

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-19-0883

Applicants: Christine and Brian Leibl

Agent: Otis Architecture Inc.

Location: A101 Surfside Ave., City of Seal Beach, Orange County (APN: 178-462-18)

Project Description: Demolition of existing two-story 1,120 sq. ft. single-family home with attached garage; and construction of 2,911 square foot three-story 35-foot high single-family home with attached 416 sq. ft. two-car garage.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the demolition of an existing single-family home and construction of a new single-family home 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, with **eight special conditions** to ensure consistency with the hazards, biological resources, water quality, public access and recreation and visual resources policies of the Coastal Act.

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 construct a new residence in a hazardous location, **Special Condition No. 1** requires the applicants to agree that no future shoreline protective device is allowed to protect the development authorized by this permit. In addition, this condition requires that if any part of the proposed development becomes threatened by coastal hazards in the future, then the threatened development must be removed rather than protected in place. **Special Condition No. 2** requires the applicants to assume the potential risk of injury and damage arising from coastal hazards that may threaten the development. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated and thus **Special Condition No. 3** requires the applicant obtain a permit amendment or new permit for any future improvements to the residence, garage, patio, decks or foundations.

The existing and proposed at-grade beachside patio deck is located on property owned by Surfside Colony, Ltd., which is also the Homeowners Association (HOA) for the community of Surfside Colony. Seaward of this patio deck, on the HOA parcel, is an approximately 40-foot deep naturally forming sand dune. The applicants state that in approximately 2018, their previous neighbor removed the sand dune substrate/vegetation fronting both the neighbor's residence¹ and the subject site, of which 25 feet by 53 feet² of impacted area is located immediately seaward of the applicants' property, without the benefit of a coastal development permit. The applicants/owners of the residence state that neither they nor Surfside Colony, Ltd. undertook the vegetation removal. However, liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists³, which in this case is Surfside Colony, Ltd. In addition to the 2018 vegetation removal, unpermitted removal of dune vegetation has occurred throughout the HOA parcel. While the vegetation has been removed and the sand dune is currently degraded due to the lack of native dune plants and coverage by non-native species, the dune morphology (the presence of hollows or depressions and hummocks or mounds) still exists and is considered Environmentally Sensitive Habitat Area (ESHA). To mitigate the ecological harm caused by the unpermitted removal of the sand dune vegetation, the applicants have proposed a Native Landscaping Plan, by which they will restore the 25-foot wide area that extends 10-feet seaward of the patio deck/leased area, which covers only a portion of the 25-foot wide by 53-foot long area

¹ The impacted area directly seaward of A-102 Surfside Ave., the neighbor's property, is 29-foot wide by 53-foot long or approximately 1500 square feet.

² Or approximately 1300 square feet.

³ see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622

wherein the unpermitted removal of dune ESHA occurred. The applicant has agreed to restore this specific area because that is the area that the HOA agreed to allow the applicant to restore. Neither the entirety of the 2018 vegetation removal nor the unpermitted removal of dune ESHA throughout the HOA parcel will be addressed in this CDP application, and the violations will remain unresolved. As a result, Commission enforcement staff will address this issue as a separate matter with other parties, including the parties that undertook the vegetation removal and the Surfside Colony, Ltd . While the proposal to restore is an adequate plan from a biological perspective, there are parts of the plan that need to be revised to address the revised landscape design, responsibility for the on-going removal by hand of all non-native plants within the restoration area, watering of the plantings, prohibition of future encroachments, and implementation of the plan. Thus, **Special Condition No. 4** requires the applicants to submit a Final Native Landscaping Plan for review and approval by the Executive Director.

Due to the beachfront location of the proposed development, there is a substantial risk of bird strikes into the glass railing proposed for the decks. Therefore, **Special Condition No. 5** requires the applicants to submit revised plans that revise the railing material for the decks facing the beach.

During and post-construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, **Special Condition No. 6** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. **Special Condition No. 7** 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.

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. 8** 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 CDP application is on **Page Five**. The special conditions begin on **Page Six**.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of

this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904- 5202.

