

CALIFORNIA COASTAL COMMISSION

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

**F5b**

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-20-0525

Applicants: Tony Zheng & Lan Xuan

Agent: Steve Sun

Location: 16776 15th Street, Sunset Beach
City of Huntington Beach, Orange County
(APN: 178-533-03)

Project Description: Demolish an existing 1-story, 1,690 sq. ft. duplex, and construct a 3-story, 35 ft.-high, 4,764 sq. ft. 2-unit condominium with attached garages.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicants are proposing to demolish an existing one-story, 1,690 sq. ft. duplex, conduct a one-lot subdivision for condominium purposes, and construct a 35 ft.-high, three-story, 4,764 sq. ft. 2-unit condominium (each unit with 2,382 sq. ft. of internal floor area) with attached garages.

Sunset Beach is an area that was formerly unincorporated Orange County area. Under the County's jurisdiction, Sunset Beach was subject to a certified Local Coastal Program (LCP). The former County LCP for the area was effectively certified in 1982 and last updated in 1992. However, in August 2011, Sunset Beach was annexed by the City of Huntington Beach, resulting in the lapse of a certified LCP for Sunset Beach. The

Sunset Beach area has not yet been incorporated into the City of Huntington Beach LCP. Therefore, the Commission is the permit-issuing entity for the proposed project and the Chapter 3 policies of the Coastal Act are the standard of review.

The project site is a 2,703 sq. ft., rectangular-shaped lot located 250 ft. inland from the beach in an urbanized area characterized by a mix of commercial and residential (single-family and multi-family) developments. The project site is zoned Residential High Density – specific plan overlay (RH-sp), which permits single-family residences and multifamily residences to be developed. The proposed 2-unit condominium is of a similar mass, scale, and character as the surrounding development, which includes single-family and multi-family residences and some commercial structures. There will be no net change in the number of housing units as the project will maintain two residential units onsite. There are no public coastal views within the vicinity of the project site, so the project will not adversely impact coastal views. The project provides adequate onsite vehicle parking, will not displace any public parking resources, and thus is consistent with the Coastal Act's public access policies. No grading is proposed as part of the project.

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 vulnerable to flooding under a minimum of 0.8 feet of sea level rise. The proposed project also involves a one-lot subdivision to allow for the construction of a 2-unit condominium in this vulnerable area. However, the project is unique in that it proposes to replace the existing duplex with the same number of units (2-unit condominium), and the proposed subdivision would not change the development potential of the resulting lot because the resulting lot would still be a single lot. Also, the proposed two units will each occupy half of the proposed structure in a symmetrical configuration, meaning that both units will touch the ground floor and subject the property owners to future sea level rise associated flooding risks. Therefore, even though the project site is located in a hazardous area with flood potential exacerbated by future sea level rise, the proposed one-lot subdivision and construction of the 2-unit condominium, in this unique case and as conditioned below, can be found consistent with Section 30253 of the Coastal Act and the Commission's 2018 Sea Level Rise Policy Guidance.

Given the project site's location within a potentially hazardous area, the applicants have proposed to elevate the finished floor of the foundation to be at least 17.9' above NAVD88 for the garages, and 20.2' for the proposed units. While the applicants have attempted to account for coastal flooding risks, the adaptation measure of elevating the structure may not be enough to withstand the flooding that is projected to impact the project site with a minimum 0.8 ft. of sea level rise. Because the proposed 2-unit condominium constitutes new development, the residences are not entitled to shoreline protection under Section 30235 of the Coastal Act. Therefore, staff recommends the Commission impose **Special Condition 1** and **Special Condition 5**, requiring the applicants to acknowledge that no shoreline protective device may ever be constructed to protect the condominium units, even if it is threatened by coastal hazards in the future, and assume the risks of developing residences in an inherently hazardous area. In further consideration of the hazardous project location, **Special Condition 6** requires

5-20-0525 (Zheng & Xuan)

an amendment to Coastal Development Permit (CDP) No. 5-20-0525, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions. As proposed by the applicants and conditioned by the Commission, the project can be found to be consistent with Section 30253 of the Coastal Act.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-20-0525 with **seven** special conditions, including future landscaping (**Special Condition 2**), permanent drainage and runoff control plan (**Special Condition 3**), construction best management practices (**Special Condition 4**), and deed restriction (**Special Condition 7**). The motion and resolution can be found on **Page 5**.

