Access to coastal recreational facilities, such as beaches, harbors, piers, and special coastal communities, is enhanced when lower cost and moderate overnight lodging facilities exist to serve a broad segment of the population.

#### Defining Lower Cost

In a constantly changing market, it is difficult to define what price point constitutes low cost, moderate cost, and high cost accommodations for a given area. In its previous actions, the Commission has established appropriate terms for defining low cost and high cost hotels (Coastal Development Permit Nos. 5-14-1932, 6-18-0215, 5-04-291, 5-88-062, 5-84-866, 5-81-554, 5-94-172, 5-06-328, A-253-80, A-69-76, A-6-IMB-07-131, 3-07-002, and 3-07-003). More recent Commission actions have utilized a formula that compares the average daily rate of lower cost hotels in a specific coastal area with the average daily rates of hotels and motels across the entire state (SBV-MAJ-2-08; 5-18-0872).

For the subject application, the applicant submitted an *Overnight Accommodations Analysis* to assist in determining whether the proposed hotel is low, moderate, or high cost (prepared by McCabe & Company, dated 2/28/2019, with a response to CCC staff questions dated 4/8/2019; the Analysis utilizes a Market Study prepared by Pacific Edge Development) (**Exhibit 4**). The Analysis includes a market comparison of the proposed development's proposed nightly room rates compared with rates charged for hotels within the coastal communities of Huntington Beach, Sunset Beach, and Seal Beach. The average nightly rate for these communities was determined in the Analysis to be \$269 for peak season, and \$184 in the off season. Based upon the data collected, the Analysis determined that the annual average daily rate for hotels in the area evaluated was estimated to be \$205.25/night. Sources for the market analysis included online motel/hotel directories, personal site visits, and phone calls. The data collection focused on all hotels and motels located along Pacific Coast Highway and the surrounding area, not only those considered to be low cost.

In addition, an inventory of economy hotels/motels was purchased from Smith Travel Research (STR) to specifically analyze lower cost accommodations. The STR Inventory includes all "economy class" facilities within a 10-mile radius of Sunset Beach. This included a total of 48 properties, many of which are located well inland of the coastal zone in cities such as Stanton and Westminster. The Analysis found that the Average Daily Rate (ADR) for 2018 in this market category was \$107.12. However, the Analysis determined that this trend report was overly broad and that a more accurate data set would be established by considering only hotels/motels located in closer proximity to the coast. The Analysis states that rates for coastal properties are typically higher than properties located miles inland. Instead, the Analysis calculated the average rate of comparable "economy" hotels in the immediate subject area that fall below the statewide average rate (\$170 in 2017)<sup>1</sup>. Based on this, the Analysis determined the average "economy" room rate in the subject area to be \$140.54. This room rate was determined using ADRs for Ocean Surf & Inn (\$121.25), Travelodge Oceanfront (\$139.50), Hampton Inn (\$151.00), Comfort Suites (\$145.00), Sun & Sand Inn (\$163.50), and Surf City Inn (\$123.00), yielding the Average Annual ADR of \$140.54.

The proposed nightly room rate for the proposed hotel is: \$433.33 for peak season, and \$233.33 for off peak season, yielding an ADR of \$283.33. Although this is clearly higher than the average "economy" room rate derived above (\$140.54), the Analysis asserts that the per person value should be considered when determining affordability. The Analysis contends that the proposed hotel amenities and style of hotel create a lower per person rate than typical one- and two-queen bed style lower cost rooms.

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<sup>1</sup> The Analysis indicates that 2018 statewide Average Daily rate information is unavailable.

The large multi bedroom suites are significantly larger at 1,400 to 1,525 square feet, than traditional lower cost hotel/motel rooms (which average 250 square feet according to an analysis by Maurice Robinson). The 1,400 square foot suites can accommodate up to six people each. The 1,525 square foot suites can accommodate up to eight people each. Depending on how many guests stay in each room, the price per person could be as low as \$62.50 in the peak summer season. The analysis suggests that this offers an excellent value to large families and groups who would otherwise have to purchase multiple rooms to accommodate all the guests in their party. In addition, amenities available to all hotel guests would also lower the overall cost of their stay. These include: full kitchens in each unit, free in-room laundry facilities, free Wi-Fi, and, two free on-site parking spaces per unit. The in-unit full kitchens could especially create cost savings by allowing guests to avoid eating out for every meal as is typically necessary with traditional motel/hotel stays.

The Analysis also compared the proposed hotel's rates to rates charged for 3-bedroom, short-term rental units (i.e. VRBO and AirBNB) in Sunset Beach, Huntington Beach and Seal Beach, although it should be noted that short term rentals are not necessarily lower cost accommodations and there is no average daily room rate for these types of accommodations. The Analysis asserts this provides a more accurate comparison of product types because both the proposed hotel and the short term rental units considered offer larger, family-style accommodations with multiple bedrooms and full kitchens. The Analysis found that the average nightly rate for a 3-bedroom short-term rental unit in the area was \$519 in the peak season and \$428 in the off season, for an ADR of \$450.75. The \$450.75 rate is much higher than the proposed \$283.33 ADR of the proposed 12-unit hotel. Alternately, another method of comparison based on short-term rental rates would be to compare them based on the total cost of each unit by the number of bedrooms. During the peak season, the nightly rate for a 4-bedroom suite in the proposed hotel would be \$125 per bedroom/\$62.50 per person.