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EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Site Plan

Exhibit 3 – Floor Plans and Roof Plans

Exhibit 4 – Elevation Plans

Exhibit 5 – Native Landscaping Plan

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-19-0883 subject to conditions set forth in the staff recommendation specified below.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of 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 will 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 permittees agree, on behalf of themselves and all other successors and assigns, that the project is new development for which there is no right to shoreline protection and hereby waives on behalf of themselves, and all other successors and assigns, any rights that may exist under applicable law to construct a shoreline protective device to protect the development approved pursuant to Coastal Development Permit No. 5-19-0883, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural coastal hazards in the future.
- B. By acceptance of this permit, the permittees further agree, on behalf of themselves and all successors and assigns, that the landowners are required to remove the development authorized by this permit, including the residence and yard improvements, if any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices.
- C. In the event that portions of the development fall to the beach before they are removed, the 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. Such removal shall require a coastal development permit. Prior to removal, the permittee shall submit two copies of a Removal Plan to the Executive Director for review and written approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, including the beach and Pacific Ocean.

2. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the 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. Future Development.** This permit is only for the development described in CDP No. 5-19-0883. Pursuant to Title 14 of the California Code of Regulations Section 13250, the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by CDP No. 5-19-0883. Accordingly, any future improvements to the residence, garage, patio, decks, foundations, and any 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. 5-19-0883 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

4. Native Landscaping Plan.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and written approval of the Executive Director, a Final Native Landscaping Plan, prepared by a qualified restoration biologist/ecologist, consistent with the plan prepared by LSA dated June 2020, except the final plan shall be modified to satisfy the following requirements:

1. Area: the plan shall include the area of restoration, including but not limited to 25-feet in width extending 10 feet seaward of the 25-foot wide by 10-foot wide lease area from which non-native vegetation will be removed and native vegetation will be planted, herein after referred to as the "restoration area".
2. Removal: the plan shall provide that all non-native vegetation shall be removed from the restoration area.
 - a. A detailed description of methods to be employed for removal of all non-native plants from the restoration area and within the area of adjacent public beach access improvements (as depicted on Figure 2 of the proposed Native Landscaping Plan).
 - b. The plan shall require on-going removal of non-native invasive plant species.
3. Topography: the restoration area topography shall be restored to the topography that existed prior to removal of the sand dune substrate/vegetation.

4. Planting: the restoration area shall be planted with native dune plantings. The types and location of the native dune plantings (both seed and container plantings) shall be depicted graphically. Regarding design of the planting area, a pathway shall be located along either one of the side 10-foot edges within the 10-foot deep and 25-foot deep restoration area with the remaining area used for planting.
 5. Irrigation: limited hand watering in a diffuse manner shall be allowed as needed for the success of the plantings. Care shall be taken to avoid hose-drag and trampling the plantings.
 6. Temporary wooden sand fencing (installed perpendicular to the prevailing wind direction) may be installed to slow wind-driven movement of sand through the site, reduce sand encroachment, and allow native hummock-forming dune plants to establish. The fencing shall remain in place only as long as needed, but in no case longer than three (3) years.
 7. Straw bundles (made from a weed-free straw material) may be employed to slow sand movement and provide sheltered planting locations.
 8. Future private encroachments shall be prohibited within the entire restoration area.
- B.** The permittee shall implement the Final Native Landscaping Plan within sixty (60) days of issuance of the coastal development permit and shall implement the plan 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.

5. Bird Strike Prevention

- A.** 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. 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 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-foot by 3-foot 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. 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. 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.
 - N. During construction of the project, no runoff, site drainage or dewatering shall be directed from the site into any street, alley or storm drain, unless specifically authorized by the California Regional Water Quality Control Board.
7. **Landscaping-Drought Tolerant, Non-Invasive Plants.** Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants that 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>).
8. **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 Description, Location and Standard of Review

Project Description and Location

The subject site is a beachfront lot located between the first public road and the sea designated as A-101 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 No. 1](#)). Surfside Colony is comprised of three rows of residences (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 on average a 350-foot wide sandy beach between the subject property and the mean high tide line. The lot size is 1,694 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. A 1966 boundary agreement (prior to the enactment of the Coastal Act) between Surfside Colony, Ltd. and the California State Lands Commission fixes the boundary between State Tidelands and submerged lands and private uplands in Surfside Colony. As a result of this boundary agreement, Surfside Colony, Ltd. owns a strip of the beach, up to 80 feet in width, adjacent to/seaward of the residences fronting the ocean. The beach seaward of Surfside Colony's land is public and available for lateral public access and recreation. Vertical access to the beach is available at the end of Anderson Street to the south of the Surfside Colony community. In addition, the Commission conditioned permit P-75-6364 to allow public access through the gates at the southeastern end of Surfside Colony during daylight hours.