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EXHIBITS

[Exhibit 1 – Vicinity Map and Project Site](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – CoSMoS Picture](#)

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 on the foregoing motion. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

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

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 applicants 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 applicants to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

1. Waiver of Rights to Future Shoreline Protective Device.

- A. By acceptance of this permit, the applicants/landowners agree, on behalf of themselves and any successors and assigns, that no new shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-20-0525 including, but not limited to, the residences, garages, balconies, patios, decks, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicants/landowners hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and any successors and assigns, that the landowner is required to remove the development authorized by the permit, including, but not limited to, the residences, garages, balconies, patios, decks, and any other future improvements, if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices.
- C. In the event that portions of the development fall to the beach or are submerged before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site and relocated any salvageable portions of the development inland. Such removal shall require a coastal development permit.

2. Future Landscaping.

- A. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, 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.

- B. The applicants shall incorporate Best Management Practices (BMPs) into the construction and post-construction phases of the subject development.
 - C. Any future proposed landscaping plan shall be reported to the Executive Director. No changes to the approved development shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 3. Permanent Drainage and Runoff Control Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and written approval of the Executive Director, two copies of a final Drainage and Runoff Control Plan for the postconstruction project site, prepared by a licensed civil engineer or qualified licensed water quality professional. The plan shall include detailed drainage and runoff control plans with supporting descriptions and calculations. The plan shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather runoff leaving the developed site. The consulting licensed civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:
- A. The plan shall incorporate appropriate Best Management Practices (BMPs) into the development, designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner into the City's storm drain system;
 - B. Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized through the use of low-maintenance landscaping and efficient irrigation technology or systems;
 - C. Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals;
 - D. All slopes shall be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this coastal development permit. The final drainage plans shall be designed and installed in conformance with the recommendations of the project consulting geotechnical engineer; and,
 - E. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the permittee or successor-in-

interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicants shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

The permittee shall undertake development in accordance with the final Drainage and Runoff Control Plan approved by the Executive Director. The final Drainage and Runoff Control Plan shall be in conformance with the development plans approved by the Commission. Any changes to the Commission approved plans required by the consulting licensed civil engineer or engineering geologist shall be reported to the Executive Director. No changes to the Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

- 4. 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, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
 - D.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - E.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
 - F.** The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - G.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take

place unless the Executive Director determines that no amendment or new permit is legally required;

- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
 - I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
 - J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
 - L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
 - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
5. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards including but not limited to waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the permittee 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; (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.

- 6. Future Development.** This permit is only for the development described in CDP No. 5-20-0525. Pursuant to Title 14 of the California Code of Regulations Section 13253(b), the exemptions otherwise provided in Public Resources Code Section 30610 shall not apply to the development governed by CDP No. 5-20-0525. Accordingly, any future improvements to the residences, garages, decks, and any other future improvements including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP No. 5-20-0525 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.
- 7. Deed Restriction.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction for each condominium unit, 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.