To gain a better understanding of whether the proposed hotel would provide low or moderate cost accommodation, CCC staff requested a comparison of the proposed hotel project with the Crystal Cove State Park Cottages, located further south in Orange County. The applicant (via 4/8/2019 response from McCabe & Company) responded that they *"believe that the rates for the proposed project compare favorably to those at the Crystal Cove Cottages."* The 4/8/2019 McCabe & Co. response further states (the Analysis does not identify whether the rates cited are high or low season):

*"Depending on the size of the cottage<sup>2</sup>, the listed daily rates are \$185.00, \$222.00, \$261.00, and \$271.00. Those rates would not be considered lower cost for a traditional hotel room. However, the cottages are not typical hotel rooms, as is the case with the proposed project. When the maximum capacity for each cottage is factored in, the per person cost ranges from \$29.90 per person (\$261.00/9-person maximum) to \$61.67 per person (\$185.00/3-person maximum) and would be considered lower cost by the Commission."*

*"Moreover, in addition to the large units with multiple bedrooms, with each bedroom having a private bathroom, the proposed Sunset Beach hotel project provides additional amenities not provided by the Crystal Cove Cottages that further reduce the cost to guests. These*

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<sup>2</sup> The analysis of Crystal Cove Cottages reviewed the daily rates for the 15 individual cottages (non-dorm style) for comparison to the proposed hotel.

*amenities include full laundry facilities in each unit, a swimming pool and spa, fitness center, two free parking spaces per unit, bicycle storage and bicycles for guests to enjoy a ride along the coast or to access the many visitor destinations in nearby Huntington Beach.”*

And concludes: “Depending on how many guests stay in each room, the price per person could be as low as \$62.50 in the peak summer season and \$37.50 in the off season.”<sup>3</sup>

The applicant has made compelling arguments to support its assertion that the proposed hotel is on the affordable end of the affordability spectrum. However, with high season rates from \$400 - \$500/night it remains difficult to agree with the applicant’s initial position that the proposed hotel would be low cost. Rather, based upon the multiple bedroom suites and other amenities provided, the Commission finds that the proposed hotel does qualify as a moderate cost overnight accommodation facility. The applicant has since revised its position regarding affordability, and has proposed the project as “*a moderately priced 12-unit hotel*”.

As discussed previously, oftentimes when a hotel facility is not a low cost facility, the Commission has imposed mitigation requirements. These requirements may be in the form of on-site mitigation, where a certain percentage of rooms must be made available at low cost; or it may be in the form of a mitigation fee; or it may be that both are imposed depending upon the particular project and the project impacts.

The Commission has found in past actions that the loss of existing, low cost hotel units should, under most circumstances, be mitigated at a 1:1 ratio of units lost to new units provided. In addition, the Commission has also found that the loss of the opportunity to provide lower cost overnight accommodations may require mitigation. Thus, for new high cost hotels where low cost alternatives are not included on-site, a mitigation fee has been required for 25% of the high cost rooms in recent Commission actions. Another factor to be considered is the availability of lower cost overnight accommodations that are available in the general project vicinity.

In this case, the proposed development will replace a car wash facility and will not displace any existing lower cost overnight accommodations, or any overnight accommodations at all. Rather than a car wash, the site would instead create new moderate cost overnight accommodations. No existing low cost rooms will be lost. And, in the Sunset/Seal/Huntington Beach area, along and near Pacific Coast Highway<sup>4</sup>, existing lower-end cost overnight accommodations will remain available (with ADRs of: Ocean Surf & Inn (\$121.25), Travelodge Oceanfront (\$139.50), Hampton Inn (\$151.00), Comfort Suites (\$145.00), Sun & Sand Inn (\$163.50), and Surf City Inn (\$123.00)). The proposed project would create a new moderate cost hotel in an area with a number of lower cost hotels.

The hotel is also dissimilar from a traditional high or moderate cost hotel because of the amenities it offers its guests. Very few hotels offer in-room kitchens (featuring refrigerator, stove, and dishwasher) in all rooms and those that do include kitchens often charge an extra fee. Few high or moderate cost hotels offer rooms which can accommodate up to six or eight guests at no additional fee, as the subject hotel proposes to do. The applicant contends that the hotel will appeal to families

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<sup>3</sup> The Analysis also points out that, unlike the proposed hotel, Crystal Cove Cottages are located on state owned lands, operated by a non-profit, and subsidized by public and private funds.

