**CALIFORNIA COASTAL COMMISSION**
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## STAFF REPORT: CONSENT CALENDAR

**Application No.:** **5-20-0323**

**Applicant:** Robert Pigneri

**Agents:** Eric Trabert & Associates (Eric Trabert)

**Location:** 16750 Pacific Coast Highway, Huntington Beach Orange County, APN 178-564-04

**Project Description:** Construction, on a vacant harbor-front lot, of a new 2,419 square foot, three-story, 34 foot high, single family residence with a 464 square foot attached two-car garage and 242 square foot deck at the third story, and a 990 square foot roof deck. Repairs to the existing bulkhead consisting of a new, 14 foot long, concrete deadman located 22 feet landward of the existing bulkhead, four new tie backs connecting the existing bulkhead to the new deadman, repair of existing concrete coping, and construction of a new 2 foot high, concrete stem wall atop the bulkhead coping are also proposed. The existing boat dock's 3-inch diameter steel guide piles are proposed to be replaced like for like (same materials, same location). No other work to the existing boat dock is proposed.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to construct a new single family residence on a vacant lot. The subject site is located between Sunset Channel in Huntington Harbour and Pacific Coast Highway in the Sunset Beach area of the City of Huntington Beach. Sunset

Beach is a narrow, low lying area located between the ocean and Huntington Harbour. Sunset Beach is currently vulnerable to flooding during high tides and/or storms. It is expected to become more vulnerable to flooding and other coastal hazards as sea level rises. The main issues raised by the proposed development relate to coastal hazards due to future sea level rise. Staff is recommending special conditions to address this and other issues. The applicant is in agreement with all recommended special conditions.

The subject site is a bulkheaded lot. The proposed project includes repairs to the existing bulkhead, which will occur entirely from the landward side of the site and will not result in any fill of coastal waters. The Commission has allowed continued use of bulkheads in small boat harbors such as Huntington Harbour as well as neighboring Newport Harbor, and other areas when they are necessary to protect “existing” development. Many of these small boat harbors and the related bulkheads were developed well prior to passage of the Coastal Act. This is the case for the Sunset Beach community, which first began to be developed in the early part of the last century. Bulkheads on these small boat harbors, including the bulkhead at this site, protect more than just the development upon the lot where the bulkhead exists. The harbor-fronting bulkheads are maintained individually by property owners, but function as a de facto uniform structure to protect more than just the individual properties. The public infrastructure that would otherwise be threatened by flooding in the absence of these bulkheads includes public streets, municipal water and sewer lines, storm drain systems, and utility connections that typically occur in the public right-of-way. The proposed bulkhead repair is necessary to protect not just the subject site, but also to protect the existing community and public infrastructure of Sunset Beach. Thus, the bulkhead is necessary to protect “existing,” pre-Coastal Act development.

Staff is recommending approval of the proposed development, including repair of the existing bulkhead, with **Special Condition No. 1**, which prohibits future bulkhead work that would result in bayward expansion (fill of coastal waters) of the existing bulkhead footprint.

However, the threat of flooding at the site is not limited to flooding from the harbor immediately adjacent to the site. Flooding on Pacific Coast Highway currently occurs in Sunset Beach. CoSMoS modeling indicates that flooding on Pacific Coast Highway can approach within tens of feet of the subject site under current highest tides and/or storm events. That is expected to worsen with future sea level rise. However, he level of Pacific Coast Highway adjacent to the site is at approximately elevation seven (7) feet NAVD 88. The lowest level of the proposed structure is to be elevated to ten (10) feet NAVD 88. In addition, the lowest level is proposed to be waterproofed. These measures will help to address the flooding impacts in the near term. However, the Coastal Hazard Analysis report prepared for the proposed project indicates that the site and development are expected to be safe from sea level rise coastal hazards until approximately the year 2056, thirty-six years from now. This falls short of the 75 year economic life typically considered with new development. In addition to flooding from Pacific Coast Highway, which originates from other areas of the harbor, future sea level

rise may eventually lead to flooding from the ocean and other coastal hazards over the typically evaluated 75 year life of development.

To address this, staff is recommending **Special Condition No. 2**, which requires that the applicant waive any rights to future shoreline protection. As "new" development, the proposed project is not afforded the shoreline protection that would be afforded to existing development (i.e. development that existed prior to passage of the Coastal Act) under Coastal Act Section 30235. In addition, **Special Condition No. 2** requires that the house be removed if it becomes unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, or other hazards related to coastal processes; or if essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to coastal hazards; or if required by future LCP policies for sea level rise adaptation planning.

