

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E Ocean Blvd., Suite 300
Long Beach, CA 90802-4302
(562) 590-5071



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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-20-0469

Applicant: David Biehler

Agent: Louie Hernandez

Location: 133 and 135 13th Street, City of Seal Beach, Orange County (APN: 199-076-55.0101 and 199-076-56.0101)

Project Description: Demolish an existing duplex with a 1,004 sq. ft unit and a 765 sq. ft. unit, and a 330 sq. ft. unpermitted unit, 596 sq. ft. garage, and 567 sq. ft. unpermitted detached carport, all located on two adjacent inland lots; and construct two new two-story, 25-ft. high, 2,850 sq. ft. single-family residences with a roof deck and an attached 416 sq. ft. garage (one home and garage on each lot).

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the demolition of an existing duplex and an unpermitted unit on two inland lots and the construction of one new single-family residence on each lot in the City of Seal Beach, Orange County.

Commission staff is recommending **approval** with **seven special conditions** to ensure consistency with the development, hazards, biological resources, water quality, public access and recreation policies of the Coastal Act.

The proposed project involves the demolition of three units, one of which is unpermitted, over two project lots. The three units will be replaced with one single-family residence on each lot for a total of two single family residences. The project site is designated as Residential High Density (RHD-20) in the City of Seal Beach Zoning Code, which allows maximum development of one unit per 2,178 sq. ft. Each lot is 2,700 sq. ft., which allows only one unit on each property based on a strict reading of the City's Zoning Code. Thus, the existing three units spanning the two lots are non-conforming with the City's Zoning Code.

While the project was approved by the City after the implementation of the Housing Crisis Act of 2019 (SB 330), the project including the removal of the unpermitted housing unit has been legally authorized by the City. Coastal Act Section 30250(a) provides that new residential development shall be located within existing developed areas able to accommodate it and the Commission has, in previous actions, generally required new development in existing developed areas to maintain housing density. However, in some cases where development was proposed on small lots or in hazardous areas, the Commission has authorized new development in existing developed areas that reduces density. In this case, two legally non-conforming units and one unpermitted unit would be demolished, and two new units would be constructed. Since the project is proposed on small lots and in a hazardous area, and the applicant recognizes the coastal hazards and assumes the risks of developing here, the Commission may authorize a reduction in housing consistent with Coastal Act Section 30250. Regardless, the applicant, the City of Seal Beach, and Commission staff do not acknowledge the loss of a unit due to the nature of the unpermitted unit.

The City has indicated that a Certificate of Compliance (COC) is needed to clarify the legality of the two lots. This is due to the existing development located at the rear of the lots crossing the interior property line shared by the two lots. The City has indicated that once demolition of this development has occurred, the legality of the lots can be confirmed, and the City will issue a COC. Thus, staff recommends that the Commission approve this CDP, but impose **Special Condition No. 1**, which requires the applicant to complete the COC process and provide evidence to the Executive Director of the lots' legality before the construction of the new residences can begin.

As described in more detail in the staff report, violations of the Coastal Act have occurred on the project site, including but not limited to the addition of a third unit, without benefit of a necessary coastal development permit.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the violations described above.

While the proposed project is located on two inland lots, it is still located within an area where coastal hazards exist and could adversely impact the development. According to CoSMoS sea level rise models, the project site is susceptible to flooding if 3.3 ft. of sea level rise occurs and no storm scenario, which may occur before the anticipated end of the structure's 75 year expected life. No shoreline protective device is proposed to protect the development pursuant to this permit. However, given that the applicant is proposing to construct new residences in a hazardous location, staff recommends the Commission impose **Special Condition No. 2**, requiring the applicant to agree that no future shoreline protective device may be relied on 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, the threatened development must be removed rather than protected in place. Staff also recommends the Commission impose **Special Condition No. 3**, requiring the applicant 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. Thus, staff also recommends that the Commission impose **Special Condition No. 4**, which requires the applicant obtain a permit amendment or new permit for any future improvements to the residence, garage, decks, or foundations.

During and post-construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, staff recommends the Commission impose **Special Condition No. 5** which provides standards for the safe storage of construction materials and the safe disposal of construction debris. Staff also recommends the Commission impose **Special Condition No. 6**, which requires that all vegetated landscaped areas only consist of native plants or non-native drought tolerant plants that are non-invasive.

