

**CALIFORNIA COASTAL COMMISSION**

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# Th7a

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Hearing Date: 3/12/20

## STAFF REPORT: CCONSENT CALENDAR

**Application No.:** 5-19-00366

**Applicant:** Jason Smallwood and Breana Pennington

**Agent:** Mark Wheeler Residential Design, Attention: Mark Wheeler

**Location:** A-44 Surfside, Seal Beach, (Orange County) (APN: 178-481-56)

**Project Description:** Addition and remodel of an existing 3,065 square foot three-story, 35-foot tall, beachfront single-family residence with an attached 544 square foot three-car garage. The proposed project includes: an addition of 4 square feet of living area and conversion of 56 square feet of the garage to new 1st floor living area; an addition of 100 square feet of living area to the existing 2nd floor; and an addition of 100 square feet to the existing 3rd floor. No grading or work to the foundation is proposed. Post project, the three-story, 35-foot tall, beachfront single-family residence will be 3,325 square feet with an attached 488 square foot two-car garage. In addition, an existing roof top access structure is being enlarged, as well as, an existing 2nd floor and 3rd floor beachfront deck.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The proposed project is the addition and remodel of an existing single-family residence on a beachfronting lot located in the existing private gated community of Surfside Colony, south of the Anaheim Bay east jetty, in the City of Seal Beach, Orange County.

Commission staff is recommending **APPROVAL** of a permit for the proposed project. The proposed project is located in an area where coastal hazards exist and could adversely impact the development. No shoreline protective device is proposed to protect the development pursuant to this permit. However, to ensure that no future shoreline protective device is proposed in the future, given that the applicants are choosing to remodel, add on to, and potentially extend the life of a home in a hazardous location, the Commission imposes **Special Condition No. 1**, which requires the applicants to agree that no future shoreline protective device is necessary to protect the development authorized by this permit. The Commission also imposes Special Condition No. 2, requiring the applicants to assume the potential risk of injury and damage arising from coastal hazards that may threaten the development.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, as a result, two special conditions address and minimize impacts to water quality and marine resources as follows: **Special Condition No. 3** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; and **Special Condition No. 4** imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

Because the project is in a hazardous location, to guarantee that the future development of the property can be evaluated for consistency with the Coastal Act, the Commission imposes, **Special Condition No. 5**, which requires the applicants to obtain a permit amendment or a new permit for any future improvements to the residence, garage, and decks. 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 No. 6**, which requires 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.

As conditioned, the proposed project will conform with Chapter 3 of the Coastal Act, which is the standard of review because the City of Seal Beach does not have a certified Local Coastal Program.

The motion to approve the coastal development permit application is on **Page Four**. The special conditions begin on **Page Five**.

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## EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Site Plan and Demolition Plan](#)

[Exhibit 3 – Floor and Roof Plans](#)

[Exhibit 4 – Elevation Plans](#)

## 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 Coastal Development Permit Application No. 5-19-0366 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

- 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 that the 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 the permit, the applicants/landowners agree, on behalf of themselves and all successors and assigns, that no new shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-19-0366 including, but not limited to, the residence, garage, decks, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicants/landowners hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this permit, the applicants/landowners further agree, on behalf of themselves and all successors and assigns, that the landowners shall remove the development authorized by this permit including, but not limited to, the residence, garage, decks, and any other future improvements, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structure to be removed, or if the State Lands Commission requires the structures to be removed in the event that they encroach on to State tidelands. If any portion of the development at any time encroaches onto public property, the permittees shall either remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property. The permittees shall obtain a coastal development permit for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

2. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicants 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. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittees shall comply with the following construction-related requirements:
- A.** No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
  - B.** No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
  - C.** Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
  - D.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
  - E.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
  - F.** The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
  - G.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
  - H.** All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
  - I.** Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
  - J.** The discharge of any hazardous materials into any receiving waters shall be prohibited;
  - K.** Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The

area shall be located as far away from the receiving waters and storm drain inlets as possible;

- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
  - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
4. **Landscaping-Drought Tolerant, Non-Invasive Plants.** Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
5. **Future Development.** This permit is only for the development described in CDP No. 5-19-0366. Pursuant to Title 14 of the California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by CDP No. 5-19-0366. Accordingly, any future improvements to the residence, garage, decks, and any other future improvements including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP No. 5-19-0366 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.
6. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of

an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## IV. FINDINGS AND DECLARATIONS

### A. Project Location, Description, Prior Permits and Standard of Review

The subject site is a beachfront lot located between the first public road and the sea designated as A-44 Surfside Avenue in the existing private gated community of Surfside Colony located south of the Anaheim Bay east jetty, in the City of Seal Beach, Orange County ([Exhibit 1](#)). Surfside Colony is comprised of three rows of homes (of which the beachfront is the "A" row) that parallel the beach and ocean, which are accessed via a private road system. The proposed development is consistent with development in the vicinity and prior Commission actions in the area. There is an approximately 400-foot wide sandy beach between the subject property and the mean high tide line. The lot size is 1,664 square feet and the City of Seal Beach Zoning Code designates use of the site for Residential Low Density and the proposed project adheres to this designation. Due to its beachfront location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards.

The proposed project is the addition and remodel of an existing 3,065 square foot three-story, 35-foot tall, beachfront single-family residence with an attached 544 square foot three-car garage. The proposed project includes: 1) an addition of 4 square feet of living area to square off angled corners on the beach side of the residence and conversion of 56 square feet of the garage to new 1<sup>st</sup> floor living area; 2) an addition of 100 square feet of living area to the existing 2<sup>nd</sup> floor on the landward side of the residence; and 3) an addition of 100 square feet to the existing 3<sup>rd</sup> floor also on the landward side of the residence. While the minimal addition to the 1<sup>st</sup> floor will expand the footprint of the residence, it will not extend any further than the already established beachward development limit. No grading or work to the foundation is proposed. Post project, the three-story, 35-foot tall, beachfront single-family residence will be 3,325 square feet with an attached 488 square foot two-car garage. In addition, the project will expand an existing 36 square foot roof top access structure by 53 square feet and as a result the existing 506 square foot roof top deck will be reduced by 86 square feet resulting in a 420 square feet rooftop deck. The existing 5-foot wide, 130 square foot 2<sup>nd</sup> floor beachfront deck will be extended beachward by 5-feet (170 square feet) resulting in a 10-foot wide, 300 square foot deck and the existing 3<sup>rd</sup> floor beachfront deck that extends beachward by 5 feet (130 square feet) will be enlarged by 20 square feet on the ends of the deck resulting in a 5-foot wide, 150 square foot deck ([Exhibits 2-4](#)). The 2<sup>nd</sup> and 3<sup>rd</sup> floor beachfront decks will have an anti-birdstike film on the glass railing. No new landscaping is proposed.



The existing residential structure is located within the applicants' property boundary. However, the existing 1<sup>st</sup> floor beachfront deck currently extends (and will remain) 10-feet seaward, beyond the property boundary, into land that is leased by the Surfside Colony to the applicants. The existing elevated 2<sup>nd</sup> floor beachfront deck currently extends 5-feet into the leased area and as proposed will be extended another 5-feet resulting in a maximum 10-foot deck extension into the leased area. The existing elevated 3<sup>rd</sup> floor beachfront deck currently extends 5-feet into the leased area and as proposed will be enlarged but will not extend any further into the leased area. The applicant has a current lease with Surfside Colony, Ltd. for their decks to be located within the 10-foot deep area of land, as described above. Surfside Colony is the community association that owns the common areas of the private community and they have given their approval for the proposed project. Surfside Colony has been invited to join as co-applicant; however, Surfside Colony has not chosen to join as of the date of this staff report. There are no existing or proposed encroachments onto the public beach.