<sup>4</sup> Staff notes that while the Hampton Inn in Seal Beach is located approximately 2 miles inland of the nearest beach and the Comfort Inn in Huntington Beach is located approximately 6 miles inland of the nearest beach, the other four hotels listed are within easy walking distance to the beach.

and groups who wish to stay together in larger rooms (1,400 to 1,525 square feet) very near the beach, bringing the cost per person down to potentially \$62.50 per person for even the highest rate assuming eight guests are staying in a four bedroom unit. It is uncommon in many areas of coastal Orange County for a hotel located just steps from the beach to offer moderate room rate guest rooms. The hotel also offers in-room laundry facilities. And by offering free use of bicycles to hotel guests, transportation costs can be reduced. Also, using the in-room kitchens to dine-in saves significant cost compared to dining out. In traditional motel/hotel rooms without kitchens, typically most meals must be eaten in restaurants that typically cost significantly more than preparing one's own meal. In addition, the proposed hotel will provide free wireless internet and two free on-site parking spaces per room.

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

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

Though the room rates are not considered low-cost, when considering the per person cost/night based upon the proposed multi bedroom hotel rooms, the fact that each room will have a full kitchen and dine-in space, as well as other amenities provided such as free parking, laundry facilities, and loaner bikes (amenities discussed in greater detail above), the room cost approaches the lower end of moderate pricing, and thus is more within reach of a greater segment of the public than traditional high cost hotel rooms. Moreover, the proposed hotel will not displace a lower cost hotel. Therefore, in this case, the Commission finds that the imposition of on-site mitigation or a mitigation fee is not warranted to ensure consistency with Section 30213 of the Coastal Act based on the scope and impact of the proposed development.

The applicant has proposed the twelve hotel units as traditional, moderately priced hotel units including limiting guest stays to less than thirty (30) consecutive days. The hotel units are also proposed as traditional, moderately priced hotel units and not as timeshare or other fractional ownership units, meaning they will be available equally to any member of the general public. In addition, the hotel units are proposed by the applicant as *"prohibited from being converted to multi-family residential per the Conditional Use Permit with the City of Huntington Beach, and applicable zoning codes of the Sunset Beach Specific Plan."* These aspects of the proposed hotel are reinforced by the Conditional Use Permit approved by the City (CUP 15-038), which requires (Special Condition 2b) *"Hotel units shall be rented to the general public for transient lodging (less than 30 days only) and shall not be converted into multifamily residential units."* These aspects of the proposed hotel are important in assuring that the moderate cost overnight accommodations



remain available to serve visitors to the area and not be converted to the lower priority residential use, which is not visitor serving.

The hotel's moderate cost is dependent upon the multi-bedroom concept and proposed hotel amenities, it is important that these are included for the life of the development. **Special Condition 1** is necessary to ensure that the applicant shall carry out the development as proposed and conditioned for the life of the development. In addition, any changes to the proposed project could affect its consistency with the Chapter 3 policies of the Coastal Act, including the provisions for lower cost visitor serving and recreational opportunities. Therefore, any proposed changes to the development shall be reported to the Executive Director. Special Condition No. 7 requires that no changes to the approved development shall occur without a Commission-approved amendment to this coastal development permit or an additional coastal development permit, unless the Executive Director determines that none is legally required. The Commission finds that, as conditioned, the proposed development is consistent with Section 30213 of the Coastal Act encouraging lower cost accommodation.

### **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.*

Coastal Act Section 30252 states, in pertinent part:

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

Section 30253(d) of the Coastal Act states, in relevant part:

*New development shall do all of the following:*

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

Public access to Sunset Beach ocean beach is available at each of the street ends within the community, 27 in all, approximately every 200 feet. The subject site is located approximately 250 feet east of the ocean beach. Also, approximately ¼ mile northeast of the subject site is a small harbor-front beach suitable for launching small craft such as kayaks and paddleboards (see **Exhibit 1**). In addition, the trails of the Bolsa Chica Ecological Reserve are located approximately 1,000 feet southeast of the site. And an on-beach bike path begins at Bolsa Chica State Beach located approximately 1,000 feet southwest of the subject site.

Public parking in Sunset Beach is available along the public linear park/parking facility located between North and South Pacific Avenues, known as the greenbelt. The greenbelt and greenbelt parking extend the entire length of Sunset Beach, from Anderson Street to Warner Avenue. The greenbelt parking is within easy walking distance of the beach, separated from the beach only by a

single row of residential development. In addition to the greenbelt parking, public parking spaces are scattered throughout the area on the public streets. This scattered on-street public parking is limited by the narrow streets and many driveways to the dense residential and commercial development in the area.

Although the greenbelt parking area provides public parking, there is otherwise very limited public parking opportunities in Sunset Beach to serve public beach-goers and visitors to the harbor. The Commission notes that all parking along the greenbelt and on-street spaces is available free to the public. The Commission recognizes this public access benefit. Nevertheless, during peak use periods, the parking demand exceeds the supply. This especially affects public use of Sunset Beach's public ocean beach, which tends to be under-utilized compared to Bolsa Chica State Beach and Huntington City and State beaches, located just downcoast. The downcoast beaches are adjacent to large public parking lots. Both the beach and harbor are great visitor destinations. Especially during the peak use periods (i.e. summer months), the lack of parking can interfere with public access when visitors cannot find an available space to park.