The proposed project is the demolition of an existing two-story, 1,120 square foot single-family home with an attached garage and construction of a 2,911 square foot three-story, 35-foot high beachfront single-family home with an attached 416 square foot two-car garage. The project includes a roof top deck accessed via a roof top

access structure from the third floor which will rise to 39'6" ([Exhibits No. 2-4](#)). The first floor at-grade patio and second floor deck are located on the seaward side of the new home and will extend 10 feet seaward beyond the property line, while the third floor deck will extend 5 feet beyond the property line, into land owned by Surfside Colony, Ltd. and leased to the applicants. The decks and the roof top deck facing the beach side of the development will have a 3-foot, 6-inch high railing. Grading will consist of 10 cubic yards of cut, 15 cubic yards of fill, 188 cubic yards of over-excavation and 5 cubic yards of import. No basement is proposed. Drainage from the roof drains and surface drainages will be directed to onsite permeable devices before entering the main storm drain system. The foundation system for the project will consist of footings and a mat slab. No landscaping is proposed.

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.

B. Hazards

Section 30253 of the Coastal Act states, in pertinent part:

New development shall do all of the following:

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

The subject site is located at the northern end of Surfside Colony, a private beachfront community in the City of Seal Beach. There is on average a 350-foot wide sandy beach between the subject property and the mean high tide line ([Exhibit No. 1](#)). Unlike the southern end, the northern end of Surfside Colony is subject to uniquely localized beach erosion due to the reflection of waves off the adjacent Anaheim Bay east jetty. These reflected waves combine with normal waves to create increased wave energy that erodes the beach in front of Surfside Colony more quickly than is typical at an unaltered natural beach. Since the erosion is the result of the federally owned jetty, the U.S. Army Corps of Engineers has periodically replenished the beach. The beach nourishment provides Surfside Colony a measure of protection from wave hazards. However, when the beach erodes, development at Surfside Colony may be exposed to wave uprush and subsequent wave damage.

Even though wide sandy beaches afford protection to development from wave and flooding hazards, development in such areas is not immune to hazards. For example, in 1983, severe winter storms caused heavy damage to beachfront property in Surfside Colony. Additionally, heavy storm events such as those in 1994 and 1998 caused flooding of the Surfside Colony community.

The especially heavy wave action generated during the 1983 El Nino winter storms caused Surfside Colony to apply for a coastal development permit for a revetment to protect the residences at Surfside Colony's northern end. The Commission approved Coastal Development Permit No. 5-82-579 for this revetment, and Coastal Development Permit No. 5-95-276 for the repair of the revetment, which remains in place today. The Commission also approved Consistency Determinations CD-028-97, CD-67-97, and CD-65-99 for beach nourishment at Surfside Colony performed by the U.S. Army Corps of Engineers.

Even though the site is protected by a wide sandy beach and revetment, this does not preclude wave uprush damage and flooding from occurring at Surfside Colony during extraordinary circumstances. Strong storm events like those that occurred in 1994 and 1997 can cause large waves to flood any portion of Surfside Colony. The proposed project includes decks and a patio area which encroach 10 feet and 5 feet seaward beyond the seaward property line onto a ten-foot wide strip of land owned by Surfside Colony, Ltd. (which serves as a Homeowners Association), which is common in this area and not specific to the project site. Surfside Colony leases its property to the applicants and adjacent homeowners for construction of patios. The proposed development will not encroach seaward past other patios associated with the existing homes in Surfside Colony. However, although the development will not encroach further seaward, as explained above, the 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. Despite efforts to add sand through beach nourishment and to control the movement of sand along the shoreline, the shoreline at the site does experience temporary erosion. Historically to prevent wave runup from reaching the site, the City has built a sand berm each winter, but that development has not been permitted by the Commission. In addition, a naturally occurring sand dune system at the back of the beach adjacent to the beach side edge of the patio deck provides protection. 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 Coastal Hazard & Wave Runup Study for A101 Surfside Avenue, Seal Beach, California prepared by Geosoils, Inc. dated October 14, 2019).