There is an approximately 400-foot wide sandy beach between the project site and the Pacific Ocean. Although this is a wide beach, due to its oceanfront location, the project site may nevertheless be potentially exposed to the hazards of waves, erosion, storm conditions, sea level rise or other natural hazards.

Due to its beachfronting location, 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. The beachfronting site has experienced minor, short term, erosion in the past where the shoreline has never eroded back within 400-feet of the site, but it is not experiencing a net long term erosion. To analyze the suitability of the proposed development relative to potential hazards, the applicants have submitted a coastal hazard analysis of the wave and water level conditions expected at the site as a result of extreme storm, wave action and sea level rise over the next 75-100 years for the planned 75-year life of the proposed residence: Coastal Hazard and Wave Runup Study for A44 Surfside Avenue, Seal Beach, California prepared GeoSoils, Inc. dated September 13, 2019.

The analyses states that the historical highest ocean water elevation in this project area is +7.2 feet NAVD88. Surfside Avenue, the public street which fronts the project site, is at elevation +11.0 feet NAVD88 and the sand dune/beach at the rear of the project site is at elevation +15.0 NAVD88. The proposed lowest finished floor elevation of the proposed residence is +13.0 feet NAVD88.

In November 2018, the Commission adopted a science update to their CCC Sea Level Rise Policy Guidance in response to evolving science on sea level rise and specifically to new statewide guidance from the Ocean Protection Council (OPC) based on two reports: *Rising Seas in California: An Update on Sea-Level Rise* released in April 2017 and an update to the OPC's *State Sea-Level Rise Guidance* released in April 2018. In the updated OPC guidance document, it states that, using a medium-high risk aversion

projections, sea levels may rise between 5.3 feet to 6.7 feet by the year 2100<sup>1</sup>. If there were to be a 5.3-foot rise (the lower range of the currently recommended amount of sea level rise to plan for residential structures, taken from the April 2018 COPC projections for southern California), a likely high tide still water level of +12.5 feet NAVD88 (+7.2 feet NAVD88 +5.3 feet) could result. This +12.5 NAVD88 would be 0.5 feet below the proposed finished floor elevation of +13.00 feet NAVD88. If there were to be a 6.7-foot rise (the upper range of the currently recommended amount of sea level rise to plan for residential structures), a likely high tide still water level of +13.9 feet NAVD88 (+7.2 feet NAVD88 +6.7) could result. This +13.9 NAVD88 would be 0.9 feet above the proposed finished floor elevation of +13.0 feet NAVD88, and could flood portions of the subject property. Additionally, wave action could damage portions of the subject property.

An additional regional sea level rise modeling tool used to assess the vulnerability of coastal areas and the 100-year storm is U.S. Geologic Survey (USGS) COSMOS. Using this tool, it shows that with a 100-year storm event, the site may flood based on area drainage patterns with future sea level rise of just 100-centimeters (3.3 feet). In addition, under a 100 year storm, most of the surrounding area, all the way to Pacific Coast Highway, will flood with 125 centimeters (4.1 feet) of sea level rise. If there were to be a 3.3-foot rise, a likely high tide still water level of +10.5 feet NAVD88 (+7.2 feet NAVD88 +3.3 feet) could result. This +10.5 NAVD88 would be 2.50 feet below the proposed finished floor elevation of +13.00 feet NAVD88.

Although the proposed finished floor elevation is higher than the currently predicted lower sea level rise range taken from the April 2018 COPC projections for southern California and the sea level rise identified from the COSMOS tool as discussed above, the foundation of the development located approximately at +13.0 NAVD88 could potentially be undermined by sea level rise and the site itself would still be potentially vulnerable to flooding and sea level rise since the project is located in an area where dynamic and unpredictable coastal hazards exist. In order to additionally mitigate future potential sea level rise impacts beyond the 75-year design life, the hazards analysis states that the residence has been designed so that it can be retrofitted with a waterproofing system. However still in the future, these hazards could adversely impact the development should the existing predictions of flooding and sea level rise prove to be inaccurate.