The Commission has consistently found that a direct relationship exists between the provision of adequate parking and the availability of public access to the coast. Consistent with Coastal Act Section 30252(4), one of the ways the Commission assures that public access is maximized is by assuring that adequate parking is provided with new development and that new development not adversely impact the availability of existing public parking spaces. When new development does not provide adequate parking to serve the demand created by the development, patrons of the development generally must find parking in public parking spaces. This displaces parking that would otherwise be available to beach-goers and area visitors.

The proposed development includes a twelve unit hotel and 1,800 square feet of retail space. Although the subject site is located in the Sunset Beach area of the City of Huntington Beach, for which there is no certified LCP, the City's otherwise certified LCP may serve as guidance when determining a project's parking demand. The lapsed County LCP for Sunset Beach, regarding parking requirements, simply referred to the County's parking ordinance applicable in 1990.

The Huntington Beach LCP parking standard for hotels is 1.1 parking space per guest room.<sup>5</sup> The Huntington Beach LCP parking standard for general retail use is 1 space per 200 square feet. Based on these parking requirements, the proposed project's parking demand is 23 parking spaces<sup>6</sup>. The proposed project includes 32 parking spaces, nine spaces over the requirement based upon the City of Huntington Beach LCP standard. In addition, a parking study was prepared for the proposed project by KOA Corporation, Parking and Engineering, dated 12/4/2017, 4/24/2018. The KOA parking study reviewed the project for consistency with the City's adopted Sunset Beach Specific Plan, which is the City's zoning for Sunset Beach (but which has not been certified by the Coastal Commission). According to the KOA parking study and as is reflected in the plan adopted by the City, the SBSP parking requirement is 1 space/225 sq. ft. of general retail; and 1 space for each

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<sup>5</sup> The additional parking requirements for hotels in the City's LCP, (one space per passenger transport, 2 spaces per manager's unit, and parking for other uses), do not apply here because none of these are included in the proposed project.

<sup>6</sup> HNB LCP - Hotel: 1.1 space per 12 units = 14 spaces; Retail: 1800 sq. ft. x 1 space/200 sq. ft. = 9 spaces; Total: 14 + 9 = 23 parking spaces

guest unit or 2 spaces per units with kitchens. Based on this standard, the proposed project would generate a parking demand of 32 parking spaces<sup>7</sup>. Thus, based on either of these two standards, the proposed project will provide adequate parking to serve its demand. In order to assure that adequate parking is provided as proposed and that it will remain for the life of the project, **Special Condition No. 2** is imposed, which requires on-site parking to be provided as proposed for the life of the project.

In addition, it is important that the proposed development avoid displacing or otherwise adversely impacting any of the very limited public parking spaces available to serve beach-goers and other visitors to the area. As described above, there is only limited public parking available to visiting beach-goers. The proposed development will eliminate one existing curb cut/vehicular driveway access from Pacific Coast Highway. This will result in unobstructed curb area of approximately 150 feet. It appears that new on-street public parking could be added along this lengthy stretch of unobstructed curb. Regarding the possibility of on-street public parking along this stretch of Pacific Coast Highway, the Huntington Beach traffic engineer states (7/18/2019 email communication):

*“Providing a few additional on-street parking spaces on PCH in front of the site is possible with the project. Behind the right edge line stripe along PCH, sufficient width exists to accommodate on-street parking when the northerly driveway is removed and replaced with curb, gutter, and sidewalk. The only areas that would require red curb in front of the project on PCH would be adjacent to the project driveway for visibility. The current red curb was most likely installed to provide improved visibility for the northerly driveway exiting vehicles of the prior use.”*

Thus, it appears that the project would create the opportunity for an increased number of public on-street parking spaces along Pacific Coast Highway adjacent to the subject site. Commission staff has discussed this possibility with the applicant, and the applicant was supportive of such additional on-street public parking spaces. The project plans indicate that the project will include construction of sidewalk, curb, and gutter along Pacific Coast Highway adjacent to the project site. In order to assure public access is maximized, in this case by providing additional on-street public parking, **Special Condition 3** is imposed which requires the applicant to provide on-street public parking along Pacific Coast Highway adjacent to the subject site in conjunction with construction of the sidewalk, curb, and gutter.

Section 30252(4), also recognizes that providing substitute (or alternate) means of serving the development with public transportation also helps to maximize public access. To this end the Commission also encourages the use of alternate transportation as a means of providing public access to the coast. There is a “sharrow” bicycle path immediately west of the site, along North and South Pacific Avenues, 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 all the way to the City of Huntington Beach’s southern border, a distance of approximately 8½ miles. The beach bike path also links to inland areas 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.

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<sup>7</sup> SNB Specific Plan: Hotel: 2 spaces per 12 units = 24 spaces; Retail: 1800 sq. ft. x 1 space/225 sq. ft. = 8 spaces; Total: 24 + 8 = 32 parking spaces.

The applicant has proposed providing bicycles for use by hotel guests as well as providing bicycle racks for guests who bring their own bicycles and/or for employees of the hotel or retail space who bike to work.