The analyses states that the historical highest ocean water elevation in this project area is +7.18 feet NAVD88. The alley at the inland side of the project site is at elevation +12.22 NAVD88 and the beach fronting the site is at elevation +13.00 NAVD88, while the sand dune fronting the residence is at elevation +15.00 NAVD88. The proposed finished floor elevation of the first floor of the proposed residence is +14.27 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 the updated OPC guidance document 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 2100⁴). 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 highest high water level of +12.48 feet NAVD88 (+7.18 feet NAVD88 + 5.3 feet) could result. This +12.48 NAVD88 would be 1.79 feet below the proposed finished floor elevation of the proposed residence of +14.27 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 +13.88 feet NAVD88 (+7.18 feet NAVD88 + 6.7) could result. This +13.88 NAVD88 would be 0.39 feet below the proposed finished floor elevation of +14.27 feet NAVD88.

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 from the inland side of the property based on area drainage patterns with future sea level rise of just 125 centimeters (4.1 feet). In addition, under a 100-year storm model, most of the surrounding area, all the way to Pacific Coast Highway may flood with 125 centimeters (4.1 feet) of sea level rise.

The proposed finished floor elevation is higher than the medium high risk aversion sea level rise range taken from the April 2018 COPC projections for southern California; however the site itself is still 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

⁴ 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.

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, sand nourishment activities and the manmade berm will prevent waves from directly 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 referenced in this analysis. 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.

Most shoreline protection devices are inconsistent with multiple policies in Chapter 3 of the Coastal Act 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.

As discussed above, an important concern under Section 30253 is the potential need for shoreline protection to protect against coastal hazards related to sea level rise, because shoreline protective devices typically conflict with Section 30253(b)'s prohibition on new development that either creates or contributes significantly to erosion or destruction of a site. Here, the applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the applicants or a successor-in-interest, could request a shoreline protection device at some point in the future. Therefore, because of the numerous adverse impacts to coastal resources caused by shoreline protective devices (discussed above), which are relevant to this project, to comply with Section 30253 and the prohibition on creating or significantly contributing to erosion and destruction of the site, it must be clear that, as new development, the entire development recognized and approved by this permit is not entitled to a shoreline protection device now or in the future.

Therefore, **Special Condition No. 1** is imposed to require the applicants to acknowledge that, as new development, the applicants have no right to a shoreline protective device for the project and, in fact, no future shoreline protective device will be constructed on site to protect the proposed development, including the redeveloped home and accessory structures.

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

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

hazards policies, because the removal of the structurally unsound or unsafe development would minimize risks to property and life.

Therefore, **Special Condition No. 1** further requires that if any part of the proposed development becomes threatened by coastal hazards in the future, then the threatened development must be removed rather than protected in place. This condition recognizes that predictions of the future cannot be made with certainty, thereby allowing for development that is currently safe and expected to be for approximately 75 years if sea level rise is about 6.7 feet, but ensuring that the future risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicants enjoying the benefits of new development, and not the public.

The Commission also finds that due to the possibility of storm waves, surges, flooding, erosion and other coastal hazards, the applicants shall assume the risks of development in a hazardous area as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicants to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition No. 2**, will show that the applicants are aware of and understand the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicants.

As discussed previously, the project location is potentially exposed to the hazards of storm conditions, waves, and erosion. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission imposes **Special Condition No. 3**, which states that any future improvements to the residence, garage, patio, decks, foundations, authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. This condition ensures that any future development on this site that may affect shoreline processes receives review under the Coastal Act by the Commission.

The proposed development, as conditioned, is 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.

C. Biological Resources/Water Quality

Section 30230 of the Coastal Act, Marine Resources; maintenance, states:

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

Section 30231 of the Coastal Act, Biological productivity, water quality, states:

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

Section 30232 of the Coastal Act, Oil and hazardous substance spills, states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30240 Environmentally sensitive habitat areas; adjacent developments

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Biological Productivity

Seaward and adjacent to the proposed at-patio deck, which would be located on property owned by Surfside Colony, Ltd., is additional Surfside Colony, Ltd. property where a naturally forming sand dune extends approximately 30 feet seaward. This sand dune is located seaward of all the beach fronting residences in Surfside, and it is considered an Environmentally Sensitive Habitat Area (ESHA) due to its morphology

(the presence of hollows or depressions and hummocks or mounds) which supports shorebirds. The owners/applicants of the property state that in early 2018, their previous adjacent northern neighbor, the owner of A-102 Surfside Avenue, removed the sand dune substrate/vegetation fronting his residence and the subject site, without the benefit of a coastal development permit. The owners/applicants that neither they nor Surfside Colony, Ltd. were responsible for the substrate/vegetation removal. The sand dune is currently degraded due to the lack of native dune plants and coverage by non-native species such as ice plant, sickle grass, and trailing African daisy. Notwithstanding its degraded state, the dune exhibits dune morphology and dune substrate.