The coastal hazards analysis for the site concludes that wave runup and overtopping will not significantly impact this development and site over the life of the proposed development. The report concludes that the property has not been subject to significant wave runup in the past and will not likely be subject to wave runup in the future and that the presence of the relatively wide beach will prevent waves from directly attacking the proposed development. Additionally, the report found that the proposed development

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<sup>1</sup> 2095 would be the end of the project's estimated 75-year design life; thus the range of SLR for 2100 overstates current expected impacts under the medium-high risk scenario. However, sea level rise science is continuously updated and the precautionary principle suggests residential development should be cited and designed to adapt to the upper range of potential impacts.

will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site, or adjacent area. Furthermore, it states that there are no recommendations necessary for wave runup protection and that the project minimizes risks from ocean flooding.

Although the applicant's reports indicate that the site is safe for development at this time, beach areas are dynamic environments and hazards could adversely impact development should the upper range (6.7 feet) of the currently recommended amount of sea level rise to plan for residential structures occur (potentially near the end of the project's expected life of 75 years).

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.

If the proposed project included a shoreline protective device, it likely could not be found consistent with Coastal Act policies. Only because the site specific hazards analysis provided by the applicants' coastal engineering consultant maintains that, even with expected future sea level rise, the proposed development is not expected to be threatened by coastal hazards and so is not expected to need shoreline protection over the life of the development, can the project be found to conform with the hazards policies of the Coastal Act. However, given the dynamic nature of coastal beaches, as well as staff's review of data indicating that the property could be impacted by sea level rise at some point in the future, it is important to make sure that the risks of developing on this beachfront lot or borne by the applicants whom will benefit from the private development, and not the public.

To minimize the project's potential future impact on shoreline processes, as well as potential impacts to public access and public trust resources should a shoreline protective device be constructed on this property, the Commission imposes **Special Condition No. 1**, which prohibits construction of any future shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-19-0366 including, but not limited to the residence, garage, decks, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other

natural coastal hazards in the future. Although no shoreline protection is necessary at this time or anticipated to be necessary in the future, the proposed development is nevertheless located in an area where dynamic and unpredictable coastal hazards exist that could adversely impact the development should existing predictions of flooding and sea level rise prove to be inaccurate. Therefore, the Commission also imposes **Special Condition No. 2**, which requires the applicants to assume the risk of development.

The proposed project constitutes new development and must be constructed in a manner that protects water quality. The applicants have submitted a drainage and runoff control plan that minimizes impacts to water quality the proposed project may have after construction. On-site drainage will be directed to French drain connected to a percolation pit. Also, to minimize erosion and prevent debris from being dispersed down the storm drain system leading to the ocean during construction, the Commission imposes **Special Condition No. 3**, which provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Currently, no landscaping is being proposed. If it were proposed in the future, the placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>). Therefore in order to minimize the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition No. 4**, which imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The subject site is a beachfront lot located between the nearest public roadway and the shoreline in the private community of Surfside ([Exhibit 1](#)). A pre-Coastal (1966) boundary agreement between Surfside Colony and the California State Lands Commission fixes the boundary between state tide and submerged lands and private uplands in Surfside. As a result of this boundary agreement, Surfside Colony, Ltd. owns a strip of the beach, up to 80-feet in width, adjacent to the homes fronting the ocean. The beach seaward of this area is available for lateral public access. Vertical access is available at the end of Anderson Street to the south of the Surfside community. In addition, the Commission conditioned permit P-76-6364 to allow public access through the gates at the southeastern end of Surfside during daylight hours.

The proposed project has decks and patio area which encroach 10-feet beachward beyond the subject site's seaward property line onto a 10-foot wide strip of land owned by Surfside Colony, Ltd. (which serves as a homeowners' association). Surfside Colony leases its property to the adjacent homeowners for construction of patios. Enclosed living area is not allowed to encroach past the individual homeowner's seaward property line onto Surfside Colony land. The applicants have obtained a lease from Surfside Colony, Ltd. for the proposed encroachment.

