

**CALIFORNIA COASTAL COMMISSION**

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# W8a

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## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-19-0218

**Co-Applicants:** Beach House LLC and City of Seal Beach

**Agent:** Rosie Ritchie

**Location:** 15 1<sup>st</sup> Street, Seal Beach, Orange County (APN: 043-171-02)

**Project Description:** Renovation of an existing (pre-Coastal Act), 15 ft. 2. in tall, 868 sq. ft. restaurant on the beach with 1,897 sq. ft. of existing outdoor patio area and a 522 sq. ft. covered patio. Proposed project would result in a 15 ft. 2 in. tall restaurant with parapet walls and a 22 ft. 6 in. tall tower.

**Staff Recommendation:** Approval with conditions.

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### SUMMARY OF STAFF RECOMMENDATION

The proposed project is the renovation of an existing (pre-Coastal Act), 15 ft.-2 in. tall, 868 sq. ft. restaurant with 1,897 sq. ft. of outdoor patio area and a 522 sq. ft. covered patio. The structure was built in the early 1970s and functioned as casual restaurant, most recently called the River's End Café. The proposed project is a remodel of the structure in the same footprint and would result in a 15 ft.-2 in. tall restaurant with parapet walls and a 22 ft.-6 in. tall tower.

The project site is located at 15 1<sup>st</sup> Street, in the City of Seal Beach, and is located on public trust lands owned by the State Lands Commission and leased to the City of Seal Beach, which currently leases the restaurant to Beach House LLC. Beach House LLC intends to operate a restaurant on the site, with dine in and take out service, but states that a remodel of the restaurant is required to provide an improved customer experience and run a profitable business. The City and the tenant, Beach House LLC, are co-applicants. The project site is located on the beach, seaward of a public beach parking lot, adjacent to the mouth of the San Gabriel River. The main Coastal Act issues are hazards due to its vulnerable location, coastal access due to potential impacts to the beach parking lot, and marine resources, including water quality.

Commission staff is recommending approval of the CDP application with seven (7) special conditions to assure consistency with the resource protection policies of the Coastal Act. The recommended special conditions are: 1) No Future Shoreline Protection; 2) Assumption of Risk; 3) Future Improvements; 4) Permit Compliance; 5) Conditions Imposed by Local Government; 6) Construction Staging and Corridor Plan; 7) Construction Best Management Practices; and 8) Bird Strike Prevention.

Chapter 3 of the Coastal Act is the standard of review, as the City of Seal Beach does not have a certified Local Coastal Program (LCP).

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**Staff Note:** Under the Permit Streamlining Act, the time-frame for Commission action on this coastal development permit application is October 25, 2020, 180 days after the filing of the CDP application. However, on April 16, 2020, the Governor of the State of California issued Executive Order N-52-20 tolling the time-frames for various actions in the Streamlining Act for 60 days. Accordingly, the Commission must act on this CDP application on or before December 12, 2020.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at [www.coastal.ca.gov](http://www.coastal.ca.gov) for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904- 5202.

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### **EXHIBITS**

[Exhibit 1 – Project Site](#)

[Exhibit 2 – Plans and Elevations](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

The Commission hereby approves the Coastal Development Permit No. 5-19-0218 for the proposed project 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. 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

- 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 applicant 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

1. **No Future Shoreline Protective Device.**

- A. By acceptance of this permit, the permittee(s) agree, on behalf of themselves and all other successors and assigns, that the project is new development for which there is no right to shoreline protection and hereby waives on behalf of themself, and all other successors and assigns, any rights that may exist under applicable law to construct a shoreline protective device to protect the development approved pursuant to Coastal Development Permit No. **5-19-0218**, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural coastal hazards in the future.
- B. By acceptance of this permit, the permittee(s) further agree, on behalf of themselves and all successors and assigns, that the permittee is required to remove the development authorized by this permit, including the residence and yard improvements, if any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices.
- C. In the event that portions of the development fall to the beach before they are removed, the permittee(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. Prior to removal, the permittee shall submit two copies of a Removal Plan to the Executive Director for review and written approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, including the beach and Pacific Ocean.

2. **Assumption of Risk, Waiver of Liability and Indemnity.**

By acceptance of this permit, the permittee(s) acknowledge and agree (i) that the site may be subject to hazards, including but not limited to flooding, wave uprush, sea level rise, and erosion, all of which will may worsen with future sea level rise; (ii) to assume the risks to the permittee 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.

3. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. **5-19-0218**. 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 land, hardscape improvements including perimeter walls or fencing shall require an amendment to Permit No. **5-19-0218** from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
4. **Permit Compliance.** The permittee shall undertake development in accordance with the approved final plans/proposal dated March 11, 2019, subject to all the requirements of all conditions herein. Any proposed change or deviation from the approved plans shall be submitted to the Executive Director to determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
5. **Conditions Imposed by Local Government.** This action has no effect on requirements imposed by the City of Seal Beach pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittees are responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by local government permits, except that, in the event of conflicts between approvals from the local government and those of this coastal development permit, the terms and conditions of this coastal development permit shall prevail.
6. **Construction Staging and Corridor Plan.**
  - A. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit, for the review and written approval of the Executive Director, a full size set of final construction staging plans for the summer season, from Memorial Day weekend to Labor Day, which indicate that the construction staging area(s) will not result in impacts to public access. The plans shall include, at a minimum, the following:
    - (1) Limits of the staging and storage areas
    - (2) Equipment staging area
    - (3) Worker parking areas
    - (4) Location of construction fencing and temporary structures, such as portable restrooms, waste bins, storage containers, etc.
    - (5) No street closure or use of public parking shall occur. No construction staging or storage is allowed in public rights-of-way, public parking spaces, public roads, on the sandy beach, or in other locations where such use would restrict public access to the coast at any time. All construction worker parking and materials storage (including, but not limited to, portable restrooms, waste bins, storage containers, etc.) must be contained within the boundaries of the project site.

- (6) The applicant shall submit evidence that the approved staging and storage plans/notes have been incorporated into construction bid documents.
    - (7) The staging site shall be removed and/or restored immediately following completion of the development.
  - B. The permittee shall undertake the development in conformance with the approved final construction staging plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.
7. **Construction Best Management Practices.** The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion;
  - (2) Staging and storage of construction machinery and storage of debris shall not take place on any sandy beach areas or areas containing any native vegetation;
  - (3) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - (4) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
  - (5) Concrete trucks and tools used for construction of the approved development shall be rinsed off-site;
  - (6) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
  - (7) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
  - (8) Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project.
8. **Bird Strike Prevention.** By acceptance of this permit, the permittee agrees that oceanfront deck railing systems, fences, glass windows and doors, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the development. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless they contain UV-reflective glazing that is visible to birds

or appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliqués used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 ft. by 3 ft. area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliqués. All materials and appliqués shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION AND BACKGROUND**

The proposed project is the renovation of an existing (pre-Coastal Act), 15 ft. 2 in. tall, 868 sq. ft. restaurant with 1,897 sq. ft. of outdoor patio area and a 522 sq. ft. covered patio. The structure was built in 1976 and functioned as casual restaurant, most recently called the River's End Café. The proposed project is a remodel of the structure in the same footprint and would result in a 15 ft. 2 in. tall restaurant with parapet walls and a 22 ft.-6 in. tall tower. The remodel will include new shiplap paneling on the exterior walls, replacement of window and door features, interior remodeling including new drywall and reconfiguration of the bathroom and kitchen. Along with the new tower, the project will also replace the existing roof shingles with a new metal roof.

The project site is located at 15 1<sup>st</sup> Street, in the City of Seal Beach. The project site is located on the beach, seaward of a public beach parking lot, and is between the first public road and the sea ([Exhibit 1](#)), adjacent to the mouth of the San Gabriel River. The subject site consists of a 2,937 sq. ft. parcel with an existing restaurant structure, which is currently vacant. In the vicinity there are public restrooms, a beach parking lot, and other ancillary development including walkways and landscaping. A quarry stone rock jetty exists between the subject site and the river.

The project site is located on land owned by the State Lands Commission, and is currently leased to the City of Seal Beach for a period of 30 years (June 22, 2016 – June 21, 2046). The City of Seal Beach is the owner of the development on the site including the subject restaurant structure. The subject application has two co-applicants: Beach House LLC and the City of Seal Beach. Beach House LLC is a tenant of the City of Seal Beach, with a commercial lease to operate a restaurant in the existing structure, and seeks the proposed renovations for the restaurant. Beach House LLC intends to operate a restaurant on the site, with dine in and take out service, but states that a remodel of the restaurant is required to provide an improved customer experience and run a profitable business.