Staff is recommending approval of the proposed coastal development permit with **ten (10) special conditions**. The special conditions are recommended to assure consistency with the hazards, public access, habitat protection, and water quality policies of Chapter 3 of the Coastal Act. The special conditions require: 1) no future seaward expansion of bulkhead footprint; 2) waiver of rights to any future shoreline protective device; 3) the applicant's assumption of risk; 4) notice that the coastal development permit is for only the development descripted herein; 5) notice that approval of this permit does not constitute a waiver of any public rights that exist or may exist on the property now or in the future; 6) Pre- and Post-Construction Eelgrass Surveys; 7) Pre-Construction Caulerpa Taxifolia Survey; 8) Conformance with drainage plan as proposed; 9) Implementation of Construction Responsibilities and Debris Removal water quality measures; and 10) recordation of a deed restriction.

Orange County's LCP for Sunset Beach was effectively certified in 1982 and updated in 1992. However, Sunset Beach was annexed into the City of Huntington Beach effective August 2011. This annexation terminated the County's LCP permitting jurisdiction for the area. The Sunset Beach annexation area has not yet been incorporated into the City of Huntington Beach certified LCP. Thus, there is not currently an effective certified LCP for Sunset Beach and, therefore, the Chapter 3 policies of the Coastal Act provide the standard of review for coastal development permits in the area. The previously certified Sunset Beach LCP may be used as guidance where appropriate.

# Table of Contents



Exhibits:

1. Vicinity Map
2. Proposed Project Plans
3. Photo of Boat Dock Guide Piles
4. CoSMoS Maps

# 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 of 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. 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

This permit is granted subject to the following special conditions:

**1. No Future Bayward Expansion of Existing Shoreline Protective Device (Bulkhead)**.

**A.** By acceptance of this Permit, the applicant agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline structure (bulkhead) approved pursuant to Coastal Development Permit No. **5-20-0323**, as described and depicted on approved project plans (Exhibit 2 of this staff report dated December 17, 2020), shall result in any encroachment bayward of the authorized footprint of the shoreline structure. By acceptance of this Permit, the applicant waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.

**B.** By acceptance of this Permit, the applicant agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that no new shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No.**5-20-0323**, as depicted on approved project plans (Exhibit 2 of this staff report dated December 17, 2020), including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to construct such devices that may exist under applicable law.

**2. Waiver of Rights to Future Shoreline Protective Device.**

**A.** By acceptance of this permit, the applicant acknowledges that the development authorized by this permit – including the single-family residence, attached garage, foundations, and patio – constitutes new development under the Coastal Act, and is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act. Thus, by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such shoreline protective devices to protect the development approved pursuant to CDP No. 5-20-0323.

**B.** By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that they are required to remove all or a portion of the development authorized by the permit, and restore the site, if:

(1) 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 damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices;

(2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;

(3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or

(4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

In addition, the development approval does not permit encroachment onto public trust lands, and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval.

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

By acceptance of this permit, the applicant acknowledges and agrees (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 applicant 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.

**4. Future Development.**

Permit Compliance. The permittee shall undertake and maintain the development in conformance with the special conditions of the permit and the final plans. Any proposed changes to the approved plans shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plans shall occur without a Commission approved permit amendment unless the Executive Director determines that no permit amendment is required.

**5. 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 now or in the future. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

**6. Eelgrass Survey(s).**

**A.** Pre-Construction Eelgrass Survey. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed within 60 days before the start of construction. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

**B.** Post-Construction Eelgrass Survey. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within 30 days of completion of construction if completion of construction occurs within the active growth period, or within the first 30 days of the next active growth period following completion of construction that occurs outside of the active growth period, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "California Eelgrass Mitigation Policy" dated October 2014 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted by project construction, the applicant shall replace the impacted eelgrass at a minimum 1.38:1 ratio on-site, or at another appropriate location subject to the approval of the Executive Director, in accordance with the California Eelgrass Mitigation Policy. Any exceptions to the required 1.38:1 mitigation ratio found within CEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is legally required.

**7. Pre-construction Caulerpa Taxifolia Survey**

**A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

**B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.

**C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:

(1) for the review and approval of the Executive Director; and

(2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through California Department of Fish & Wildlife (858/467-4218) National Marine Fisheries Service (562/980-4043).

