

CALIFORNIA COASTAL COMMISSION

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W7a

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-19-1063

Applicant: Kay MacDonald

Agent: Sennikoff Architects, Inc.

Location: 1523 Seal Way, Seal Beach, Orange County (APN: 199-09-314).

Project Description: Demolition of an existing one-story, 1,231 sq. ft. single family home with an attached one-car garage and construction of a new two-story, 2,527 sq. ft. single family home with an attached two-car garage.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the demolition of an existing one-story, 1,231 sq. ft. single family home with an attached one-car garage and construction of a new two-story, 2,527 sq. ft. single family home with an attached two-car garage. The project site is located at 1523 Seal Way, Seal Beach in Orange County. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act because the City of Seal Beach does not have a certified Local Coastal Program.

Staff recommends the Commission approve a CDP for the project, subject to **eight special conditions**. The project site is a beachfront lot in an area where coastal

hazards exist. The proposed development could be adversely impacted by sea level rise, waves, coastal erosion, storm conditions, and other natural hazards in the future. The project is in an existing residential neighborhood and has been designed to avoid the most severe impacts of sea level rise. No shoreline protective device is proposed to protect the development pursuant to this permit, and to ensure that no shoreline protective device is proposed in the future, staff recommends the Commission impose **Special Condition No. 1**, which prohibits any future shoreline protective device that may become necessary to protect the development authorized by this permit. Since the proposed project is located in an area where coastal hazards exist and could adversely impact the development, the applicant proposes the development with full understanding of the site's vulnerability. **Special Condition No. 2** requires the applicant to assume liability for any future injury or damage that may occur from coastal hazards that may threaten the development.

During construction and post-construction, the proposed project has the potential for adverse impacts to water quality and marine resources. Therefore, staff recommends the Commission impose **Special Condition No. 3**, which ensures compliance with safe construction practices, staging of materials, and safe disposal of construction debris. Additionally, **Special Condition No. 4** ensures that all future vegetated landscaped areas consist only of native plants or non-native, drought-tolerant plants which are non-invasive. Due to the beachfront location of the proposed development, there is a substantial risk of bird strikes; therefore, **Special Condition No. 5** requires the applicant to use bird-safe glass for all structural elements.

Any potential changes to the proposed project may result in adverse impacts to coastal resources. In further consideration of the hazardous project location, **Special Condition No. 6** requires an amendment to Coastal Development Permit (CDP) No. 5-19-1063, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions. To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, **Special Condition No. 7** 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.

The approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property, which is addressed by **Special Condition No. 8**.

The motion to approve CDP No. 5-19-1063 is on **Page 4**. The special conditions begin on **Page 5**.

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EXHIBITS

[Exhibit 1 – Project Location](#)

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

II. STANDARD CONDITIONS

- 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 or 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 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. 5-19-1063 including, but not limited to, the residence, garage, balcony, 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, including, but not limited to, the residence, garage, balcony, patio, deck, and any other future improvements, 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.

C. In the event that portions of the development fall to the beach or are submerged before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site and relocated any salvageable portions of the development inland. Such removal shall require a coastal development permit.

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. Bird Strike Prevention.**
- A. Ocean-front deck railing systems, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. 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.
 - B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit final revised plans showing the location, design, height and materials of fences, screen walls and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition.

C. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. **Future Development.** This permit is only for the development described in CDP No. 5-19-1063. 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. 5-19-1063. 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. 5-19-1063 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 applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcels 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.
8. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS

A. Project Location and Description

The subject site is located between the first public road and the sea on a 3,500 sq. ft. lot at 1523 Seal Way in the City of Seal Beach, Orange County ([Exhibit 1](#)) adjacent to the

public beachfront walkway. The lot is zoned as Residential High Density (RHD-20) in the City of Seal Beach Zoning Code, where single-family residences and multi-family residences are permitted, however, the City of Seal Beach's Zoning Code has not been certified by the Coastal Commission. Due to its beachfront location, the subject site may be exposed to sea level rise, wave run-up, erosion, storm conditions, and other coastal hazards.

The project site is currently developed with a one-story, 15-ft. high, 1,231 sq. ft. single-family residence with an existing attached one-car garage in an urban residential neighborhood in the City of Seal Beach. The applicant proposes to demolish the existing single-family residence and attached, 155 sq. ft., one-car garage to construct a new two-story, 25-ft. high, 2,527 sq. ft. single-family residence with an attached, 434 sq. ft., two-car garage ([Exhibit 2](#)). The proposed development will increase the amount of parking on-site from one covered space to two covered spaces. In addition, the proposed project is set back 12 feet from the ocean-fronting property line. A landscape area currently exists within the 12-foot setback area of the front yard, facing the public walkway, and is proposed to remain on site. Within this landscape area, the applicant proposes to remove ten (10) existing banana trees that range from 9 to 12-ft. tall with trunks between 6 to 10 inches in diameter and relocate them on the site. The applicant also proposes to incorporate native planting and a wood walk and step over a gravel base in the front landscape area. The applicant proposes to install a 36" tall wood gate and a 42" tall wood fence within the property lines, adjacent to the public walkway, which is consistent with City code and previous Commission approved projects along the walkway.