In past permits, the Commission has consistently allowed the seaward property line of individually owned beachfront lots in Surfside to serve as the enclosed living area stringline. The Commission has also consistently allowed the seaward edge of the ten-foot wide strip of land owned by Surfside Colony, Ltd. to serve as the deck stringline. These stringlines serve to limit encroachment of development onto the beach. The proposed development would conform to these stringlines.

The proposed project would not result in direct adverse impacts, either individually or cumulatively, on vertical or lateral public access. In addition to the beach seaward of the fixed boundary between State and private lands, public access, public recreation opportunities and public parking exist nearby in Sunset Beach, an unincorporated area of Orange County at the southeastern end of Surfside. In addition, the proposed project provides parking consistent with the standard of two parking spaces per residential dwelling unit, which the Commission has regularly used for development in Surfside.

To guarantee that the future development of the property can be evaluated for consistency with the Coastal Act, the Commission imposes, **Special Condition No. 5**, which requires the applicants to obtain a permit amendment or a new permit for future improvements and any repair or maintenance of the residence. 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 No. 6**, which requires the property owner to 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.

Due to the beachfront location of the proposed development, there is a substantial risk of bird strikes. Clear glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which expose them to predation. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). The applicants have proposed to address this issue by applying an anti-birdstrike film on the glass railing along the beach-facing decks.

The existing home is approximately 35 feet high and the proposed development does not increase the height of the dwelling, and minimally expands the footprint of the existing building envelope but does not extend any further than the already established beachward development limit (**Exhibit 4**). The Commission typically has limited residential development in Surfside, except for chimneys and roof access

staircase enclosures, to a 35-foot height limit. This is to minimize the visual effect of a large wall of buildings along the beach that results because most homes are constructed to maximize use of the City established building envelope. The proposed project includes a roof top access structure that will exceed the height by approximately 5-feet resulting in an approximate overall building height of 40.83-feet. As stated, these types of structures have been approved and allowed to exceed the 35-foot height limit. The approved project would be consistent with the height of the existing structure and with heights of other homes in Surfside.

On March 15, 1988, the Commission approved Coastal Development Permit No. 5-88-152-(Kanelos) for the demolition of a single-family residence and construction of the 35-foot tall, 3,206 square foot single-family residence which exists on the site. One special condition was imposed regarding assumption of risk. The conditions of approval of the subject permit would apply to the improvements to the home being proposed, including the additions, areas being remodeled that include structural components, and new decks.

Section 30600(c) 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 City of Seal Beach does not have a certified Local Coastal Program. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

## **B. Hazards**

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and run-off control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall); and to require that the landowners and any successors-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of the Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

## **C. Public Access**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. As conditioned, the Commission finds that the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## **D. Water Quality**

The proposed development has a potential for a discharge of polluted run-off from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing run-off through the use of permeable surfaces, the use of non invasive drought tolerant vegetation to reduce and treat the run-off discharged from the site, and for the use of construction and post construction best management practices to minimize the project's adverse impacts on coastal waters. As conditioned, the Commission finds that the development conforms with 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.

## **E. 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 one additional condition 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, as conditioned, any prospective future owner will receive actual 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.

## **F. Local Coastal Program (LCP)**

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 that 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 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. Therefore, 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 Planning Department determined that the proposed development is categorically exempt on April 30, 2019. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the water quality, hazards and public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that 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.



## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

Coastal Development Permit No. 5-88-152-(Kanelos).

City of Seal Beach Planning Department Approval-in-Concept dated May 3, 2018.

Letter from Surfside Colony, Ltd. Dated March 27, 2019.

Letter from Commission staff to Mark Wheeler Residential Design dated June 10, 2019.

Letter from Mark Wheeler Residential Design to Commission staff dated June 28, 2019.

Letter from Commission staff to Mark Wheeler Residential Design dated August 2, 2019.

Coastal Hazard and Wave Runup Study for A44 Surfside Avenue, Seal Beach, California prepared GeoSoils, Inc. dated September 13, 2019.