**D.** If Caulerpa taxifolia is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director, subject to concurrence by the Executive Director, that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with C. taxifolia. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**8. Drainage Plan.**

By acceptance of this permit, the permittee agrees that development of the site shall conform with the drainage plan proposed by the applicant and attached to this staff report as **Exhibits 2h and 2i**, indicating that site drainage will be directed to a catch basin with fossil filter inserts. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

**9. Construction Responsibilities and Debris Removal.** The permittee shall comply with the following construction related requirements:

**A.** No demolition or construction materials, equipment, 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.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;

**C.** 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;

**D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;

**E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;

**F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;

**G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;

**H.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;

**I.** 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;

**J.** 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;

**K.** Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;

**L.** 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;

**M.** The discharge of any hazardous materials into any receiving waters shall be prohibited;

**N.** 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;

**O.** Best Management Practices (BMP's) and Good Housekeeping Practices (GHP's) 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

**P.** All BMP's shall be maintained in a functional condition throughout the duration of construction activity.

**10. 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 landowner(s) 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 AND LOCATION

The applicant proposes to construct a new 2,419 square foot, three-story, 34 foot high, single family residence with a 464 square foot, attached two-car garage and 242 square foot deck at the third story, and a 990 square foot roof deck, on a vacant, harbor-front lot (**Exhibit 2**). The deck railings and the railing atop the bulkhead are proposed to be cable railings.

Proposed repairs to the existing bulkhead include: 1) a new, 14 foot long by 1½ feet wide by 3 feet deep, concrete deadman located 22 feet landward of the existing bulkhead and buried three feet below the surface; 2) four new tie backs connecting the

existing bulkhead to the new deadman; 3) repair of existing concrete coping and construction of a new 2 foot high, concrete stem wall atop the bulkhead (**Exhibit 2**). Top elevation of the concrete stemwall will be +10 feet NAVD 88. The existing boat dock's 3-inch diameter steel guide piles are proposed to be replaced like for like (same materials, same location). No other work to the existing boat dock is proposed.

The subject site is currently vacant. Its last use was as a storage yard for an electric boat rental facility. The boat rental facility extended over the adjacent lots to the west. A rental shop remains on the lots to the west. The shop rents kayaks, stand up paddleboards, and electric boats. The subject site has no certified land use designation or zoning. The City's General Plan designation for the site is Uncertified Residential High Density-Specific Plan Overlay (RH-sp). The City's zoning designation for the property is Uncertified – Sunset Beach Specific Plan – Coastal Zone Overlay. Residential high density zoning at the site was recognized by the Commission in the former LCP for the area, the County's Sunset Beach LCP. Certification of that LCP lapsed when the unincorporated Sunset Beach area was annexed into the City of Huntington Beach in 2011. Since annexation, the permit issuing authority has reverted to the Coastal Commission. The City reviewed the proposed project and issued an Approval in Concept (Initial Plan and Zoning Review No. 20-003) on 8/13/2020.

The subject site, 16750 Pacific Coast Highway, fronts on Sunset Channel in Huntington Harbour. The nearest public access is located approximately one block to the northwest at a small harbor beach suitable for hand launching small watercraft such as kayaks and stand up paddleboards. In addition, public access is available approximately two blocks southwest of the site at the wide public sandy ocean beach known as Sunset Beach.

An existing gangway leading from an existing cantilevered platform, descends to an existing boat dock float within Sunset Channel (**Exhibit 2**). No changes to the cantilevered platform, gangway, or boat dock float are proposed. The three existing, 3-inch diameter, steel boat dock guide piles are proposed to be replaced, like for like in the same location. No increase in fill will occur. The piles are embedded in the bulkhead coping, then extend upward from the coping, then curve away from the bulkhead and then down into the water (**Exhibit 3**). These piles will be replaced in conjunction with the proposed bulkhead repair.

Eelgrass and Caulerpa taxifolia surveys were conducted at the site by Ron Blackledge Marine Services on 1/18/2020. The surveys found that no eelgrass or Caulerpa taxifolia was present in the project vicinity. The only bottom disturbing activities proposed are the like for like replacement of the three, 3-inch diameter boat dock guide piles, for a total of approximately 0.15 square feet in area. The eelgrass and Caulerpa taxifolia surveys are valid for a limited time period. **Special Condition No. 6** requires pre- and post-construction eelgrass, in compliance with NMFS California Eelgrass Mitigation Policy (CEMP, 2014). If these surveys reveal that any eelgrass has been impacted by the proposed project, the special condition identifies measures applicant is required to implement, including preparation of an eelgrass mitigation plan consistent with the requirements of CEMP and as required by **Special Condition No. 6**. **Special**

**Condition No. 7** requires a pre-construction Caulerpa taxifolia survey and outlines procedures to be followed if the required pre-construction Caulerpa taxifolia survey reveals the presence of Caulerpa taxifolia in the project vicinity.

Site drainage will be collected and directed to a catch basin with fossil filters prior to being released from the site and into the City's storm drain system. No drainage from the site will be allowed into the harbor waters. **Special Condition 8** requires the drainage plan to be carried out as proposed. In addition, **Special Condition 9**, identifies water quality measures to be incorporated into the project during construction.

