

CALIFORNIA COASTAL COMMISSION

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W22b

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-18-1235

Applicant: Peter & Sue White

Agent: Gulian Design, Inc. Attention Ed Gulian

Location: 1203 Seal Way, City of Seal Beach (Orange County)
(APN: 199-075-02)

Project Description: Demolition of an existing two-story, 2,345 square foot duplex with a 405 square foot detached garage and construction of a two-story, 2,951 square single-family residence with an attached 469 square foot two car garage on a beach front lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL AS CONDITIONED** of the demolition of a duplex and construction of a new single-family residence on a beach fronting lot. The major issue is beachfront development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future. The proposed development would also result in the loss of one housing unit.

The proposed project is located in an area where coastal hazards exist and could adversely impact the development near the end of its expected life. No shoreline

protective device is proposed to protect the development pursuant to this permit. However, to ensure that no shoreline protective device is proposed in the future, given that the applicants are choosing to develop in a hazardous location, the Commission imposes **Special Condition No. 1**, which requires the applicants to agree that no future shoreline protective device will be authorized 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, **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.

As proposed, the project includes structural elements that extend out to the rear (seaward) property line on the ground floor and 2nd floor adjacent to the public lateral accessway (walkway). A 0-foot beachfront setback would make it impossible for the owner of the private residence to conduct normal maintenance activities typically necessary to maintain a residence without encroaching onto the public walkway and adversely impacting public access along the walkway. Additionally, the lack of setback could preclude the property owners from implementing features on the property adaptive to future sea level rise and storms (e.g. sandbags or drains). In order to ensure that the applicants may conduct routine maintenance or adaptive measures to the structure from within the private property lines, without encroaching onto public walkway, the Commission imposes **Special Condition No. 5**, which requires the applicants to submit revised project plans, for review and approval by the Executive Director, incorporating a minimum structural setback of five feet from the rear (seaward property line). The applicants' proposed plans identify living space set back 7-feet, 3-inches from the rear property line on the ground floor and set back 10-feet, 8-inches from the rear property line on the 2nd floor. Thus, all that will need to be eliminated through the revised project plans are architectural embellishments and high walls in the setback area. An at-grade patio would be allowed in the setback area.

The proposed project involves the replacement of an existing duplex (a legal non-conforming use) with a single-family residence. The subject site is designated as Residential High Density (RHD-20) in the City of Seal Beach Zoning Code, which allows maximum development of 1 unit per 2,178 square feet. The subject property has a lot size of 2,700 square feet, which allows only one unit on the property based on a strict reading of the City's zoning code. The subject project was approved by the City prior to the implementation of the Housing Crisis Act of 2019 (SB 330); thus, the loss of one housing unit was legally authorized by the City. Coastal Act Section 30250(a) provides that new development shall be located within existing developed areas able to accommodate it. The Commission has, in previous actions, generally required new

development in existing developed areas to maintain housing density; however in some cases where development was proposed on small lots or in hazardous areas, the Commission has also authorized new development in existing developed areas to reduce density. Because the subject project is proposed on both a small lot and in a hazardous area, and the applicants have recognized the hazards and assumed the risks, the Commission may authorize a reduction in housing consistent with Coastal Act Section 30250.

To guarantee that the future development of the property can be evaluated for consistency with the Coastal Act, the Commission imposes **Special Condition No. 6**, which requires the applicants to obtain a permit amendment or a new permit for any future improvements to the residence, garage, patio, or deck. 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. 7**, which requires the property owners 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.

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 Five**. The special conditions begin on **Page Six**.

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EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Site, Floor and Roof Plans](#)

[Exhibit 3 – Elevation and Section Plans](#)

[Exhibit 4 – Foundation Plan](#)

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. 5-18-1235 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 this permit, the applicants/landowners agree, on behalf of themselves and any successors and assigns, that no new shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-18-1235 including, but not limited to, the residence, garage, patio, deck, 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 further agree, on behalf of themselves and any successors and assigns, that the landowner is required to remove the development authorized by the permit if the City or 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

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. Submittal of Revised Final Plans.**
- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and written approval of the Executive Director, two full-size sets of the following revised final plans, modified as required below:
 - 1. The rear (seaward) setback of all structural elements shall not be less than five feet. An at grade patio may be constructed in the setback area.
 - B. All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission’s approval and with the recommendations of any required technical reports.
 - C. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Seal Beach Planning Department.
 - D. 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. Future Development.** This permit is only for the development described in CDP No. 5-18-1235. 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. 5-18-1235. 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. 5-18-1235 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.
- 7. 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 and Description

The applicants propose to demolish an existing two-story, 2,345 square foot duplex with a 405 square foot detached garage and construct a two-story, 25-foot high, 2,951 square single-family residence with an attached 469 square foot two car garage on a beachfront lot ([Exhibits 2-4](#)). In addition, the project includes a beachfront ground level patio, a 2nd floor deck, and a roof top deck. Grading will consist of 200 cubic yards of fill. The foundation system for the project will consist of footings and a concrete mat slab.