Coastal dunes form in areas of the California coast that have ample sand supplies, strong winds and relatively flat topography. In these places, plants growing along the coastal strand slow the movement of blowing sand. The plants grow taller as sand deposits build up around them and eventually small foredunes are created. Three native plant species are considered to be important in the early phases of this process: beach saltbush (*Atriplex leucophylla*), beach bur (*Ambrosia chamissonis*) and red sand verbena (*Abronia maritima*). Over time, more sand may be trapped and the foredunes can build up and coalesce to form more stable dune ridges that are often seen windward of backdune or dune swale areas. Once the system shifts from an unstable sheet of sand (subject to rapid movement under the influence of strong winds) to a vegetated habitat with dune topography, a number of other native dune plants can colonize the habitat including beach evening primrose (*Camissonia cheiranthifolia*), beach morning glory (*Calystegia soldanella*), and several species of shrubs.⁵

Restoration of the area of unpermitted development would aid in the effort toward resolving the violation resulting from the unpermitted removal of sand dune vegetation. To that end, the applicants have submitted and propose to implement a Native Landscaping Plan prepared by LSA dated June 2020 for the area where the unpermitted weed and vegetation removal took place. The restoration area proposed by the applicants includes the 25-foot wide area that extends 10-feet seaward of the 25-foot wide by 10-foot deep lease area ([Exhibit No. 5](#)). The Native Landscaping Plan provides for removal of all non-native plants, weeds and ornamental species removed by hand and installation of native vegetation that are appropriate native dune plants. It is important that the restoration area be planted with appropriate native dune plants. Without such planting, onshore wind and storms would blow the sand away, creating issues for the adjacent residents from blown sand. Thus, once all non-native plants are removed the area must be planted to provide long term stability. Most of the dune/berm along Surfside is vegetated primarily with ice plant and other non-natives. However, the restored area will plant dune plants native to coastal southern California. This will have the dual benefit of stabilizing the dune and, potentially, increasing the habitat value.

⁵ Pierpont Beach Sand Management Plan, David Hubbard and Mathew James, Coastal Restoration Consultants, Inc., 11/19/2007.

Moreover, native dune plants would be more visually pleasing than ice plant, which is important in the area immediately adjacent to the public beach.

To help stabilize the restored area, temporary wooden sand fencing (installed perpendicular to the prevailing wind direction) may be installed to slow wind-driven movement of sand through the site, reduce sand encroachment, and allow native hummock-forming dune plants to establish. This wooden sand fencing would help the dune to establish but should eventually be removed in order to allow the restored dune to function as naturally as possible. In addition, straw bundles (made from a weed-free straw material) may be employed to slow sand movement and provide sheltered planting locations. These measures may help to advance the long-term viability of the restoration area.

The locations of the initial native dune plantings are depicted graphically in the Native Landscaping Plan. As shown on the plan (Figure 2), the planting area will be located on both ends of the planting site while the middle area will be kept clear of any vegetation to establish a pathway. However, in order to have a less fragmented design so that the landscaping can be more located together, the applicant has proposed to revise the landscaping so that the pathway is instead located at either of the side edges along the 10-foot edge of the landscaped area. However, the applicant has yet to submit a revised site plan indicating this design.

It is important to know where these plants will be placed in the restoration area to better understand and assess the overall Plan. The Plan must also address irrigation and note that it should be avoided to the extent feasible, allowing hand watering in a diffuse manner, with care to avoid trampling the plantings.