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 leading inland. In addition, the City of Huntington Beach provides a free summer shuttle (Surf City USA Shuttle<sup>8</sup>), which includes two routes, the Coastal Loop and the City Loop, with transfer between the two. These shuttles run from Memorial Day Weekend through Labor Day weekend, coinciding with the peak visitor use period. The Coastal Loop runs from Anderson Street and Pacific Coast Highway at the upcoast extent of Sunset Beach, to downtown Huntington Beach, near the pier and commercial core. The City loop links the City's downtown to inland sites, up to (but not including) the San Diego Freeway/U.S. Interstate 405. The Coastal Loop stops at the corner of Pacific Coast Highway and Warner, approximately 800 feet from the subject site.

In addition, if, in conjunction with the proposed hotel use, hotel guests are made aware of bike routes, bike rental shops and bike share facilities, as well as walking and jogging maps, it would help to reduce impacts on parking and vehicle miles traveled. This would make hotel guests aware of alternatives to driving a private car to many likely destinations. It also would make guests aware of possible recreational opportunities, such as biking in the area and to other visitor destinations. Bike-able and/or walk-able destinations in the project vicinity include: Bolsa Chica Ecological Reserve (no bike trails there, but a hotel guest could bike or walk to the destination and then walk the extensive nature trails); Bolsa Chica State Beach is not far from the site, with an on-beach bike trail that extends along the beach to the down coast end of the City of Huntington Beach; also a guest could bike along the beach bike path to the City's downtown with its many visitor amenities including restaurants, shopping, and the Huntington Beach pier. Also, even if a guest prefers to remain in Sunset Beach, with both bicycles provided by the hotel and bike racks available to those who bring their own bikes, the local Sunset Beach amenities including restaurants, beaches, and kayak and paddleboard rentals could easily be accessed via bicycle. Many local Sunset Beach amenities are also readily accessed by walking from the subject site. But the likelihood of hotel guests biking or walking to their destination is significantly increased if the hotel guests are made aware of the opportunities and when bicycles and bicycle racks are provided with the development, as is proposed by the applicant. If maps of bike routes and information about bike rentals are also made available to hotel guests, the likelihood of biking over car use is increased even further.

The same is true with regard to alternate forms of transportation. There are many options already in place in the project area. But if hotel guests are specifically made aware of them and how to use them, the likelihood of their using these alternate transportation options increases significantly. In addition to hotel guests, if employees of the hotel and retail space are made aware of the options and encouraged by incentives to take advantage to use them, the likelihood that guests and employees may use them significantly increases. For example, if employees are reimbursed for public transit costs or hotel guests are made aware of the free summer shuttle, they are more likely to see the benefit of accessing these options, rather than making individual trips by private car. By avoiding car trips, parking demand either at the hotel or at the visitor destinations would be decreased. It may also be possible for a hotel guest to avoid the use of a car entirely, depending upon the planned

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<sup>8</sup> <https://www.surfcityusa.com/shuttle/>

activities (i.e. accessing the local beaches, or commercial areas of Sunset Beach and Huntington Beach). But even if going greater distances, such as to area theme parks, using public transit or ride sharing are also viable, non-automobile options. For these varied reasons it is important that the project be implemented as proposed, but also to add additional incentive measures. Therefore **Special Condition 6** is imposed which requires the applicant to implement a Transportation Demand Management Program with the goal of promoting public access by minimizing impacts to public parking and by promoting alternative forms of transportation.

Although much remains to be done to promote access via walking, bicycle, and public transit, the bike amenities, OCTA bus routes, and the free summer shuttle provide substantial alternative transportation options that serve the subject site. Use of bicycles, walking and public transit will also help to reduce energy consumption and vehicle miles traveled, as required by Coastal Act Section 30253(d). The Commission also notes that the provision of low and moderate cost overnight accommodations increases access opportunities for visitors who live too far inland to easily make the trip to the coast and back in a single day. Therefore, only as conditioned to implement a Transportation Demand Management Program, is the proposed development consistent with the public access and development policies of the Coastal Act, in particular with Sections 30210, 30252, and 30253.

#### **D. HAZARDS**

Coastal Act Section 30253 states, in pertinent part:

*New Development shall do all of the following:*

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

Due to its low-lying location between the oceanfront and the harbor, an inherently dynamic and potentially hazardous area, the project site must be examined for the potential for erosion, flooding, wave attack and wave runup hazards, including consideration of potential impacts due to severe storm events. Moreover, these hazards may be exacerbated by expected future sea level rise, which must also be considered. In this geographic area, the main concerns raised by development are potential exposure of the proposed development to coastal flood and/or erosion hazards and whether future hazardous conditions (including the possibility of flooding from either the beach or harbor) might eventually lead to a request to build a shoreline protection device to protect the proposed development. Flooding from the harbor inland of the subject site may actually occur earlier than beach flooding and erosion from the ocean. This inland flooding could impact roadways and other infrastructure, limiting access to the residences and damaging necessary public services. Although development currently exists between the subject site and the ocean and harbor, sea level rise models suggest the site will likely become at risk within the expected 75-year life of the proposed development. To address questions raised by these issues, the applicant's coastal engineer provided a "Sea Level Rise Discussion" (GeoSoils, Inc., 9/26/2018).