After being selected by the City as the tenant for the site in February 2018, Beach House LLC submitted the subject Coastal Development Permit (CDP) application, which the Commission received on March 11, 2019. On July 1, 2019, Beach House LLC sought a Conditional Use Permit (CUP) 19-4 from the City to upgrade the site's alcohol



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license, and to expand the operating hours. The City approved the alcohol license and modified operating hours, but also required the restaurant to comply with an earlier version of project plans, dated February 2019. That version of plans differed from the plans submitted to the Commission as part of the subject CDP application. On February 18, 2020, the City approved CUP 19-8, which resolved the inconsistency by approving plans consistent with the version submitted to the Commission, which is date-stamped March 11, 2019 ([Exhibit 2](#)).

On August 11, 2020, Commission staff was informed by the City that Beach House LLC had sought a third CUP from the City to expand the outdoor patio in the seaward direction over sandy beach and vegetation. The City approved the request as CUP 20-2 on August 3, 2020. Due to the timing of this last-minute change to the project with potential impacts to coastal resources, the applicant agreed on August 20, 2020 not to pursue the patio expansion through the subject CDP at this time. If the co-applicants seek to expand the patio or the restaurant in the future, an amendment to this permit will be required. As such, what is before the Commission is the project as originally submitted (i.e. the March 2019 plans).

Since the City of Seal Beach does not have a certified LCP, the standard of review is the Chapter 3 policies of the Coastal Act.

## **B. HAZARDS**

Section 30253 of the Coastal Act states in relevant part:

New development shall:

- (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.

The site and existing structure are in a hazardous location, which will become more hazardous as the sea level rises, adjacent to the San Gabriel River and the Pacific Ocean. According to the City's staff report, the restaurant was originally built in 1976, prior to the effective date of the Coastal Act (January 1, 1977). The proposed project includes renovations to 100% of the exterior walls and roof, a new tower element on the roof, and an interior remodel.

The issue of whether this project constitutes "new development" or more minor improvements/remodel is important in evaluating the proposed project and in determining application of appropriate special conditions necessary to address site hazards. For a project that constitutes "new development," the structure must include sufficient measures to assure potential hazards effecting the site are reduced. While the dividing line between minor improvements/remodel and "new development" is not always clear, at a certain point, substantial alterations to a structure can no longer be

considered minor improvements/remodel, but instead must be considered new development. Consequently, the Commission has looked at the extent of proposed alterations to the subject structure to determine whether it constitutes “new development”, which then must, as a whole, comply with Coastal Act policies. In this case, the applicant has indicated that the proposed project would result in replacement of 48% of the exterior walls, and 2% new exterior walls, and that they will further replace any damaged structural elements as required, once they open up the walls. Thus, the proposed project meets the 50 percent threshold used in past Commission actions in the area to determine whether replacement and alterations to a structure constitute new development (CDP No. 5-18-1214, Tomlinson). While the proposed 50 percent alterations alone is sufficient to meet the threshold for constituting new development, the applicant has also identified the potential for further need to replace any damaged structural components for safety reasons. Furthermore, the project also proposes replacing the existing roof shingles with a new metal roof, although they have indicated that this work should not require alterations to the structural components of the roof (i.e. rafters, beams), unless damaged elements are discovered. Therefore, the proposed project constitutes significant alterations to the existing residence (including more than 50% addition to the existing residence and more than 50% new roof area) such that the whole project must be considered new development. Therefore the Coastal Commission considers the project to be new development. Thus, the redeveloped residence must comply with the applicable standards of the Coastal Act, including the hazards policies, as discussed further below.

The applicant has provided a Preliminary Sea Level Rise Discussion prepared by GeoSoils, Inc. analyzing coastal hazards at the project site. According to the report, the adjacent rock jetty has an elevation of +10 ft. (NAVD88) and exists along the entire length of the subject site. The jetty is managed by the Ocean County Flood Control District for the purpose of managing the conveyance of water out to the ocean. The jetty provides incidental protection to the project site but was not built specifically to protect the restaurant. However, due to the project site’s location adjacent to the river, and its relatively low-lying elevation, the site is still vulnerable to flooding and coastal hazards. The site may also be vulnerable to flooding from the Ocean side if sea level rise is severe and storms generate waves that overtop the beach.

The report notes that the natural grade elevation of the proposed development site, derived from the nearby parking lot, ranges from +7.5 ft to +9 ft (NAVD88). The site is approximately 80 ft. from the San Gabriel River and is separated by approximately 800 ft. of sandy beach from mean high tide line of the Pacific Ocean. The report notes that even with no sea level rise, the site is currently shown as green on the Our Coast Our Future (OCOF) sea level rise viewer, indicating potential vulnerability to flooding (but lacking hydrologic connection to a water source) due to the low-lying nature of the site. The site is shown to be subject to actual flooding with 2.2 ft. of sea level rise with a 100-year storm. The report also notes that the foundation of the subject structure is approximately 40 years old, and that due to heavy wear and tear and the harsh ocean environment, the typical oceanfront restaurant has a design life of 50 years or less.