B. Hazards

The subject site is fronted by an approximately 450-foot wide sandy beach and the Pacific Ocean. The beach in Seal Beach is divided into West Beach and East Beach and the subject site is located on East Beach. Although there is a wide beach between the subject property and the sea, the proposed development is an oceanfront location and may be potentially exposed to coastal hazards. The proposed development must be analyzed for potential natural hazards that may adversely affect the project site, such as coastal erosion, flooding, wave runup and attack, and storm hazards. Sea level rise is expected to continue over the coming decades and may exacerbate the impacts of these coastal hazards. For this project, the applicant has submitted a Wave Runup and Coastal Hazard Study to analyze the potential coastal hazards for the proposed development. The report investigates wave and water level conditions expected at the site in consequence of extreme storm and wave action in the next 75 years (see Wave Runup and Coastal Hazards Study 1523 Seal Way, Seal Beach prepared by GeoSoils, Inc., dated December 2, 2019).

On November 7, 2018, the Commission adopted a science update to its Sea Level Rise Policy Guidance. This document provides interpretive guidelines to ensure that projects are designed and built in a way that minimizes sea level rise risks to the

development and avoids related impacts to coastal resources. The most recent projections in the statewide sea level rise guidance indicate that sea levels in this area may rise between 5.3 feet and 6.7 feet by the year 2100, though there is a risk of much more significant sea level rise depending on various uncertainties, including the dynamics of ice sheet loss. The projection is given in a range largely because researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea level rise are tracking along the higher projections), the Ocean Protection Council and the Natural Resources Agency have continued to recommend that we avoid relying on the lower projections in planning and decision-making processes.

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

The applicant’s analysis states that the proposed residential project has a design life of 75 years and that, using the Ocean Protection Council (OPC) Sea Level Rise’s best available science, the range of sea level rise in the year 2095 is between 1.8 ft. and 5.4 ft. The report states that the highest recorded water elevation on record in the vicinity of the site is 7.7 feet NAVD88. Seal Way, where the project site is located, is at about elevation +10 ft. NADV88. The proposed finished floor elevation of the first floor of the proposed residence is at or above +13 feet NAVD88. If 1.8 and 5.4 ft. are added to this 7.7 feet NAVD88 elevation, then future design maximum water levels of ~9.5 ft. NAV88 and ~13.1 ft. NADV88 are extrapolated. The maximum future sea level of 13.1 feet is higher than the 13.0 feet finished floor elevation of the proposed home; however, the report determines that the structure is not expected to experience flooding. The overtopping rates for the eroded beach for both 1.8 ft. and 5.4 ft. may flood public infrastructure, given that Seal Way is at about elevation +10 ft. NADV88, with an existing 24-inch non-deepened wall on public property on the ocean side of Seal Way.

In addition, the applicant’s Wave Runup and Coastal Hazards study includes a regional sea level rise modeling tool, U.S. Geologic Survey (USGS) CoSMoS, to assess the vulnerability of coastal areas and the 100-year storm. Using this tool, the visualization in the report shows that with a 100-year storm event, the site may flood with ~4.9 ft. of sea level rise. The site may flood from area drainage with 4.1 ft. of sea level rise, and the flooding appears to come from drainage of the low-lying land area behind the site, with water flooding from the bay. The lowest finished floor is at or above 13.0 ft. NADV88

and 3 ft. above Seal Way. Therefore, based on the model, the report determines that the development is reasonably safe from flooding over the 75 to 100-year period, because the proposed elevation of the finished floor is above the area drainage.

The report concludes that there is no erosion at the site, but rather, there is long-term accretion of sand, therefore, coastal erosion will not significantly impact the development over the 75-year life period. This accretion is a result of dredging the nearby channel and sand replenishment programs implemented by the Army Corps of Engineers, which cannot be assumed to continue indefinitely. The analysis also states that the wide sandy beach will prevent the proposed development from being directed attacked by waves. The report states that the City of Seal Beach constructs sand berms each winter to prevent waves from reaching the developments adjacent to the beach, including the subject site. These sand berm developments, however, have not been permitted by the Commission.

The coastal hazards analysis for the site concludes that wave runup and overtopping will not significantly impact the subject 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 impacting the proposed development.