The project site is a beach fronting lot located at 1203 Seal Way within the City of Seal Beach, Orange County ([Exhibit 1](#)). The lot size is approximately 2,700 square feet and is zoned as Residential High Density in the City of Seal Beach Zoning Code. The zoning code is not certified by the Commission. The site is located between the first public road and the sea on a lot adjacent to and inland of a public beachfront walkway.

The project is sited within an existing urban residential area, located southeast (downcoast) of the Seal Beach Pier and upcoast of the Anaheim Bay jetty.

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 tinting the glass railing along the beach-facing ground floor patio and 2nd floor deck.

B. Standard of Review

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.

C. Hazards

There is an approximately 350-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. Historically to prevent wave runup from reaching the public walkway fronting the site, the City has built a sand berm each winter, but that development has not been permitted by the Commission. To analyze the suitability of the proposed development relative to potential hazards, the applicants have submitted a coastal hazards 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 (see *Wave Runup and Coastal Hazards Study 1203 Seal Way, Seal Beach* prepared by GeoSoils, Inc., dated August 16, 2019).

The analyses states that the historical highest ocean water elevation in this project area is +7.7 feet NAVD88. The alley at the inland side of the project site is at elevation +13.60 NAVD88 and the public beachfront walkway fronting the site is at elevation +9.50 NAVD88. The proposed finished floor elevation of the first floor of the proposed residence is +12.80 feet NAVD88.

In November 2018, the Commission adopted a science update to its 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. The year 2095 would be the end of the project's estimated 75-year design life, and in the updated OPC guidance document, it states that, using a medium-high risk aversion projection, sea levels may rise 5.3 feet to 6.7 feet near the end of the project's expected life (year 2090 to year 2100¹). 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 CPOC projections for southern California), a highest high water level of +13.0 feet NAVD88 (+7.7 feet NAVD88 + 5.3 feet) could result. This +13.0 NAVD88 would be 0.2 feet above the proposed finished floor elevation of +12.80 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 highest high tide still water level of +14.4 feet NAVD88 (+7.7 feet NAVD88 + 6.7 could result. This +14.4 NAVD88 would be 1.6 feet above the proposed finished floor elevation of +12.8 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, the visualization shows that with a 100-year storm event, the site may flood based on area drainage patterns with future sea level rise of just 25 centimeters (0.8 feet). In addition, under a 100-year storm model, most of the surrounding area, all the way to Pacific Coast Highway, will flood with 50 centimeters (1.6 feet) of sea level rise.

The proposed finished floor elevation is slightly lower than the medium high risk aversion sea level rise range taken from the April 2018 CPOC projections for southern California and the site itself is 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 mitigate future potential sea level rise impacts, the hazards analysis states that the residence has been designed so that it can be retrofitted with a waterproofing system.

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's conclusion is based on application of a lower range of potential sea level rise. 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

¹ 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.

attacking the proposed development. Again, this conclusion is based on application of lower sea level rise scenarios (and a lower risk aversion) than the scenarios analyzed in the previous paragraphs. Additionally, the report found that the proposed development 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 applicants' report indicates that the site is relatively safe for development at this time, it is not based on the medium-high risk aversion as recommended for residential development, and beach areas are dynamic environments. Natural hazards could adversely impact development should the upper range of sea level rise occur (potentially near the end of the project's expected life of 75 years). The applicants have acknowledged that if this level of sea level rise occurs, development will be threatened and the surrounding public infrastructure may not be viable. The project is proposed on a developed residential lot in a developed residential area, but the area is low lying and may be inundated if sea level rise is severe.

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.

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 thus is not expected to need shoreline protection over the life of the development, the project can 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 ensure that the risks of developing on this beachfront lot are borne by the applicants, not the public at large.

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. 5-18-1235 including, but not limited to the residence, garage, patio, deck, 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 and the applicant's hazards analysis states that no shoreline protection device is 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 the applicants' predictions of flooding and sea level rise prove to be inaccurate. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicants to assume the risk of development.

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.

D. Water Quality

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 cause after construction. Post construction, on-site drainage will be directed to underground gravel pit drains. 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.

The applicants have stated that landscaping is proposed. 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) 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>).