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

### **Sea Level Rise**

Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years.<sup>9</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>10</sup> This report synthesizes recent evolving research on sea level rise science, notably including a discussion of probabilistic sea level rise projections as well as the potential for rapid ice loss leading to extreme sea level rise. This science synthesis was integrated into the OPC's *State of California Sea-Level Rise Guidance 2018 Update*.<sup>11</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 probabilistic projections in the 2017 Rising Seas report and the 2018 OPC Guidance suggest sea

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<sup>9</sup> <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>

<sup>10</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.

<sup>11</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)

levels could rise between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge<sup>12</sup>, depending on future greenhouse gas emissions. The OPC Guidance recommends that development of only moderate adaptive capacity, including development such as the proposed hotel/retail 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>13</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 more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

Rising sea levels are exacerbating and will continue to intensify hazards along the shoreline, including inundation, storm flooding, erosion, saltwater intrusion into aquifers, groundwater rise, and liquefaction. Some shoreline development will experience increasingly hazardous conditions over time; therefore, to ensure safety and structural integrity consistent with Section 30253 of the Coastal Act, development must be sited and designed in such a way that takes into account the anticipated impacts of sea level rise over the full time span of its economic life. Changing conditions could also alter the anticipated impacts of the development upon coastal resources. In particular, coastal resources such as beaches and wetlands that are located just inland of the sea

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<sup>12</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>13</sup> <https://www.coastal.ca.gov/climate/slrguidance.html>

could disappear if they are squeezed between rising sea levels and a fixed line of development on the shoreline, thus impacting public access, recreation, visual, and other coastal resources. Therefore, to be consistent with the Chapter 3 policies of the Coastal Act, proposed development must be sited, designed, and conditioned in such a way that considers the impact of the development upon coastal resources over its full economic life, avoiding and mitigating those impacts as appropriate.

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

The Coastal Act discourages shoreline protection devices because they generally cause significant impacts on coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. This is expected to be exacerbated with future sea level rise. Adverse impacts associated with shoreline protection devices include: as a sandy beach erodes, the shoreline will generally migrate landward, toward the structure, resulting in reduction and/or loss of public beach area and in some cases, public trust lands, while the landward extent of the beach does not increase; oftentimes the protective structure is placed on public land rather than on the private property it is intended to protect, resulting in physical loss of beach area formerly available to the general public; the shoreline protection device may actually increase the rate of loss of beach due to wave deflection and/or scouring (this is site-specific and varies depending on local factors); shoreline protection devices cause visual impacts and can detract from a natural beach experience, adversely impacting public views; and, shoreline protection devices can lead to loss of ecosystem services, loss of habitat, and reduction in biodiversity compared to natural beaches.<sup>14</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 about 250 feet from the subject site). Although the subject site is not a beachfront site, with expected sea level rise and related erosion and flooding, the area between the subject site and ocean waters is expected to narrow with time. Likewise, flooding from the harbor is expected to approach the subject site more and more in the future and groundwater rise, while an area of developing science, could exacerbate flood risks in future. Together, these risks raise the question of potential impacts to the subject site due to these coastal hazards, which in turn raises the question of a possible request for future shoreline protection at the site.

Shoreline protective devices, by their very nature, tend to conflict with various statewide LCPs and Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could “...create [or] contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”<sup>15</sup>

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

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<sup>14</sup> Summarized from <http://www.beachapedia.org/Seawalls>

<sup>15</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 plainly new development.



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

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

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

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

located on beach areas and/or public trust lands, occupying land that would otherwise be available for public access, ecosystem services and other coastal resource benefits. In this case, the subject site is not currently located adjacent to the public sandy beach. But with sea level rise the location of the beach may well move inland, towards the subject site. Even though development is currently present between the site and the beach, that may not be the case in the future.

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

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

Moreover, private commercial uses are not public trust uses and the existence of private commercial use, such as the proposed project, on future public trust lands likely would conflict with the public's right to use and enjoy such lands. In addition, private development on public beaches creates conflicts with the public access and recreation policies of the Coastal Act. Thus, the Commission's action on this project must consider the effects on loss of public beach, public trust lands, natural shoreline processes, loss of ecosystem services, and public access under current conditions, and under future conditions, when it is likely that the sandy beach shoreline currently located about 250 feet seaward of the subject site may erode and move inland, up to or past the subject site, and/or that flooding from the harbor, currently located approximately 500 feet inland, may result in inundation of the subject site. Rather than contemplate shoreline protection devices to protect new development in the future, current development proposals must consider adaptation measures that could be implemented should development become threatened.