Like the majority of waterfront properties in Huntington Harbour, the project site is a bulkheaded lot. The proposed project includes repair of the existing bulkhead. All of the proposed bulkhead repair work will occur on the land side of the property. No bulkhead work will occur within the harbor waters. No fill of coastal waters will occur from the proposed bulkhead repairs. A Bulkhead Condition Report and a Coastal Hazards Report were prepared for the proposed development. Both were prepared by William Simpson & Associates, dated 9/24/2020. The project's Coastal Hazards Report (William Simpson & Associates, 9/24/2020) includes the following statements:

> "The highest recorded water level for this area is at +7.74' NAVD88 that it is 2.26' below top of slab of the proposed structure and will remain below it approximately until year of 2056 using Medium-High Risk Aversion and High emission. As we well know, majority of the public streets in Sunset Beach area are currently at much lower elevations than the subject site and they will flood due to Sea Level Rise way before the development on this site becomes subject to flooding. For building protection between year 2056 and year 2095 the bulkhead allows to be increased in height by concrete or CMU stem wall to accommodate actual sea level rise without further seaward encroachment."
>
> "Per architectural drawing Sheet 09 and attached preliminary drawings SW-1 and SW-2, there will be a new stem wall on top of coping to accommodate sea level rise. Top of new stem wall is at +10.0' NAVD88."
>
> "Since top of slab elevation of the proposed house will be at +10' NAVD88, it will remain above the high tide approximately until year 2056. Top of new stem wall is also at +10.0' NAVD88. The bulkhead will remain above the high tide approximately until year 2056, considering Medium-High Risk Aversion and High emissions. For the actual sea level rise over the next 75 years, per detail T/SW-2 the bulkhead assembly allows to be increased in height by stem wall to accommodate actual sea level rise that it is 6' without further seaward encroachment."
>
> "Once the existing seawall is repaired and reinforced accordance with the enclosed preliminary drawing SW-0 thru SW-2, need for a new shoreline protective devise is not anticipated for proposed development to protect it from sea level rise until year 2056. After year 2056 if found not adequate for the actual sea level rise, the

bulkhead assembly allows to be increased in height accordance with detail T/SW-2 to accommodate sea level rise without further seaward encroachment."

The applicant's coastal engineering consultant has indicated that the subject site's bulkhead, as proposed to be repaired, is expected to be adequate to protect against future sea level rise until approximately the year 2056 (i.e. for the next 36 years). The applicant's engineering consultant states that the repaired bulkhead can accommodate additional height as needed to address sea level rise beyond the level expected by 2056 without bayward encroachment of the bulkhead footprint.

Development in the Sunset Beach community dates back many decades, well prior to the passage of the Coastal Act. According to a Sunset Beach Walking Tour brochure available on the City of Huntington Beach website,[1] lots in the community first went up for sale in 1904. At that time, the only way to access the area was by the Pacific Electric railway. About 1908, Sunset Drive was deeded to the County and a series of dirt roads were built around the beach areas, but they were impassable by cars. By the 1920s, '30s and '40s the community of Sunset Beach was well established, including homes, restaurants, and roads.

Virtually all development fronting on Huntington Harbour, including residential, commercial, other types of development, and public street ends are protected by bulkheads. The harbor-fronting bulkheads are maintained individually by property owners, but function as a de facto uniform structure to protect more than just the individual properties. The public infrastructure that would otherwise be threatened by flooding includes public streets, the municipal water and sewer lines, storm drain systems, and utility connections that typically occur in the public right-of-way.[2] The proposed bulkhead repair is necessary to protect not just the subject site, but also to protect the existing community and public infrastructure of Sunset Beach. Thus, the existing bulkhead as proposed to be repaired is necessary to protect existing, pre-Coastal development. **Special Condition No. 1** prohibits any expansion of the existing bulkhead's footprint as necessary to prevent fill of coastal waters that may be inconsistent with Section 30233.

However, the site is expected to also become threatened by flooding along Pacific Coast Highway, originating from elsewhere within the harbor and potentially eventually from the ocean. This may trigger a future request for construction of a new shoreline protective device (other than the existing bulkhead), due to coastal hazards associated with future sea level rise. Any such future protective device would protect only the proposed development, which will be entirely new and so cannot be considered "existing" development. If it is known that the new development requires shoreline protection, it would be unlikely that such development could be found to be consistent

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[1] https://www.huntingtonbeachca.gov/files/users/planning/Historical-Sunset-Beach-Walking-Tour.pdf

[2] The Commission has approved similar bulkhead repair projects in small boat harbors that protect the larger community in addition to the project site (i.e. 5-19-0886 (Panic); 5-19-1513 (JL Oceanfront, LLC); 5-19-0024 (Argent)).

with Section 30253 of the Coastal Act which requires that new development "not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. **Special Condition No. 2** requires the applicant to waive any rights to a new shoreline protective device to protect the proposed new development. This is discussed in further detail in the following section.