Although the applicants' report indicates that the site is relatively safe for development at this time, the sea level rise range estimates are not based on the medium-high risk aversion scenario as recommended by the Coastal Commission for residential development. The Los Angeles Harbor tide gauge is the closest to Seal Beach and the medium-high risk aversion scenario for the project's expected life of 75 years is 5.3 to 6.7 ft. of sea level rise. Referencing the CoSMoS model to analyze the project site's vulnerability to sea level rise impacts, using a 6.6-ft. sea level rise scenario which is closest to the upper range of the sea level rise range and a 100-year storm scenario, the model shows that the site is subject to episodic flooding but is not anticipated to be subject to wave uprush. The CoSMoS model also identifies the surrounding streets as subject to flooding with approximately 4 feet of sea level rise, which could impact accessibility and utilities associated with the proposed development. Coastal areas are dynamic environments and it is difficult to predict how any project site will be impacted; therefore, it is important to take a more precautionary approach when estimating the potentially adverse impacts of sea level rise.

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. Shoreline protective devices may have adverse impacts such as landward migration of a shoreline as a sandy beach erodes, resulting in a reduction and/or loss of public beach area, while the landward extent of the beach does not increase. In addition, shoreline protective structures are often placed on public land rather than on the private property it is intended to protect, resulting in a physical loss of beach area formerly available to the general public. In general, shoreline

protection devices cause visual impacts and can detract from a natural beach experience, adversely impacting public views, and can lead to loss of ecosystem services. Shoreline protective devices tend to conflict with Chapter 3 policies because they can have a variety of adverse impacts on coastal resources.

The site-specific hazards analysis provided by the applicant's report indicates that even with expected future sea level rise, the proposed development is not expected to be threatened by coastal hazards. Since there are no proposed shoreline protective devices, the project can be found to be in conformity with the hazards policies of the Coastal Act. However, given the dynamic nature of coastal beaches, as well as review of data indicating that the property could be impacted by higher sea level rise than the applicant's report indicates, it is important to ensure that the risks of developing on this beachfront lot are assumed to be a risk of the applicants and not the public.

To minimize the project's potential future impact on shoreline processes, the Commission imposes **Special Condition No. 1** to state that the applicant is not entitled to shoreline protection for the development approved by this permit and to waive rights to future shoreline protection. The proposed development is located in an area where unpredictable coastal hazards exist that could adversely impact the development should the applicant's predictions that the project site be reasonably safe from sea level rise related hazards 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, is consistent with the Commission's obligation to manage and protect public trust resources.

C. Water Quality and Biological Resources

The proposed development has the potential for a discharge of polluted runoff from the project site into coastal waters. To address these concerns, the development as proposed incorporates design features to minimize the infiltration of water and 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 and for the use of post construction best management practices to minimize the project's adverse impact on coastal waters. 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 proposed development involves some landscaping in the front yard and in the side yards. The placement of any vegetation that is considered invasive which could supplant native vegetation will 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>).

While the proposed landscaping consists of non-invasive, native 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.

Due to the beachfront location of the proposed development, there is a substantial risk of bird strikes; therefore, **Special Condition No. 5** is imposed to assure ecosystem preservation, requiring the applicant to use bird-safe glass for all structural elements.

Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

D. Public Access

The project site is located along the seaward side of Seal Way and is located between the first public road and the sea. The proposed project is consistent with the City's required setback from the seaward property line and public walkway and is consistent with past Commission actions. The setback of the residential development for the proposed development is 12-ft. inland of the property line. The landscape area that currently exists within the 12-ft. setback will be vegetated with native plants and banana trees that will be removed and relocated on site. In addition, the applicant's proposal to add a wood walk and step over gravel, a 36" tall wood gate and a 42" tall wood fence within the property lines, adjacent to the public walkway will not affect public access. As proposed, the residential development will not encroach into the public walkway.

In addition, the Commission has found through previous permit actions in this area that the City's setback in this area (setback or no setback) is acceptable for maintaining public access and is consistent with the pattern of development in the subject area. Public access to the beach is available immediately east of the project site at Neptune Avenue's street end. The proposed development provides adequate parking based on the Commission's regularly used parking standard of two parking spaces per individual dwelling unit. **Special Condition No. 8** is imposed to state that the Coastal

Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property.

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.

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 **Special Condition No. 7**, 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. 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)

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

On July 28, 1983, the Commission denied the proposed 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. However, the City received an LCP Grant from the Commission in 2016 and is working toward the completion of a sea level rise vulnerability assessment and Local Coastal Program update.

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

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding

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showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

The City of Seal Beach determined the proposed project to be categorically exempt from CEQA (Class 3, Item a). The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Wave Runup and Coastal Hazards Study 1523 Seal Way, Seal Beach prepared by GeoSoils, Inc. dated December 2, 2019.