The native landscaping area must be maintained free of invasive and non-native plant species. In addition, for successful dune restoration to occur, the Native Landscaping Plan must acknowledge that no native dune species that establish within this area shall be removed or harmed and that on-going removal by hand of non-native plants within the restoration area will occur. Additionally, it must be made clear that future private encroachments, including any placement of any items not needed for the restoration, are prohibited in the area seaward of the leased property, including within the entire restoration area. And, it is important that the dune restoration occur within a timely manner to encourage the impacts from the unpermitted substrate/vegetation removal to be offset in as timely a manner as possible. All of the above requirements have not been incorporated into the Native Landscaping Plan in order to assure that the Plan will effectively restore the dune area that was disturbed by the unpermitted sand dune substrate/vegetation removal.

Sections 30230 and 30240 of the Coastal Act require restoration and protection of biological resources and ESHA and the applicant's submitted Native Landscaping Plan will assist in restoring an important biological resource, the impacted sand dune, which is considered ESHA. While the plan is sufficient, there are additional measures which are necessary and once implemented will enhance the plan. For the reasons described

above, the Commission imposes **Special Condition No. 4** which requires the applicant to submit a Final Native Landscaping Plan for review approval by the Executive Director, which incorporates all the measures described above, but also addresses the revised landscape design, responsibility for the on-going removal by hand of all non-native plants within the restoration area, watering of the plantings, prohibition of future encroachments, and implementation of the plan.

The decks and the roof top deck facing the beachside of the development include a 3-foot, 6-inch high railing. Due to the beachfront location of the proposed development, there is a substantial risk of bird strikes associated with glass railings, which are proposed. 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). Therefore, the Commission imposes **Special Condition No. 5**, which requires the applicants to submit revised plans, for review by the Executive Director, that revises the railing material for the decks and roof top deck facing the beach. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass. Clear glass or Plexiglas shall not be installed unless appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Section 30230 of the Coastal Act requires protection of biological resources, such as avian species. Implementation of this condition to protect avian species from bird strikes will protect and preserve that biological resource and as a result the project will be consistent with Section 30230 of the Coastal Act.

Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition No. 6**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible. Adverse impacts to water quality can occur during construction if no protective measures are implemented. As conditioned to protect water quality and biological productivity through the implementation of requirements for safe storage of construction

materials and safe disposal of construction debris, the project is consistent with Section 30231 and 30232 of the Coastal Act.

Post-Construction Impacts to Water Quality

The proposed project is considered development and there is an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize, to the extent feasible within its jurisdiction, the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. In order to deal with these post-construction water quality impacts, 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 permeable devices before entering the main storm drain system.

Currently, no landscaping is 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 and water-efficient practices should be followed. 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>). Therefore in order to minimize the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition No. 7**, 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.

Section 30230 and 30231 of the Coastal Act protect water quality and biological productivity. The applicant has adequately addressed post-construction water quality impacts by submitting a drainage and runoff control plan. As conditioned for the project to adhere to landscape controls, the project also further addresses biological productivity and protection of native vegetation. Thus, as conditioned, the proposed project is consistent with Section 30231 and 30232 of the Coastal Act.

D. Public Access and Recreation

Section 30210 of the Coastal Act, Access; recreational opportunities; states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act, New development projects (in part), states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30250 of the Coastal Act, Location, existing developed areas, states:

(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

The subject site is a beachfront lot located between the nearest public roadway and the shoreline in the private community of Surfside ([Exhibit No. 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 residences fronting the ocean. Surfside Colony, Ltd. and has given their approval for the proposed project and have been invited to join as co-applicant; however, Surfside Colony, Ltd. has not chosen to join as a co-applicant as of the date of this staff report. 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 an at-grade patio area which encroach 10-feet and 5-feet beyond the seaward property line onto a 10-foot wide strip of land owned by Surfside Colony, Ltd. 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 10-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 private uplands, public recreation opportunities and public parking exist nearby in Sunset Beach, at the southeastern end of Surfside. 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; thus, the development will not rely on public parking resources for access.

To guarantee that the future development of the property can be evaluated for consistency with the public access policies of the Coastal Act, the Commission imposes, **Special Condition No. 3**, which requires the applicants to obtain a permit amendment or a new permit for future improvements and any repair or maintenance of the residence.