## B. HAZARDS

Coastal Act Section 30253 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.

Due to its low-lying location between the oceanfront and the harbor, 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. In this geographic area, the main concerns raised by development are potential exposure of the proposed development to coastal flood and/or erosion hazards and whether future hazardous conditions (including the possibility of flooding from either the beach or harbor) might eventually lead to a request to build a new shoreline protective device to protect the proposed development. Flooding from the harbor side in the area may actually occur earlier than beach flooding and erosion from the ocean. This inland flooding could impact roadways and other infrastructure, limiting access to the residences and damaging necessary public services. Although development currently exists between the subject site and the ocean, sea level rise models suggest the site will likely become at risk prior to the expected 75-year life of the proposed residence. To address questions raised by these issues, the applicant's coastal engineer provided a Coastal Hazards Analysis Report (William Simpson & Associates, Inc., September 24, 2020).

The Sunset Beach community has historically experienced flooding and damage from storm waves, and areas adjacent to the harbor, typically beginning with the roads, can flood now during high tides, or high tides combined with storms. In response to these recurring flood problems, the community has developed several programs to minimize beach loss and flood risk. The U.S. Army Corps of Engineers (USACE), in conjunction with the city and county, undertakes a periodic beach replenishment program that has been ongoing for more than 50 years. Formerly the County and currently the City of Huntington Beach also constructs a seasonal berm across the beach each winter for protection from storm waves. Both of these programs enhance the beach areas and reduce flooding, but such efforts happen only with a sustained financial commitment

from the different funding agencies. Without ongoing interventions, much of the lower lying areas of Huntington Beach, including Sunset Beach, would likely be at increased risk from flooding, and shoreline areas would be at risk from erosion. With rising sea level, these risks are likely to increase unless the interventions become larger or more frequent to keep up with the future hazards.

**Sea Level Rise**

Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years.[3] Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, the best available science demonstrates that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In April 2017, a working group of the Ocean Protection Council's (OPC) Science Advisory Team released Rising Seas in California: An Update on Sea-Level Rise Science.[4] This report synthesizes recent evolving research on sea level rise science, notably including a discussion of probabilistic sea level rise projections as well as the potential for rapid ice loss leading to extreme sea level rise. This science synthesis was integrated into the OPC's State of California Sea-Level Rise Guidance 2018 Update.[5] This Guidance document provides high-level, statewide recommendations for state agencies and other stakeholders to follow when analyzing sea level rise. Notably, it provides a set of projections that OPC recommends using when assessing potential sea level rise vulnerabilities for various projects. Taken together, the Rising Seas science report and updated State Guidance account for the current best available science on sea level rise for the State of California. The updated probabilistic projections in the 2017 Rising Seas report and the 2018 OPC Guidance suggest sea levels could rise between 2.1 and 6.7 feet by 2100 at the Los Angeles tide gauge,[6] depending on future greenhouse gas emissions. The OPC Guidance recommends that development of only moderate adaptive capacity, including residential

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[3] http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf

[4] Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). Rising Seas in California: An Update on Sea-Level Rise Science. California Ocean Science Trust, April 2017.

[5] OPC State of California Sea-Level Rise Guidance, 2018 Update: http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf

[6] The OPC Guidance provides sea level rise projections for 12 California tide gauges, and recommends using the projections from the tide gauge closest to the project site. The projections for the LA tide gauge can be found on page 72 of the OPC Guidance.

development, use the high end of this range, 6.7 feet, to inform decisions regarding development. The updated Rising Seas science report and OPC Guidance also include an extreme scenario (termed the "H++" scenario) of 9.9 feet of sea level rise by 2100 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss. These projections and recommendations are incorporated into the 2018 update of the Coastal Commission Sea Level Rise Policy Guidance.[7]

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 2018 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.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, which will result in increased flooding, erosion, and storm impacts to coastal areas. On a relatively flat beach, with a slope of 40:1, a simple geometric model of the coast indicated that every centimeter of sea level rise will result in a 40 cm landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a seawall, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than is inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently. Accompanying this rise in sea level will be an increase in wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

Rising sea levels are exacerbating and will continue to intensify hazards along the shoreline, including inundation, storm flooding, erosion, saltwater intrusion into aquifers, groundwater rise, and liquefaction. Some shoreline development will experience increasingly hazardous conditions over time; therefore, to ensure safety and structural integrity consistent with Section 30253 of the Coastal Act, development must be sited

[7] https://www.coastal.ca.gov/climate/slrguidance.html

and designed in such a way that takes into account the anticipated impacts of sea level rise over the full time span of its economic life. Changing conditions could also alter the anticipated impacts of the development upon coastal resources. In particular, coastal resources such as beaches and wetlands that are located just inland of the sea could disappear if they are squeezed between rising sea levels and a fixed line of development on the shoreline, thus impacting public access, recreation, visual, and other coastal resources. Therefore, to be consistent with the Chapter 3 policies of the Coastal Act, proposed development must be sited, designed, and conditioned in such a way that considers the impact of the development upon coastal resources over its full economic life, avoiding and mitigating those impacts as appropriate.