To ensure that any prospective future owner(s) of the properties are made aware of the applicability of the conditions of this permit, staff recommends the Commission impose **Special Condition No. 7** which requires the property owner to record deed restrictions against the properties, 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 conforms 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 6**. The special conditions begin on **Page 7**.

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

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I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-20-0469 pursuant to the staff recommendation.

Staff recommends a **YES** vote. 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 owner and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE NEW SINGLE FAMILY RESIDENCES,** the permittee shall provide to the Executive Director a copy of the recorded Certificate of Compliance issued by the City of Seal Beach regarding the legality of both lots, and documentation supporting its issuance, for the Executive Director's review and approval. The permittee shall inform the Executive Director of any changes to the project required by the City of Seal Beach. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director issues a written determination that no amendment is legally required.
2. **Waiver of Rights to Future Shoreline Protective Device.**
 - A. By acceptance of this permit, the applicant/landowner agrees, on behalf of himself and any successors and assigns, that no new shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-20-0469 including, but not limited to, the residences, garages, balconies, patios, roof decks, foundations and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant/landowner hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
 - B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and any successors and assigns, that the landowner is required to remove the development authorized by the permit, including, but not limited to, the residences, garages, balconies, patios, roof decks, foundations and any other future improvements, if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices.
 - C. In the event that portions of the development fall to the beach or are submerged before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site and relocated

any salvageable portions of the development inland. Such removal shall require a coastal development permit.

- 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 including but not limited to 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; (v) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, the structure may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) 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, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.
- 4. Future Development.** This permit is only for the development described in CDP No. 5-20-0469. Pursuant to Title 14 of the California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by CDP No. 5-20-0469. Accordingly, any future improvements to the residences, garages, balconies, patios, roof decks, 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. 5-20-0469 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.
- 5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee 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 applicant 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 stormdrain, unless specifically authorized by the California Regional Water Quality Control Board.
6. **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>).
7. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) has/have executed and recorded against the parcels governed by this permit deed restrictions, 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 properties, subject to terms and conditions that restrict the use and enjoyment of those properties; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Properties. The deed restrictions recorded against title to each property shall include a legal description of that entire parcel. The deed restrictions shall also indicate that, in the event of an extinguishment or termination of either or both of the deed restrictions for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject properties so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Location, Description and Standard of Review

Project Location and Description

The project site is two adjacent lots located at 133 and 135 13th Street, Seal Beach, Orange County ([Exhibits 1 and 2](#)). The two lots, Lot 33 and Lot 35, each 2,938 sq. ft. (25 ft. wide x 117.50 ft. long) in size, are a combined 5,875 sq. ft. The City of Seal Beach, which does not have a certified LCP, designates the project site as Residential High Density (RHD-20) in its Zoning Code with a maximum development of 25 dwelling units/acre, or one unit per 2,178 sq. ft. The Zoning Code is not certified by the Commission. The project site is located on the seaward side of Pacific Coast Highway in a residential neighborhood in the Old Town area of Seal Beach. The predominant character of the surrounding area is one or two-story residential structures with parking accessed from rear alleyways. The project site is not located between the first public road and the sea and is approximately 730 ft. southwest of the public beach at the terminus of 13th Street.

The applicant proposes to demolish an existing duplex with a 1,004 sq. ft unit and a 765 sq. ft. unit, and a 330 sq. ft. unpermitted unit, 596 sq. ft. garage, and 567 sq. ft. unpermitted detached carport, all located over two lots. Once that development is removed, one new two-story, 25-ft. high, 2,850 sq. ft. single-family residence with a roof deck and an attached 416 sq. ft. garage will be constructed on each lot ([Exhibits 2-4](#)). Grading will consist of 45 cubic yards of fill to provide a flat pad for the buildings. The foundation system for both buildings will consist of footings and a concrete mat slab. On-site drainage will be directed to permeable devices, infiltration pits, before entering the main storm drain system. No landscaping is proposed.

The proposed residences are of similar mass and scale as the surrounding development and will not be out of character with the area. There are no public coastal views within the vicinity of the project site, so the project will not adversely impact coastal views.