FINDINGS AND DECLARATIONS

A. Project Description and Background

The applicants are proposing to demolish an existing one-story, 1,690 sq. ft. duplex, conduct a one-lot subdivision of the 2,703 sq. ft. lot to allow the construction of two residential condominiums, and construct a 35-ft. high, three-story, 4,764 sq. ft. 2-unit condominium with roof decks and attached garages ([Exhibit 2](#)). The two units are symmetrical facing opposite directions (15th Street and the alley running parallel to 15th

Street). The project site is a 2,703 sq. ft., rectangular-shaped lot located at 16776 15th Street, in the Sunset Beach area of the City of Huntington Beach, Orange County ([Exhibit 1](#)). The lot is sited 250 ft. inland from the beach in an urbanized area. The project site is zoned Residential High Density – specific plan overlay (RH-sp), which permits single-family residences and multifamily residences to be developed. The neighborhood in which the project site is located is characterized by a mix of residential (single family and multi-family) and commercial developments, ranging from one to three-story and 832 sq. ft. to 8000 sq. ft. in size. The proposed residence, at 35 feet in height and 2,382 sq. ft. for each of the two units, is of a similar mass and scale as the surrounding development and will not be out of character with the area. Fifty cubic yards of grading is proposed for the project.

Sunset Beach is an area that was formerly unincorporated Orange County area. Under the County's jurisdiction, Sunset Beach was subject to a certified Local Coastal Program (LCP). The former County LCP for the area was effectively certified in 1982 and last updated in 1992. However, in August 2011, Sunset Beach was annexed by the City of Huntington Beach, resulting in the lapse of a certified LCP for Sunset Beach. The Sunset Beach area has not yet been incorporated into the City of Huntington Beach LCP. Therefore, the Commission is the permit-issuing entity for the proposed project and the Chapter 3 policies of the Coastal Act are the standard of review. The County's previously certified Sunset Beach LCP may be used as guidance; however, it should be noted that the previously certified LCP was last reviewed by the Coastal Commission almost thirty years ago and did not adequately address a number of issues of current concern including appropriate development setbacks from the seaward property line of beach-fronting lots and sea level rise concerns, which are likely to be a significant issue in the new LCP, given the high degree of sea level rise vulnerability in the area.

The project is sited about 250 ft. inland from the beach, in a low-lying coastal area that is subject to coastal hazards. The project also proposes a one-lot subdivision to allow for the construction of a 2-unit condominium with separate ownerships. The primary issues raised by the project is the potential for the project site to be impacted by coastal flooding resulting from sea level rise over the coming decades, and whether the proposed one-lot subdivision is consistent with the Coastal Act in this hazardous area.

Coastal 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.”

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in hazardous areas, including areas subject to flooding. New development must also not significantly contribute to erosion or destruction of the site or surrounding area or require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed project raises potential hazards concerns related to the project site's location 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 associated with locating development in an area that is currently vulnerable to flooding. 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 feet and 6.7 feet 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.

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.

Subdivision in Hazardous Areas

The Commission’s adopted 2018 Sea Level Rise Policy Guidance provides strategies appropriate for addressing sea level rise with regards to subdivisions. It provides: “Limit

subdivisions in areas vulnerable to sea level rise: Prohibit any new land divisions, including subdivisions, lot splits, lot line adjustments, and/or certificates of compliance that create new beachfront or blufftop lots unless the lots can meet specific criteria that ensure that when the lots are developed, the development will not be exposed to hazards or pose any risks to protection of coastal resources.” Such specific criteria could include: resultant parcels contain a buildable area in which development on new lots would comply with LCP policies protecting coastal resources, would remain located on private property despite the migration of the public trust boundary, not require the future construction or augmentation of a shoreline protective device, be adequately served by public services (e.g., water, sewer, and safe, legal, all-weather access as applicable) over the anticipated duration of the development, and otherwise be consistent with all LCP policies. While this approach anticipates impacts from SLR on beachfront and blufftop lots, the same logic applies to inland lots that will be impacted by SLR.