**Adverse Coastal Impacts Due to Shoreline Protective Devices**

The Coastal Act discourages shoreline protective devices because they generally cause significant impacts on coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. This is expected to be exacerbated with future sea level rise. Adverse impacts associated with shoreline protective 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 protective 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 protective devices cause visual impacts and can detract from a natural beach experience, adversely impacting public views; and, shoreline protective devices can lead to loss of ecosystem services, loss of habitat, and reduction in biodiversity compared to natural beaches.[8] All of these impacts are likely to occur as a result of a shoreline protective device being constructed at this beach (Sunset Beach, which is about 400 feet west of the subject site). Although the subject site is not a beachfront site, with expected sea level rise and related erosion and flooding, the area between the subject site and ocean waters is expected to narrow with time. Likewise, flooding originating from the harbor reaches to within a few tens of feet from the site along Pacific Coast Highway under current conditions and is expected to approach the subject site more and more in the future (**Exhibit 4**). Together, these risks raise the question of potential impacts to the subject site due to these coastal hazards, which in turn raises the question of a possible request for future shoreline protection at the site.

Shoreline protective devices, by their very nature, tend to conflict with various statewide LCPs and Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Because shoreline protective devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal

[8] Summarized from http://www.beachapedia.org/Seawalls

processes, Coastal Act Section 30253 specifically prohibits development that could "…create [or] 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."[9]

In order to avoid the adverse impacts of shoreline protective devices, it is important to assure that new development (such as the proposed construction of a new structure on a vacant lot) not be permitted shoreline protection to the extent such shoreline protection would be inconsistent with Coastal Act Chapter 3 policies. A bulkhead has been present and exists now along Sunset Channel at the site. That bulkhead pre-dates passage of the Coastal Act and protects existing development, as described earlier. However, future sea level rise is expected to eventually threaten the site from the Pacific Coast Highway side of the site. The existing, pre-Coastal bulkhead would not provide protection from flooding and other coastal hazards from this side of the site. (**Exhibit 4**).

**Public Costs/Loss of Public Beach/Impacts to Public Trust Lands**
Requests for shoreline protective devices are common when development is threatened by erosion, flooding, and storm activity. From a public access perspective, a major concern with shoreline protection is the threat of lost public beach area. As the beach erodes, the shoreline retreats landward toward developed areas. Shoreline protective devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the boundary between public and private lands. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of shoreline protection such as rock revetments and seawalls to protect private property would prevent any current or future migration of the shoreline landward, thus eliminating the distance between the high water mark and low water mark. As the distance between the high water mark and low water mark narrows or disappears, the seawall effectively eliminates lateral access opportunities along the beach as the entire area below the fixed high tideline becomes inundated. The ultimate result of a fixed tideline boundary (which would otherwise normally migrate and retreat landward, while maintaining a passable distance between the high water mark and low water mark overtime) is a reduction or elimination of the area of sandy beach available for public access and recreation.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's ability to access the beach. First, changes in the shoreline profile, particularly changes in the slope of the profile which

[9] However, section 30235 of the Coastal Act recognizes that "existing" development may be protected by a shoreline protective device subject to certain conditions. Section 30235 does not apply here because the proposed project is plainly new development.

results from a reduced beach berm width, alter the usable beach area. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This narrows the beach area available for public access. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the nearshore sand bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This affects public access again through a loss of beach area. Third, shoreline protective devices such as revetments, seawalls, and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the beach would also accrete at a slower rate, if at all. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate wave energy. Moreover, even when shoreline protection is not present, the placement of structures along an eroding shoreline can impact beach areas and public trust lands. As the shoreline migrates inland, structures may become located on beach areas and/or public trust lands, occupying land that would otherwise be available for public access, ecosystem services and other coastal resource benefits. In this case, the subject site is not currently located adjacent to the public sandy beach. But with sea level rise the location of the beach may well move inland, towards the subject site. Even though development is currently present between the site and the beach, that may not be the case in the future.

Coastal hazards and shoreline protective devices also raise public trust concerns. The common law public trust doctrine protects the public's right to access tidelands, submerged lands, and navigable waters, which the State holds in trust for the public's use and enjoyment. This doctrine is enshrined in California's Constitution, which provides in Article X, section 4, that no individual may "exclude the right of way" to any "frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State." Cal. Const. Art. X, Sec. 4. The Constitution further directs the Legislature to enact laws that give the most "liberal construction" to Article X, section 4, so that access to navigable waters of the State "shall be always attainable for the people."