Section 30210 and 30212 of the Coastal Act require that public access to the coast be provided and Section 30250 of the Coastal act requires that new residential development will be located where it will not have cumulative adverse impacts to coastal resources. As indicated above, public access is available along the beach seaward of the upland private lands and also at the southern end of the Surfside Community. In addition, the project provides sufficient parking so that it does not rely on the public parking resource locate at the southern end of the Surfside Community. To ensure that any future changes to the project do not impact public access, a condition has been imposed requiring the applicant obtain a permit amendment or a new permit for future improvements and any repair or maintenance of the residence. Therefore, as conditioned, public access is provided near the project site and the project will also not impact provision of that access consistent with Section 30210, 30212 and 30250 of the Coastal Act.

E. Visual Resources

Section 30251 states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect view to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the

character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed residence will be 35 feet high. The Commission typically has limited residential development in Surfside, except for chimneys and roof top 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 residences are constructed to maximize use of the building envelope. The proposed project includes a roof top access structure that will exceed the height by approximately 4 feet, 6 inches, resulting in an overall building height of 39 feet, 6 inches. The applicant has obtained a Minor-Use Permit (MUP 19-3) for this height exception and the Commission has authorized similar roof access structures in previous actions. The approved project would be consistent with the height of the existing structure and with heights of other residences in Surfside. Section 30251 of the Coast Act protects the scenic and visual resources of coastal areas. The proposed project has been designed to be consistent with the heights in the area as approved by the Commission to protect the existing scenic and visual resources. As such, the project, as conditioned, is consistent with Section 30251 of the Coastal Act.

F. 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. 8**, which requires the property owners 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.

G. Coastal Act Violations

Violations of the Coastal Act that are associated with the subject property have been undertaken on the sand dune area located on separate private property adjacent to the subject property, including removal of vegetation and substrate/vegetation from the dune area fronting the residence⁶ and the adjacent residence⁷ at A-102 Surfside

⁶ The impacted area directly seaward of the applicants' residence is 25-foot wide by 53-feet long or approximately 1300 square feet.

⁷ The impacted area directly seaward of A-102 Surfside Ave. is 29-foot wide by 53-feet long or approximately 1500 square feet.

Avenue. The removal is associated with the residence because it is next to a deck associated with the residence.

In response and in an effort to offset some of the adverse impacts resulting from the unpermitted removal of vegetation and substrate/vegetation from the dune area, the applicants have agreed to restore the area of the HOA property that the HOA has authorized the applicants to access for the purpose of restoration. This includes restoration, with natural dune habitat, of a 10-foot wide portion of the area fronting their proposed residence and deck where vegetation was removed, including by revegetating the area with plants native to southern California coastal dunes as outlined in the proposed Final Native Landscaping Plan prepared by LSA dated June 2020 and required by **Special Condition No. 4**. The Commission has considered the impacts of the proposed project on a baseline of site conditions established by treating the unpermitted removal as if it had not occurred.

Nevertheless, impacts to dune habitat occurred for a period of time due to the removal of the vegetation. These impacts must be addressed. To address and offset these impacts that accrued due to the unpermitted development, the Commission finds that the sand dune area where vegetation was removed must be restored to natural dune habitat (as described earlier in this report). The applicant has proposed restoration of natural dune habitat in the lease area, including the adjacent beach area. The restoration is required by **Special Condition No. 4**.

As noted above, unpermitted removal of dune ESHA has occurred throughout the HOA parcel. The applicant has agreed to restore the dune area that is 10 feet seaward of the area that they lease because that is the area that the HOA is allowing the applicants to restore. Neither the entirety of the 2018 vegetation removal nor the unpermitted removal of dune ESHA throughout the HOA parcel will be addressed in this CDP application. As a result, Commission enforcement staff will address this issue as a separate matter with other parties, including the parties that undertook the unpermitted development, and Surfside Colony.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development.

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 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.

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 Planning Department determined that the proposed development is categorically exempt on July 10, 2019. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the hazards, biological resources, water quality, public access and recreation and visual resources 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

City of Seal Beach Approval-In-Concept dated July 10, 2019.

Minor-Use Permit 19-3. City of Seal Beach Planning Commission Resolution 19-8.

Letter from Commission staff to Karen Otis dated August 19, 2019.

Letter from Karen Otis to Commission staff received October 24, 2019.

Coastal Hazard & Wave Runup Study for A101 Surfside Avenue, Seal Beach, California prepared by Geosoils, Inc. dated October 14, 2019.

Native Landscaping Plan prepared by LSA dated June 2020.