The applicant has stated that landscaping will consist of drought tolerant landscaping. While the proposed landscaping consists of non-invasive and drought tolerant plants,

future landscaping may not consist of such plants. Therefore in order to make sure that any onsite landscaping minimizes 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 proposed development, as conditioned, 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. Public Access

The project site is located along Seal Way, a beachfront public lateral accessway (walkway). The proposed project has a 7-foot, 3-inch rear yard (adjacent to the walkway) ground floor structural setback from the property line and 10-foot, 8-inch rear yard 2nd floor structural setback. The residential development will not encroach into the walkway; however, a 1-foot, 4-inch wide structural element (architectural embellishment and high wall) is proposed to extend 7-feet, 3-inches to the rear property line on the ground floor and a similar structural element on the 2nd floor is proposed to extend 10-foot, 8-inches to the rear property line. These two structural portions of the development raise public access concerns since they have a 0-foot setback from the rear property line adjacent to the public walkway. A 0-foot beachfront setback would make it impossible for the owner of the private residence to conduct normal maintenance activities typically necessary to maintain a residence without encroaching onto the public walkway and adversely impacting public access along the walkway. For example, as proposed, the owners of the proposed residence would not be able to wash or paint this section of the residence on its seaward side, or other typical maintenance activities, without performing such work from the public walkway. Moreover, the proposed and any future construction activities at the site would also require incursion onto the public walkway. Additionally, the lack of setback could preclude the property owners from implementing features on the property adaptive to future sea level rise and storms (e.g. sandbags or drains).

As proposed, the project would not maximize public access as required by Section 30210 of the Coastal Act. However, if the rear structural elements were set back even a small distance from the rear property line, it would allow the applicants to conduct routine maintenance and adapt to future hazards from within the private property lines, without encroaching onto public walkway.

Therefore, the Commission imposes **Special Condition No. 5**, which requires the applicants to submit revised project plans, for review and approval by the Executive Director, incorporating a minimum structural setback of five feet. An at grade patio would be allowed in the setback area. Above grade patios or decks would be required to be set back at least five feet from the property line.

Vertical public access to the beach is available approximately 30-feet north of the project site at the 12th Street, street end. The proposed development provides

adequate vehicle parking based on the Commission's previous actions in the area requiring a minimum of two vehicle parking spaces per dwelling unit.

As conditioned, 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 Section 30252 of the Coastal Act.

F. Development

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site may potentially result in a development which is inconsistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition 6** requiring a permit for any new development in the encroachment area. As conditioned, the development conforms with the Chapter 3 policies of the Coastal Act.

The proposed project would replace a duplex with a single-family dwelling, resulting in a loss of one housing unit. However, the existing duplex does not comply with zoning regulations regarding lot size. The City of Seal Beach, which does not have a certified LCP, designates the subject site as Residential High Density (RHD-20) in its Zoning Code with a maximum development of 25 dwelling units/acre, or 1 unit per 2,178 square feet. The subject property has a lot size of 2,700 square feet, which allows one unit on the property based on a strict reading of the City's zoning code.

The subject project was approved by the City prior to the implementation of the Housing Crisis Act of 2019 (SB 330); thus, the loss of one housing unit was legally authorized by the City. Coastal Act Section 30250(a) provides that new development shall be located within existing developed areas able to accommodate it. The Commission has, in previous actions, generally required new development in existing developed areas to maintain housing density; however in some cases where development was proposed on small lots or in hazardous areas, the Commission has also authorized new development in existing developed areas to reduce density. Because the subject project is proposed on both a small lot and in a hazardous area, and the applicants have recognized the hazards and assumed the risks, the Commission may authorize a reduction in housing consistent with Coastal Act Section 30250.

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 No. 7**, 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. 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.

H. 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, 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 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.

I. 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 a Ministerial Project, exempt from CEQA review, in a determination dated November 1, 2018. 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

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the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

City of Seal Beach Planning Department Approval-In-Concept dated November 1, 2018.

Letter from Commission staff to Gulian Design Architecture dated January 16, 2018.

Letter from Gulian Design Architecture to Commission staff received May 9, 2019.

Letter from Commission staff to Gulian Design Architecture dated June 6, 2019.

Letter from Gulian Design Architecture to Commission staff received July 17, 2019.

Letter from Commission staff to Gulian Design Architecture dated August 13, 2019.

Letter from Gulian Design Architecture to Commission staff dated September 29, 2019.

Wave Runup and Coastal Hazards Study 1203 Seal Way, Seal Beach prepared by GeoSoils, Inc. dated August 16, 2019.