The Coastal Act’s Chapter 3 resource policies treat development in hazardous areas differently than other development. Section 30253 of the Coastal Act requires siting new development such that it minimizes risks to life and property in flood hazard areas, assures stability and structural integrity, and does not require the construction of protective devices that substantially alter natural landforms. Concurrently, the Coastal Act also requires concentrating development in existing developed areas able to accommodate it (as required by Section 302501), which provides more opportunities for people to live near places they work and recreate, such as the beach, thus reducing vehicle miles traveled and preserving open spaces that might otherwise have to be developed, and thereby, reduces impacts to coastal resources. Taken together, these Coastal Act policies support maintaining housing density in safe areas to assure the stability and structural integrity of development. On a broader scale, maintaining density in locations at reduced risks from sea level rise will have the net effect of helping to maintain housing stock that is safe from hazards and relieve development pressure in unsafe areas in the long-term, thus carrying out Section 30253’s hazards policies on a community-scale.

Conversely, limiting development in areas that are likely to be affected by coastal hazards facilitates the protection of coastal resources. As sea levels rise, beaches trapped between the rising seas and the first line of development could be threatened. Often, the first line of development impedes the ability of the beach to naturally migrate inland over time and reduces the sources of sand supply created by erosion that contribute to beach accretion. This process is commonly referred to as “coastal squeeze,” and leads to the narrowing and eventual loss of beaches and other shoreline habitats. Without strategic planning, this may lead to economic losses due to reduced recreational visitors, and also to occasional flooding of public coastal facilities and related damages. The loss of beach area from coastal squeeze represents a loss of many coastal resources protected by the Coastal Act, including public access, recreational opportunities and associated economic benefits, habitats and marine resources, scenic and visual qualities of coastal communities. Coastal squeeze also presents challenges for carrying out the public trust doctrine, and presents a significant environmental justice issue if the public loses its ability to access the shore as public

beach spaces diminish over time. Coastal squeeze would also decrease the likelihood of successful preservation of the coastal resources associated with the beach, as required by Sections 30210, 30220, 30240(b), 30251 of the Coastal Act.

Applicability to this Project

In this case, the proposed development consists of three components: demolition of the existing duplex, a one-lot subdivision for condominium purposes, and the construction of a 2-unit condominium on the resulting single lot. 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. This vulnerability is further exacerbated with sea level rise and increased storm surge activity. According to CoSMoS sea level rise models, the project site is susceptible to flooding at a minimum 0.8 feet of sea level rise and no storm scenario, which is well before the anticipated end of the structure's life ([Exhibit 3](#)).

However, the project is unique in that it proposes to replace the existing duplex with the same number of units (2-unit condominium), and the proposed subdivision would not change the development potential of the resulting lot because the resulting lot would still be a single lot. Also, the proposed two units will each occupy half of the proposed structure in a symmetrical configuration, meaning that both units will touch the ground floor and subject the property owners to future sea level rise associated flooding risks ([Exhibit 2](#)). In addition, as discussed in greater detail below, any prospective future owners of the condominium units will be made aware of the applicability of the conditions of this permit by the required deed restriction referencing all of the Special Conditions of this permit including assumption of development risk and waiver of rights to future shoreline protective device. Therefore, even though the project site is located in a hazardous area with flood potential exacerbated by future sea level rise, the proposed one-lot subdivision and construction of the 2-unit condominium, in this unique case and as conditioned below, can be found consistent with Section 30253 of the Coastal Act and the Commission's 2018 Sea Level Rise Policy Guidance.

Given the project site's location within a potentially hazardous area, the applicants have proposed to elevate the finished floor of the foundation to be at least 17.9' above NAVD88 for the garages, and 20.2' for the proposed units ([Exhibit 2](#)). While the applicants have attempted to adapt the proposed residence to account for coastal flooding risks, the adaptation measure of elevating the structure may not be enough to withstand the flooding that is projected to impact the project site at a minimum 0.8 feet of sea level rise. Because the project is located inland of the first line of homes fronting the ocean, it is not expected to be subject to wave action. But flooding may occur during the life of the development with at least 0.8 feet of sea level rise, which may affect the home and the surrounding streets and utilities.