As discussed above, future sea level rise will cause the landward migration of the intersection of the ocean with the shore and, thus, the tidelands and submerged lands that are public trust resources. To the extent that shoreline protective devices contribute to erosion and blockage of the natural inland migration of the beach and shoreline, and thus result in the loss of natural beaches that allow the public to access tidelands and submerged lands, their construction is also inconsistent with the State's obligation to protect the public's right to access these areas. Knowing, as we do, that our understanding of how fast and how severe sea level rise will occur, and the precise impacts on particular coastal areas, is an evolving area of scientific inquiry, the Coastal

Commission must act conservatively to manage public trust resources in a way that will protect them for future generations. For this additional reason, the Coastal Commission is unlikely to approve proposals for new development that require shoreline protective devices, as their construction threatens public trust resources managed by the Coastal Commission.

Moreover, private residential uses are not public trust uses and the existence of private residential uses, such as the proposed project, on future public trust lands likely would conflict with the public's right to use and enjoy such lands. In addition, private development on public beaches creates conflicts with the public access and recreation policies of the Coastal Act. Thus, the Commission's action on this project must consider the effects on loss of public beach, public trust lands, natural shoreline processes, loss of ecosystem services, and public access under current conditions, and under future conditions, when it is likely that the sandy beach shoreline currently located about 400 feet oceanward of the subject site may erode and move inland, even up to or past the subject site, and/or that flooding from the harbor may result in inundation of the subject site. Rather than contemplate new shoreline protective devices to protect new development in the future, current development proposals must consider adaptation measures that could be implemented should development become threatened.

**Site-Specific Evaluation**
In order to evaluate whether the proposed development would be consistent with Coastal Act Section 30253's requirement to minimize hazards, the applicant has submitted a Coastal Hazards Analysis Report, prepared by William Simpson & Associates, Inc., dated September 24, 2020 (Study). The Study states:

> Based on the highest high tide of +7.74' NAVD88, the above established Sea-Level Rise will account for water level of +13.74' NAVD88 for Medium-High Risk Aversion and High emissions. For Medium-High Risk Aversion and Low emissions the water level would be +12.69' NAVD88.

The Study considers impacts to the site due to sea level rise of 6 feet and finds the likely sea level at the site under the Commission's recommended scenario of 6 feet will likely be between +12.69 feet and +13.74 feet NAVD 88. The top elevation of the finished slab will be +10 feet NAVD 88. The Study finds that the proposed development will likely be safe from future sea level rise "until year of 2056 using Medium-High Risk Aversion and High emission." Thus, applying the best available science standard, the proposed development may become threatened prior to its expected 75 year life. In addition, the updated Rising Seas science report and OPC Guidance also recognize the possibility of an extreme scenario (termed the "H++" scenario) of 9.9 feet of sea level rise by 2100 associated with possible future rapid ice sheet loss.

As proposed the finished slab elevation of +10 feet NAVD 88 represents two feet above the base flood elevation, as is required by the City of Huntington Beach. The neighboring City of Newport Beach recently certified LCP requires development to be elevated to +9 feet NAVD 88. In addition to the elevated slab level, the first floor level of

the proposed structure is proposed to be waterproofed. These measures will assist in avoiding flood impacts to some extent. But the site is still expected to be threatened by sea level rise impacts including flooding and storm hazard prior to the end of its expected 75 year life.

If the site is threatened by coastal hazards due to expected future sea level rise, then impacts will likely have also occurred to Pacific Coast Highway, where the subject site is located, and the surrounding streets. This will disrupt access to essential services such as access to public roads and the ability to be served by public utilities and infrastructure. The Study acknowledges that by 2100, much of Sunset Beach may be inundated, affecting all of the properties on Pacific Coast Highway. Moreover, the flooding that may be likely at the site with future sea level rise may mean the subject site is no longer located on private property due to the migration of the public trust boundary.

The applicant has indicated acceptance of all recommended special conditions including **Special Condition No. 2** which states that the applicant has no right to a new shoreline protective device for the proposed development and that development must be removed if threatened, and **Special Condition No. 3** which identifies the hazards associated with the site and requires that the applicant acknowledge and assume the risks of development.

Because the best available science indicates the proposed development will be threatened by coastal hazards as a result of sea level rise at some point during its 75 year life, under section 30253, the Commission may not approve the project unless it finds: 1) the project does not create or significantly contribute to erosion, geological instability, or destruction of the site or surrounding area (section 30253(b)), 2) the project assures stability and structural integrity (section 30253(b)), and 3) the project minimizes “risks to life and property” in areas of high flood hazard (section 30253(a)).