### **Site-Specific Evaluation**

In order to evaluate whether the proposed development would be consistent with Coastal Act Section 30253's requirement to minimize hazards, the applicant has submitted a Sea Level Rise Discussion, prepared by GeoSoils, Inc., dated September 26, 2018 (Study). The Study states:

*“Based upon this 2017 COPC SLR report, the maximum probable SLR for the project is estimated to be 3.3 feet. There also is a 5% probability that SLR can be about 4.5 feet (interpolated). The maximum historical water elevation at the site is +/- 7.0 feet NAVD88. This elevation does not include the long-term sea level rise prediction. If 1.8 and 4.5 feet are added to this 7.0 feet NAVD88 elevation, then future design maximum water level range of 8.8 feet NAVD88 to 11.5 feet NAVD88 is determined. The maximum design future water level is 11.5 feet NAVD88. With the SLR under the “likely” maximum SLR prediction (1.8 to 3.3 feet), the proposed development is safe from ocean water impacts well beyond the year 2100. Even if SLR is 7.1 feet under the 0.5% probability “meet or exceed,” the temporary water elevation at the site will be about +14.1 feet NAVD88, which is still over 6 feet below the habitable finished floor elevation of +20.4 feet NAVD88.”*

The Study concludes:

*“We have reviewed the plans, including the foundation plans, and project elevations. Due to the construction of the lower portion of the structure and the elevation of the habitable portions of the development it is safe from SLR related hazards. Based upon our analysis the proposed new development is in compliance with the Coastal Act Section 30253. The project is designed, sited, and engineered for changing water levels based upon the best available SLR science, over the life of the development.”*

The Study considers impacts to the site due to sea level rise of 3.3 – 4.5 feet. The Study finds that *“With the SLR under the “likely” maximum SLR prediction (1.8 to 3.3 feet), the proposed development is safe from ocean water impacts well beyond the year 2100.”* However, the Study does go on to consider SLR of 7.1 feet and finds that *“the temporary water elevation at the site will be about +14.1 feet NAVD88, which is still over 6 feet below the habitable finished floor elevation of +20.4 feet NAVD88.”* It should be noted, however, that the referenced 20.4 feet NAVD88 elevation refers to the second floor of the proposed development, which would be above the expected water level with 7.1 feet of SLR. However, the proposed 1,800 square foot retail area and the parking garage will be located at the ground level, with a finished floor elevation of 9.59 which is below both the 11.5 feet NAVD88 water elevation and the 14.1 feet NAVD88 water elevation at the site with 4.5 or 7.1 feet of SLR respectively.

Review of CoSMoS modeling applied to the subject site indicates it will be threatened with 3.3 feet of sea level rise. The 2018 OPC SLR Guidance indicates that 3.3 feet of SLR is expected to occur in 2070 under the medium-high risk scenario, meaning the site may become threatened within about 50 years. When a 100 year storm event is also considered, the site may become threatened even earlier. Applying the best available science standard, the proposed development may be threatened earlier than identified in the applicant’s Study and prior to its expected 75 year life. In addition, the updated Rising Seas science report and OPC Guidance also recognize the possibility of an extreme scenario (termed the “H++” scenario) of 9.9 feet of sea level rise by 2100 associated with possible future rapid ice sheet loss.

The Study notes: *“The proposed structure does incorporate a site specific SLR adaptation strategy with the lower portions constructed of block and concrete walls that include waterproofing. In addition, the access ways to the parking area can be protected with temporary flood shields.”* These measures will afford some protection from the earlier impacts of SLR. In addition, it is worth

noting, as the Study suggests, that the hotel portion of the facility will be above the base street elevation which would be flooded under the 7.1 feet SLR scenario.

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

Impacts due to expected future sea level rise flooding will be worse when storm activity and possible groundwater impacts are also factored in. In this case, because with future sea level rise the subject site may be threatened from both the harbor side as well as the ocean side, consideration of impacts due to protecting the proposed development must be considered not just from the ocean, but from the harbor as well. If the site is threatened by coastal hazards from the harbor side of development, as exacerbated by expected future sea level rise, then impacts will have also occurred to Pacific Coast Highway, where the subject site is located, and the surrounding streets. This will disrupt the ability of the site to be accessed by essential services such as access by public roads and the ability to be served by public infrastructure in the normal manner. The Study acknowledges that the public streets surrounding Huntington Harbour, including Pacific Coast Highway, will flood before the proposed development floods. Moreover, the flooding that may be likely at the site with future sea level rise may mean the subject site is no longer located on private property due to the migration of the public trust boundary.

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

### **No Shoreline Protection**

As discussed above, an important concern under Section 30253 is the potential need for shoreline protection to protect against coastal hazards related to sea level rise, because shoreline protective devices typically conflict with Section 30253(b)'s prohibition on new development that either creates or contributes significantly to erosion or destruction of a site. Here, the applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, nothing would prevent the applicant from requesting a shoreline protection device at some point in the future. Therefore, because of the numerous adverse impacts to coastal resources caused by shoreline protective devices (discussed above), which are relevant to this project, to comply with Section 30253's prohibition on creating or significantly contributing to erosion and destruction of the site, it must be clear that, as new development, the development approved by this permit is not entitled to a shoreline protection device now or in the future. Therefore, **Special Condition 4** is imposed to require the applicant to acknowledge that, as new development, the applicant has no right to a shoreline protective device for the project and, in fact,

no future shoreline protective device will be constructed on site to protect the proposed development.