The Commission's adopted Sea Level Rise Guidance (2018) recommends evaluating potential sea level rise impacts over the entire expected life of a development. In this case, the expected life is 20 to 30 years. The tenant obtained a 20-year lease from the City of Seal Beach in 2018. The subject structure is owned by the City but is located on land owned by the State Lands Commission. The land is currently leased by the State Lands Commission to the City of Seal Beach for a period of 30 years (June 22, 2016 – June 21, 2046).

Using a project life of 20 to 30 years and the medium-risk aversion scenario recommended for commercial development, the Commission's sea level rise table for the Los Angeles tidal gauge shows a range of 1.5 to 1.8 ft. of projected sea level rise at the site. The closest scenario to both projections on OCOF is 0.5 meters. OCOF shows the site is not projected to be subject to direct flooding with 0.5 meters of sea level rise (the scenario modeled for the expected life of the development) but would be flooded during a 100-year storm event with or without sea level rise. Beyond 20 to 30 years, if sea level rise is severe, the site is projected to be subject to extensive flooding and may no longer be viable for development of this intensity. The City's lease from State Lands requires the City to begin adaptation planning for sea level rise prior to expiration of the lease. Because the project is considered new development, it is not entitled to shoreline protection now or in the future. As mentioned above, it receives incidental protection from the jetty (as does the public parking lot and portions of the public beach), but the City does not own the jetty, and has indicated that it cannot raise the jetty or assume that the jetty will be raised as a future adaptation strategy. Future adaptation strategies for the area may include removal and relocation of the development at the end of the State Lands lease term. Removal and relocation is a viable and pragmatic option because the property is already in public ownership under the public trust.

Therefore, to ensure that new development will not result in future shoreline protection, the Commission imposes **Special Condition 1**. The Commission also imposes **Special Condition 2** requiring co-applicants to acknowledge the vulnerability of the site to coastal hazards including sea level rise, that hazards may constrain future enjoyment of the site, and requiring the co-applicants to assume any risk and liability resulting from damage due to coastal hazards. Lastly, the Commission imposes **Special Condition 3** which requires any future improvements be subject to approval of a coastal development permit; this will ensure that the property is not expanded without a permit in the future and will enable future sea level rise adaptation measures to be reviewed for consistency with the Coastal Act.

As conditioned, the Commission finds the proposed development consistent with Section 30253 of the Coastal Act.

### **C. PUBLIC ACCESS AND RECREATION**

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and

recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30221 of the Coastal Act states:

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

The project site is located on the northwestern-most edge of the public beach, at the southern terminus of the San Gabriel River bike trail, which is a coastal recreational amenity. The site has historically been developed with a casual restaurant since 1976, which is primarily frequented by visitors to the beach and the bike trail. The proposed development consists of renovations the restaurant's interior, façade, and roof, but will not expand or exceed the current footprint of the restaurant. The use of the public oceanfront land for a restaurant is consistent with Coastal Act Section 30221 because ample recreational amenities and a wide public beach surround the site. Additionally, the restaurant is a visitor serving facility.

The restaurant does not have a dedicated parking lot for its customers; many of its customers use the beach parking lot containing 111 spaces, and visit both the restaurant and the beach. The Commission has consistently found that the ability of visitors to park near the coast is important for coastal access. The subject restaurant shares the 1<sup>st</sup> Street beach parking lot with beachgoers, windsurfers, and other visitors. The operation of the restaurant is a historic use and the new restaurant is not expected to generate increased parking demand because it will continue to serve coastal visitors. Importantly, the proposed project will not result in increased service floor area, which is the metric the Commission has used in its analysis of potential parking/public access impacts associated with other restaurants in Orange County. Finally, the applicant proposes to install bicycle racks on site for the use of the general public which may incentivize some people to ride their bikes instead of driving their vehicles.

In order to ensure that coastal access is not adversely impacted by construction staging and equipment, **Special Condition 6** requires the submittal of a final construction staging and storage plan that identify construction staging and storage areas, as well as working parking areas, to ensure that the public's ability to access the parking lot and the beach is not restricted. The condition states that no street closure or use of public parking shall occur. No construction staging or storage is allowed in public rights-of-way, public parking spaces, public roads, on the sandy beach, or in other locations where such use would restrict public access to the coast at any time.