**No Shoreline Protection**

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 new shoreline protective device and no new shoreline protection would be authorized by this permit; however, nothing would prevent the applicant from requesting a new shoreline protective 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’s prohibition on creating or significantly contributing to erosion and destruction of the site, it must be clear that, as new development, the development approved by this permit is not entitled to a new shoreline protective device now or in the future. Therefore, **Special Condition 2** is imposed to require the applicant to acknowledge that, as new development, the applicant has no right to a new shoreline protective device for the

project and, in fact, no new future shoreline protective device will be constructed on site to protect the proposed development.

**Removal If Development Is Threatened**

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 new 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 is unlikely to be for many years, 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 house may become unstable at some point, posing risks to property and even life, and a new shoreline protective device would not be an option for protecting the structure from coastal hazards. If, however, the proposed development (i.e., the new single family residence) were to be removed if it became threatened, the proposed development can be found to be consistent with the Coastal Act hazards policies, because the structurally unsound or unsafe development would be removed, minimizing risks to property and life.

Therefore, the Commission imposes **Special Condition 2**, which requires the landowner to remove the development (consisting of a single family residence, garage, foundations, and any future 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 new shoreline protective devices. **Special Condition 2** 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. All or a portion of the development authorized by this permit shall also be removed if essential services to the site can no longer feasibly be maintained due to coastal hazards, if removal is required pursuant to LCP policies for sea level rise adaptation planning, or if the development requires new shoreline protective devices that conflict with relevant LCP or Coastal Act policies. In addition, the public trust boundary may migrate landward in response to rising sea levels.[10] If the public trust boundary does migrate such that it encompasses

[10] The Public Trust boundary separates tidelands, submerged lands, and navigable waterways protected for public use from privately owned lands. For more information on public trust lands, visit https://www.slc.ca.gov/public-engagement/.

the development approved under CDP No. 5-20-0323, the development would need to be removed pursuant to **Special Condition 2**. 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 36 years, but ensuring that the future risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of new development, and not the public.

**Assumption of Risk**
The Commission also finds that due to the possibility of storm waves, surges, flooding, erosion and other coastal hazards, the applicant 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 applicant to waive any claim of liability against the Commission for damage to life or property which 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 3**, will show that the applicant is aware of and understands 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 applicant.

**Hazards Conclusion**
The proposed development, as conditioned, can be found to be consistent with Section 30253 of the Coastal Act, which requires that risks to life and property be minimized, that stability and structural integrity are assured, and that proposed development neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. Approval of the project, as conditioned, also is consistent with the Commission's obligation to manage and protect public trust resources.

## B. PUBLIC ACCESS

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

## C. RECREATION

The proposed development, as conditioned, does not interfere with public recreational use of coastal resources. The proposed development, as conditioned, protects coastal areas suited for recreational activities. Therefore, the Commission finds that the proposed development, as conditioned, is in conformity with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

## D. WATER QUALITY

The proposed development will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. The applicant is proposing measures to address these water quality concerns, including directing site drainage to fossil filters prior to being released from the site into the City's storm drain system. **Special Condition 5** requires the project to conform to the site drainage plan as proposed. (**Exhibit 2**). In addition, to reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition No. 8** requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act**.**

## E. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit must 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. Orange County's LCP for Sunset Beach was effectively certified in 1982 and updated in 1992. However, Sunset Beach was annexed into the City of Huntington Beach effective August 2011. This annexation terminated the County's LCP permitting jurisdiction for the area. The Sunset Beach annexation area has not yet been incorporated into the City of Huntington Beach certified LCP. Thus, there is not currently an effective certified LCP for Sunset Beach and, therefore, the Chapter 3 policies of the Coastal Act provide the standard of review for coastal development permits in the area. The previously certified Sunset Beach LCP may be used as guidance where appropriate. As conditioned, the proposed development is consistent with the Chapter 3 policies of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

## F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned 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 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 City of Huntington Beach is the lead agency responsible for CEQA review. As determined by the City, this project is categorically exempt from CEQA per Section 15303 exemption. As conditioned, there are no additional feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified possible impacts, is consistent with CEQA and the policies of the Coastal Act.

## APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Coastal Development Permit Application No. 5-20-0323 and associated file documents.

City of Huntington Beach, Approval in Concept (Initial Plan and Zoning Review No. 20-003), 8/13/2020

Bulkhead Condition Report, William Simpson & Associates, 9/24/2020.

Coastal Hazards Analysis Report, William Simpson & Associates, 9/24/2020.

Eelgrass and Caulerpa taxifolia Surveys, Ron Blackledge Marine Services, 1/18/2020.