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

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

However, as discussed, the best available science indicates that sea level rise is occurring and coastal hazards may threaten the project site to some extent towards the end of its economic life, although there are uncertainties inherent in predicting exactly how and when the impacts discussed above will occur. Due to increasing coastal hazards in this area, the proposed development may become unstable at some point, posing risks to property and even life, and a shoreline protective device would not be an option for protecting the structure from coastal hazards. If, however, the new development were to be removed if threatened, rather than protected by a shoreline protection device, the proposed development may be found to be consistent with the Coastal Act hazards policies, because the structurally unsound or unsafe development would be removed, minimizing risks to property and life.

Therefore, the Commission imposes **Special Condition 4**, which requires the landowner to remove the development if: (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device to prevent a-d above. **Special Condition 4** requires that if any part of the proposed development becomes threatened by coastal hazards in the future, then the threatened development must be removed rather than protected in place. This condition recognizes that predictions of the future cannot be made with certainty, thereby allowing for development that is currently safe and expected to be for most of its economic life, but ensuring that the future risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of new development, and not the public.

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

**Condition 4** requires the land owner(s) to remove the development if required pursuant to LCP policies for sea level rise adaptation planning.

The Commission also finds that due to the possibility of storm waves, surges, flooding, erosion and other coastal hazards the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 8**, will show that the applicant is aware of and understands the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicant.

In addition, the Commission imposes **Special Condition 9**, which requires the applicant to record a deed restriction on the property, acknowledging the risks inherent in undertaking development in this dynamic area and acknowledging that the degree of future risk cannot be known with certainty today. Additionally, **Special Condition 9** imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser and any future owners of the site with recorded notice that the restrictions are imposed on the subject property. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the hazards and shoreline development policies of the Coastal Act.

### **Conclusion**

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

### **E. WATER QUALITY**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

*The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment,*

*controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The proposed development has the potential for construction and post-construction discharge of polluted runoff from the project site into coastal waters, either directly or via the community's storm drains, which ultimately flow to the sea. The applicant has proposed the following measures to minimize impacts to coastal waters in conjunction with development of the subject site: site drainage, including roof drainage, will be directed to flow-through planter boxes; and, a 6-inch trench drain with filters will be located across each driveway (Pacific Coast Highway and North Pacific Avenue). Although these measures are proposed in the project narrative, only one trench drain (North Pacific Avenue) is shown on the project's drainage plan (Plan Sheet C1.0 Preliminary Water Quality Exhibit). Thus, a revised drainage plan that incorporates all the water quality measures depicted on Plan Sheet C1.0 and also depicts the proposed trench drain at the Pacific Coast Highway driveway entrance to the site, must be provided. Therefore, a condition is imposed which requires submittal of a revised drainage plan depicting all water quality measures proposed.

As, conditioned, implementation of the proposed water quality measures will minimize adverse water quality impacts and protect water quality. In order to assure these measures are implemented as proposed by the applicant, **Special Condition 5** is imposed which requires the applicant to submit a revised drainage plan and to carry out the drainage plan as proposed. As proposed and conditioned, the project conforms to the water quality policies of the Coastal Act. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

## **F. DEVELOPMENT**

Section 30250 of the Coastal Act requires that new development be located within existing developed areas able to accommodate it and where it will not have significant adverse impacts on coastal resources. 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 that is not consistent with the Chapter 3 policies of the Coastal Act. Section 30610(b) of the Coastal Act provides that certain improvements to any structure other than a single-family home do not require a coastal development permit, subject to Section 13252 of the Commission's regulations, which lists certain improvements to structures other than a single-family home that require a coastal development permit because they involve a risk of adverse environmental effect. Section 13253(b)(6) specifies that for development that may involve a risk of adverse effect, a coastal development permit is required for those improvements to a development (other than a single-family residence). Thus, to assure that the development and any future improvements are consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that it is necessary to impose **Special Condition 7** requiring that any future improvements to the proposed development require 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 9**, requiring that the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability. Therefore, the Commission finds that the proposed development, as conditioned, conforms to the Coastal Act by ensuring that any successors-in-interest have proper notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

## **H. LOCAL COASTAL PROGRAM**

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

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

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

The City of Huntington Beach is the lead agency responsible for CEQA review. The City determined that the project qualifies for a CEQA categorical exemption "*pursuant to Section 15332, Class 32 – In-fill Development, because the project is characterized as in-fill development.*" 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) City of Huntington Beach certified Local Coastal Program
- 2) Formerly Certified County of Orange Sunset Beach Local Coastal Program
- 3) City of Huntington Beach Conditional Use Permit (CUP) 15-038
- 4) City of Huntington Beach Tentative Parcel Map (TPM) No. 2016-142
- 5) Sea Level Rise Discussion; GeoSoils, Inc. (September 26, 2018)
- 6) Ocean Protection Council's *Rising Seas in California: An Update on Sea-Level Rise Science*
- 7) Ocean Protection Council's *State of California Sea-Level Rise Guidance 2018 Update*