As conditioned, the proposed development will not have any new adverse impacts on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Section 30210 and 30221 of the Coastal Act.

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

The proposed project is located approximately 80 ft. from the mouth of the San Gabriel River to the immediate northwest, and 800 ft. from the Pacific Ocean to the south. Because the project site is located directly on the beach, any drainage from the site flows directly into the adjacent coastal waters. The staging and storage of construction materials so close to coastal waterways has the potential to directly impact water quality because there is almost no opportunity for contaminant to be filtered or otherwise arrested before reaching the river or ocean. In order to minimize adverse impacts to water quality and ensure control of runoff during construction, **Special Condition 7** requires the applicants to incorporate best management practices (BMPs) into the project and site management procedures to prevent contaminants from running off the site such as proper storage and staging, erosion and sedimentation controls, and immediate removal of construction materials after construction ends each day.

The applicant has also proposed new acrylic windscreens around the decks/patios on the seaward side of the project site. Transparent railing systems, walls or wind screens are known to have adverse impacts upon a variety of bird species. Birds are known to strike these clear walls causing their death or stunning them, which exposes them to predation. To ensure bird strike prevention, **Special Condition 8** requires that the applicant use a material for the acrylic windscreens that is designed to prevent bird strikes.

The Commission, therefore, finds that, as conditioned to require construction-related requirements and best management practices, and to incorporate glass walls or windscreens that will prevent bird strikes, the development will be consistent with Sections 30230 and 30231 of the Coastal Act.

## E. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

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

The site is currently developed with a 15 ft. 2 in. tall restaurant. The proposed project includes modifications to the roof exterior which would not increase the height of the roofline, but proposes a new 7 ft. 4 in. tall tower on the roof (for a total height of 22 ft. 6 in). The subject site is located on a beach, seaward of the 1<sup>st</sup> Street parking lot. Other than the public restrooms and ancillary development, including cement walkways and landscaping, the subject structure is not surrounded by any other buildings. Most of the proposed development would not extend beyond the existing building envelope, and therefore would not result in any new impacts to public views.

However, the proposed development does include two components that extend beyond the current building envelope: the 7 ft. 4 in. tower, and new acrylic windscreens around the outdoor patio seating area. The proposed tower would be in the center of the building, and on top of the existing 15 ft. 2 in. roofline. The tower is approximately 8 ft. wide at its widest, and is consistent with the character of the restaurant as a visitor-serving use. Because of the tower's limited size, width, and consistency with the character of the site development the tower alone will not significantly impact public views of the ocean or beach. Furthermore, the tower will not have cumulative impacts because the site is uniquely located on the beach, and there are no nearby developable lots on the beach that could be similarly developed. The sight line from which coastal visitors would have the clearest view of the tower is from the developed parking lot; the tower would not obstruct coastal views from any designated viewpoint or scenic trail.

The 4 ft. tall transparent acrylic windscreens will surround three sides of the outdoor patio seating area, which is located on the seaward side of the restaurant. Thus, public views of the ocean from the landward side of the restaurant would be unaffected. From the seaward side, the visual impact of the new windscreens is somewhat mitigated by the transparency of the acrylic material. However, as noted above, the applicant will be required to incorporate bird-safe measures such as etching to prevent bird strikes.

**Special Condition 4** is imposed to ensure that all development occurs in compliance to the proposal, subject to all the requirements of all conditions herein, for the installation of new project elements. In addition, pursuant to sections 13250(b) and 13252(a)-(b) of the Commission's regulations, the Commission imposes **Special Condition 3** requiring

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a CDP amendment or new CDP for any future improvements or repair and maintenance to the development approved under the subject permit and/or any new development to adequately protect public visual resources. Therefore, the Commission finds the proposed project will not have a significant adverse impact on visual resources and is consistent with Section 30251 of the Coastal Act.

## **F. LOCAL COASTAL PROGRAM**

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of Title 14 of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter 3 policies of the Coastal Act. The Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

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

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, 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 Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

In this case, the City of Seal Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Seal Beach determined that the proposed development is exempt under Class 1. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the marine resources, water quality, hazards and public access policies

of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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## **APPENDIX A - SUBSTANTIVE FILE DOCUMENTS**

1. CDP Application No. 5-19-0218
2. Preliminary Sea Level Rise Discussion by GeoSoils, Inc., dated April 13, 2020.