Because the proposed 2-unit condominium constitutes new development, the residences are not entitled to shoreline protection under Section 30235 of the Coastal Act. Therefore, the Commission imposes conditions to ensure that the applicants develop the project to adapt to sea level rise, waives the right to future shoreline

protection, and assumes the risks of the development. **Special Condition 1** requires the applicants to acknowledge that no shoreline protective device may ever be constructed to protect the new condominium units, even if it is threatened by coastal hazards in the future. **Special Condition 5** requires the applicants to assume the risks of developing a new single-family residence in an inherently hazardous area. Furthermore, any potential changes to the proposed project may result in adverse impacts to coastal resources. In further consideration of the hazardous project location, **Special Condition 6** requires an amendment to Coastal Development Permit (CDP) No. 5-20-0489, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions. As proposed by the applicants and conditioned by the Commission, the project can be found to be consistent with Section 30253 of the Coastal Act pertaining to hazards.

B. Development

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area, has been designed to assure structural integrity, and will avoid cumulative adverse impacts on public access. Although the project site is not located adjacent to the ocean, it is within a low-lying coastal area that is vulnerable to coastal flooding hazards. Development which may require a protective device in the future cannot be allowed due to the adverse impact such devices have upon, among other things, public access, visual resources, and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite (**Special Condition 3**); prohibit construction of protective devices (such as a seawall) in the future (**Special Condition 1**); and to require that the landowner and any successor-in-interest assume the risk of undertaking the development (**Special Condition 5**).

There are no public coastal views within the vicinity of the project site, so the project will not adversely impact coastal views. Given that the existing duplex is proposed to be replaced with two residential condominiums, the project will also maintain the existing residential density onsite. Overall, the project is consistent with Section 30251 regarding community character and visual resources.

As conditioned, the Commission finds that the proposed development conforms with Sections 30250, 30251, 30252, 30235, 30253, and the public access sections of the Coastal Act.

C. Public Access

Each condominium will provide two onsite vehicle parking spaces, which will be accessed on 15th Street and the alley running parallel to 15th Street, respectively. The existing parcel does not provide on-street parking spaces, so no public parking spaces will be impacted. The proposed residence adheres to the City's setback requirements and does not encroach onto the public right-of-way along 15th Street or the alley.

Therefore, the project is consistent with the Chapter 3 public access policies because it will not displace any public vehicle parking spaces that are used for coastal access.

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. Water Quality

The proposed project has the potential to adversely impact the water quality of the nearby Pacific Ocean. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. The applicants have provided a preliminary grading/drainage plan which indicated that roof and surface runoff will be managed onsite through gravity flow, but has not provided a precise plan showing the location of downspouts, drainage pipe, permeable area, etc. Therefore, the Commission imposes **Special Condition 3** to require the applicants to submit a permanent drainage and runoff control plan that ensures no water quality impact of the project.

The applicants have indicated that no landscaping will be proposed. While no landscaping is proposed now, future landscaping may not consist of non-invasive and drought tolerant plants. For water conservation, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). In order to make sure that any onsite landscaping minimizes the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition 2**, which imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The Coastal Act requires protection of marine resources, including the protection of coastal waters by controlling runoff and preventing spillage of hazardous materials. Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 4**, 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 applicants 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 stored as far away from a storm drain inlet and receiving waters as possible.

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

E. Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 7**, which requires that the property owners record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

F. Local Coastal Program

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

As conditioned, the proposed development is consistent with Chapter 3 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.

G. California Environmental Quality Act

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 Huntington Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Huntington Beach determined that the proposed development is exempt under Section 15301(e)(2) of CEQA. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment, either individually or cumulatively with other past, present, or reasonably foreseeable probable future projects. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit Application No. 5-20-0525 and associated file documents.
- Sea Level Rise Policy Guidance, Original Guidance – August 12, 2015
- Sea Level Rise Science Update – November 7, 2018
- State of California Sea-Level Rise Guidance – 2018 Update