The property is located within one of the most environmentally vulnerable parts of Seal Beach, extending from the San Gabriel River, roughly south of Pacific Coast Highway and south of Electric Avenue, to Anaheim Bay. This portion of Seal Beach is projected to have the highest vulnerability in the city to multiple coastal hazards due to hydraulic connections to inland inundation and flooding from both the San Gabriel River, Anaheim Bay, Seal Beach National Wildlife Refuge, and storm flooding. The subject properties are located in a highly vulnerable portion of a highly vulnerable region, approximately $\frac{3}{4}$ mile from the Seal Beach National Wildlife Sanctuary, approximately 1,500 ft. inland from the western edge of Anaheim Bay, less than one mile northwest of the San Gabriel River and approximately 730 ft. southwest of the public sandy beach.

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. Development

Section 30250 of the Coastal Act states, in pertinent part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30250 of the Coastal Act requires new development to be sited as close as possible to existing developed areas, where it can be accommodated without adverse impacts to coastal resources.

The proposed project will demolish three units, one of which is unpermitted, on the project site, and replace them with one single-family residence on each of the two lots. This will result in a loss of one housing unit. Besides one of the units being unpermitted, the existing triplex does not comply with zoning regulations regarding lot size. The City of Seal Beach, which does not have a certified LCP, designates each of the lots as Residential High Density (RHD-20) in its Zoning Code with a maximum development of 25 dwelling units/acre, or one unit per 2,178 sq. ft. Each lot has a lot size of 2,700 sq. ft., which allows one unit on the property based on a strict reading of the City's Zoning Code. Thus, the existing three units spanning these two lots are non-conforming with the City's Zoning Code. However, the applicant is proposing to demolish the three units and construct a single-family residence on each of the two lots, which will be consistent with the City's Zoning Code and will also maintain two permitted units.

While the project was approved by the City after the implementation of the Housing Crisis Act of 2019 (SB 330), the project including the removal of the unpermitted housing unit has been legally authorized by the City. Coastal Act Section 30250(a) provides that new residential development shall be located within existing developed areas able to accommodate it and the Commission has, in previous actions, generally required new development in existing developed areas to maintain housing density.

However, in some cases where development was proposed on small lots or in hazardous areas, the Commission has authorized new development in existing developed areas that reduces density. In this case, two legally non-conforming units and one unpermitted unit would be demolished, and two new units would be constructed. Since the project is proposed on small lots and in a hazardous area, and the applicant recognizes the coastal hazards and assumes the risks of developing here, the Commission may authorize a reduction in housing consistent with Coastal Act Section 30250. Regardless, the applicant, the City of Seal Beach, and Commission staff do not acknowledge the loss of a unit due to the nature of the unpermitted unit.

The City has indicated that a Certificate of Compliance is needed to clarify legality of the two lots since the rear garage with the unpermitted unit located above it crosses the inland property line shared by the two lots. Furthermore, the City has indicated that once this development has been demolished, the legality of the lots can be confirmed, and a Certificate of Compliance can be issued. The applicant has yet to obtain this Certificate of Compliance from the City. Thus, the Commission imposes **Special Condition No. 1**, which requires the applicant to complete the COC process and provide evidence to the Executive Director before construction of the new residences can begin.

The proposed development, as conditioned, is consistent with Section 30250 of the Coastal Act pertaining to new development.

C. 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 proposed project is sited in a low-lying area that is inherently vulnerable to flooding. Thus, potential hazards issues that must be addressed include the potential for flooding and storm hazards. These hazards may be exacerbated by the sea level rise that is expected to occur over the coming decades.

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. Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, there is unequivocal evidence 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. On November 7, 2018, the Commission adopted a science update to its Sea level Rise Policy Guidance. This document provides interpretive guidelines to ensure that projects are designed and built in a way that minimizes sea level rise risks to the development and avoids related impacts to coastal resources, consistent with Coastal Act Section 30253. These guidelines state, “to comply with Coastal Act Section 30253 or the equivalent LCP section, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development.” The most recent projections in the statewide sea level rise guidance indicate that sea levels in this area may rise between 3.2 ft. and 6.7 ft. by the year 2100, though there is a risk of more significant sea level rise depending on various uncertainties, including the dynamics of ice sheet loss. The projection is given in a range largely because researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea level rise are tracking along the higher projections) as well as the inherent uncertainty regarding the exact rate of future sea level rise, the Ocean Protection Council and the Natural Resources Agency have continued to recommend that we avoid relying on the lower projections in planning and decision-making processes.

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

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 in many locations, which will result in increased flooding, erosion, and storm impacts to coastal areas. 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.

Although the project site is not located within the first line of development adjacent to the ocean, the site is within a large, low-lying coastal area that is particularly vulnerable to flooding from both the ocean and the bay. This vulnerability is further exacerbated with sea level rise and increased storm surge activity.

The Coastal Commission, in line with statewide guidance, generally advocates for a precautionary approach to sea level rise adaptation planning, which stems from the overall importance of keeping development safe from coastal hazards and protecting coastal resources, consistent with the Coastal Act. It also derives from the fact that the costs and consequences associated with inadvertently underestimating SLR hazards could be quite high. As explained in the State of California Sea Level Rise Guidance written by the Ocean Protection Council (OPC), the “risk aversion scenario” is a principle of SLR risk analysis that is used to account for variable risk tolerance for different types of development by establishing SLR probability thresholds for varying degrees of risk aversion. For example, a critical infrastructure asset, such as a hospital, should be analyzed with high risk aversion, and would use a more precautionary range of probabilities of amounts of SLR, while a parking lot or a bike path could be analyzed with lower risk aversion. In this case, the risk aversion scenario recommended by both the Commission and OPC Guidance for residential projects is “medium-high,” as it represents a scenario that is relatively high within the range of possible future SLR scenarios and is therefore appropriately precautionary. In other words, the statewide SLR guidance recommends use of the relatively high projection of SLR associated with the medium-high risk aversion scenario, even though it has a lower probability (1-in-200 chance), because of the high consequences to precious coastal resources, valuable development, and life and safety that would occur if SLR were underestimated, and the recognition that many of these impacts cannot be undone once they have occurred.

According to CoSMoS sea level rise models, the project site is susceptible to flooding if 3.3 ft. of sea level rise occurs and no storm scenario, which may occur before the anticipated end of the structure’s 75 year expected life ([Exhibit 5](#)). Using CoSMoS sea level rise models and imposing a 100-year storm scenario, the project site is even more vulnerable to flooding, at a lower amount of sea level rise of 2.5 ft. Given the project site’s location within a potentially hazardous area, the applicant prepared a coastal hazards study (Sea Level Rise Hazard Discussion for 133 and 135 13th Street, Seal Beach, Orange County, California prepared by Geosoils, Inc. dated June 16, 2019) to analyze potential risks to the project site resulting from coastal flooding and other hazards (including wave uprush and coastal erosion). The applicant’s study states that the proposed residence would be relatively safe from hazards for the expected 75-year

lifespan of the development despite the flood risk present at the project site. It also states that the lowest finished floor elevation of +11.58 ft. NAVD88 is 1 ft. above the highest adjacent street elevation.

While the applicant's study has attempted to explain that the proposed residence would be safe from coastal flooding risks, it relied on the City's existing flood control system (levees) and discussed the possibility of increasing the height of the levees as an adaptation measure in the future. However as shown through CoSMoS, the project site would still be susceptible to flooding if 3.3 ft. of sea level rise occurs even with these levees in place, because flooding may come from the bay which is not bound by levees, and may seep up through the stormdrain system as already occurs during king tides. So while the project is located inland of the first line of residences and the nearby San Gabriel River, Anaheim Bay and Seal Beach National Wildlife Sanctuary and is not expected to be subject to wave action, flooding may still occur during the lifetime of the development and affect the residences and surrounding streets and utilities.

Because the site-specific hazards study provided by the applicant's 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 the Commission'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 these inland lots are borne by the applicant, not the public at large.

Section 30253 prohibits new development that would require construction of a protective device that would substantially alter natural landforms along bluffs or cliffs. Here, the applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the applicant or a successor-in-interest could request a shoreline protection device at some point in the future. Although the project site is not a beachfront site, with expected sea level rise and flooding, the area between the project site and ocean waters is expected to narrow with time. Likewise, flooding from the San Gabriel River, Anaheim Bay and Seal Beach National Wildlife Sanctuary harbor is expected to approach the project site in the future, which in turn raises the question of a possible request for future shoreline protection at the site. Therefore, it must be clear that, as new development, the entire development approved by this permit is not entitled to a shoreline protection device now or in the future. **Special Condition No. 2** is imposed to require the applicant to acknowledge that the applicant has no right to a shoreline protective device for the project and that no future shoreline protective device will be allowed on site to protect the proposed development.

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. 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. Therefore, **Special Condition No. 2** requires that if any part of the proposed development becomes threatened by coastal hazards in the future, 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 safe for the life of the development, 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.

The Commission also finds that due to the possibility of flooding and other coastal hazards, if the applicant chooses to build in this location despite those risks, they should assume the risks of development in a hazardous area as a condition of project 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 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. 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.

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. 4**, which states that any future improvements to the residences, garages, balconies, patios, roof 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 13250(b)(6) 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 (or future certified LCP) by the appropriate regulatory body.

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 new development neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or

surrounding area. Approval of the project, as conditioned, also is consistent with the Commission's obligation to manage and protect public trust resources.

D. 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.

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 could result in adverse impacts upon the marine environment that could reduce the water quality and 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 to water quality and biological productivity and to be consistent with Sections 30230, 30231 and 30232 of the Coastal Act, conditions must be imposed. Thus, the Commission imposes **Special Condition No. 5**, 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. 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 Sections 30230, 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 as required by Sections 30230, 30231 and 30232 of the Coastal Act. 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 address these post-construction water quality impacts and to be consistent with Sections 30230, 30231 and 30232 of the Coastal Act, the applicant has submitted a drainage and runoff control plan that minimizes impacts to water quality the proposed project may have after construction. On-site runoff will be directed to infiltration pits, 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. Native drought tolerant plants help preserve biodiversity and help local wildlife live and thrive. They also require much less watering, fertilizer, and pesticides and thus prevent water run-off and improve air quality. 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. 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 preserve local biodiversity and minimize the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition No. 6**, 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. As conditioned to protect water quality and biological productivity through the implementation of landscape controls, the project is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

Therefore, as conditioned, biological resources and water quality is protected, consistent with Sections 3020, 30231 and 30232 of the Coastal Act.

E. 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 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....

Section 30210 of the Coastal Act requires that public access to the coast be provided and Section 30250 requires that new residential development will be located where it will not have cumulative adverse impacts on coastal resources, including public access.

Vertical public access to the beach is located approximately 730 ft. southwest of the site at the end of 13th Street, which fronts the project site. The beach end of 13th Street intersects with a beachfront public walkway that provides lateral access to the beach. As such, public access is available near the site and the proposed project will not adversely impact that access consistent with Section 30210 of the Coastal Act. The proposed project also provides parking consistent with the standard of two parking spaces per residential dwelling unit, which the Commission has regularly used for development in Seal Beach. Therefore, the development will not rely on public parking resources for access, aside from temporary construction-related parking impacts. Thus, the proposed project will not result in direct adverse impacts, either individually or cumulatively, on vertical or lateral public access consistent with Section 30250 of the Coastal Act.

While the proposed project does not currently result in any adverse impacts to public access, future development may result in such impacts. To ensure 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. 4**, which requires the applicant to obtain a permit amendment or a new permit for future improvements and any repair or maintenance of the residence.

Therefore, as conditioned, the project will not impact public access to the coast, consistent with Sections 30210 and 30250 of the Coastal Act.

F. Deed Restrictions

To ensure that any prospective future owner(s) of the properties are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 7**, which requires the applicant to record deed restrictions against both of the 133 and 135 13th Street properties, 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 Properties. Thus, as conditioned, any prospective future owner(s) 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 sites are subject, and the Commission's immunity from liability.

G. Coastal Act Violations

Violations of the Coastal Act have occurred on the project site, including but not limited to the addition of a third unit, without benefit of the necessary coastal development permit. Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

The proposed project includes the demolition of three units, including the one unpermitted unit, on two lots, and the construction of two single-family residences, one on each lot.

Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the violations described above. Although development has taken place prior to submission of this permit application, 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).

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 August 4, 2020. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the development, 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 August 4, 2020.

Letter from Commission staff to David Biehler dated September 22, 2020.

Response from David Biehler to Commission staff received November 6, 2020.

Sea Level Rise Hazard Discussion for 133 and 135 13th Street, Seal Beach, Orange County, California prepared by Geosoils, Inc. dated June 16, 2019.