

CALIFORNIA COASTAL COMMISSION

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W19d

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-20-0630

Applicant: Vision Development, LLC

Agent: Cheryl DeMarco, AIA

Location: 16655 Pacific Coast Highway, Sunset Beach,
Huntington Beach, Orange County (APN: 178-523-09)

Project Description: Construction of a new three-story, 35-ft. high, mixed use building consisting of a 4,720 sq. ft. restaurant and a 1,716 sq. ft. townhome with twelve parking spaces for the restaurant and two parking spaces for the townhome on a vacant lot. The project also includes an after-the-fact permit request for demolition of the pre-existing commercial building on the site and grading of the lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the construction of a mixed-use building consisting of a ground level parking area and a restaurant and residential town home on the second and third floors in the Sunset Beach community of the City of Huntington Beach, Orange County.

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

A one-story commercial building previously occupied the project site but was demolished and the site cleared without benefit of a necessary coastal development permit. The property was then sold to the current owner whose application is the subject of this staff report. The applicant has since submitted a fee five times the amount required for a coastal development permit waiver to demolish the pre-existing structure, in addition to the fee for the proposed development which is scheduled on the Commission's Regular Calendar.

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 resolve the violations described above.

The project site is located in an area where on-street parking is available to the general public along Pacific Coast Highway and 18th Street. The proposed project will not adversely impact on-street parking. However, to ensure that the applicant is aware of the importance of retaining on-street public parking now and in the future, staff recommends the Commission impose **Special Condition No. 1**, which requires that the proposed project shall not interfere with on-street public parking.

The proposed project is located on an inland parcel approximately 200 ft. inland of the beach and the Pacific Ocean, within an area where coastal hazards exist and could adversely impact the development. According to the CoSMoS sea level rise model, the project site is susceptible to flooding if 1.6 ft. of sea level rise occurs in combination with an astronomical tide, even without a storm scenario. Based on the best available science, 1.6 ft. of sea level rise or more is likely during the project's expected 75-year life. Additionally, under a severe storm, the site will be subject to flooding, even without any increase in sea level. In order to mitigate future potential sea level rise impacts, the applicant is proposing non-habitable development on the first floor, which will be constructed of block and concrete walls that include waterproofing. No shoreline protective device is proposed to protect the development pursuant to this permit. However, given that the applicant is proposing to construct a new restaurant and a residence 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 parking area, garage, restaurant, residence, roof deck, or foundation.

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.

Because the development includes space for a large commercial restaurant, **Special Condition No. 6** requires the applicant to submit and implement a comprehensive plan to reduce waste and single-use plastic foodware and packaging.

Staff also recommends the Commission impose **Special Condition No. 7**, 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. 8** which requires the property owner to record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

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

The motion to approve the CDP application is on **Page 5**. The special conditions begin on **Page 6**.

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.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS	6
IV. FINDINGS AND DECLARATIONS	10
A. Project Location, Description and Standard of Review	10
B. Public Access and Recreation	12
C. Hazards	15
D. Biological Resources/Water Quality	21
E. Deed Restriction	24
F. Coastal Act Violations	24
G. Local Coastal Program (LCP)	25
H. California Environmental Quality Act (CEQA)	25
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	26

EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Site Plan/First Floor Plan](#)

[Exhibit 3 – Floor and Roof Plans](#)

[Exhibit 4 – Elevation Plans](#)

[Exhibit 5 – Grading Plan](#)

[Exhibit 6 – CoSMos Sea Level Rise Model Maps](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-20-0630 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. **On-Street Public Parking.** By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that, with the exception of the decrease and re-location of the driveway along Pacific Coast Highway from thirty ft. (30) wide to twenty-six (26) ft wide, the subject development shall not interfere with existing on-street public parking spaces along Pacific Coast Highway and along 18th Street, which shall remain unobstructed by the subject development and available to the general public for public parking.
2. **No Future Shoreline Protective Device.**
 - A. By acceptance of this permit, the permittee agrees, on behalf of itself and any successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-20-0630 including, but not limited to, the restaurant, garage, residences, and foundation, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other natural hazards in the future. By acceptance of this permit, the permittee hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235, any similar provision of a certified LCP, or any applicable law.
 - B. By acceptance of this Permit, the permittee further agrees, on behalf of itself and all successors and assigns, that it is required to remove all or a portion of the development authorized by this permit and restore the site, if:
 - i. The City of Huntington Beach or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
 - ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;

- iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
- iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP No. 5-20-0630 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

- 3. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittee 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 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; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 4. **Future Development.** This permit is only for the development described in CDP No. 5-20-0630. Pursuant to Title 14 of the California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a)-(b) shall not apply to the development governed by CDP No. 5-20-0630. Accordingly, any future improvements to the parking area, garage, restaurant, residence, roof deck, foundation 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 13253(a)-(b), shall require an amendment to CDP No. 5-20-0630 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. Marine Debris Reduction Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a comprehensive plan to reduce waste and single-use plastic foodware and packaging. The plan shall include at a minimum, all of the following, and the applicant shall implement the approved version of the plan:

- A.** The applicant shall install and maintain educational signage that promotes and encourages the use of reusable items (instead of single-use items)
- B.** Adhere to the following criteria:
 - i. Only use reusable foodware (including dinnerware, drinkware, silverware, and ramekins/containers) for onsite dining.
 - ii. Only provide paper straws, or straws made from naturally occurring materials or reusables, upon request.
 - iii. Prohibit the use of expanded polystyrene (aka Styrofoam).
 - iv. Prohibit the use of plastic bags on-site or for takeout/to-go orders.
 - v. Only provide single-use utensils, straws, condiments, and other accessory items upon request for takeout/to-go orders.
 - vi. Prohibit the sale of beverages in plastic bottles.
 - vii. Follow proper recycling practices.
- C.** Participate in a Marine Debris Reduction Program such as the ReThink Disposable Program (RTDP), Surfrider's Ocean Friendly Restaurants (OFR), or a substantially similar program, meet all mandatory criteria of the selected program and become a fully certified member of the selected program. Within 6 months of the completion of the proposed development, the applicant shall participate in an established program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders. The applicant shall be responsible for the fees needed to participate in the program.
- D.** No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

7. **Landscaping-Drought Tolerant, Non-Invasive Plants.** Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
8. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the 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, Standard of Review and Prior Permit

On a currently vacant lot, the applicant proposes to construct a new three-story, 35-ft. high, mixed use building consisting of a 4,720 sq. ft. restaurant and a 1,716 sq. ft. townhome with a rooftop deck, including twelve parking spaces for the restaurant and two dedicated parking spaces in a 364 sq. ft. garage for the townhome ([Exhibits 2-5](#)). The lowest level (ground floor) will consist of the parking area for the restaurant and townhome and the second and third floors will consist of the restaurant and townhome. No grading is proposed, except for the grading to clear the lot of pre-existing development which has already taken place (see Prior Permit and Violations sections of this report). The foundation system will consist of footings and a concrete mat slab. On-site drainage will be directed to a rain storage chamber connected to a bio clean

water polisher system and then pumped out to the street through a curb drain at 18th Street. Landscaping is proposed.

The project site is a 5,600 sq. ft. parcel located at 16655 Pacific Coast Highway, in the Sunset Beach community of the City of Huntington Beach, Orange County ([Exhibits 1](#)). Sunset Beach is a low-lying, relatively narrow strip of land between two water bodies – the Pacific Ocean (approximately 200 ft. to the west) and Huntington Harbour (approximately 250 ft. to the east). The project is located on the seaward side of Pacific Coast Highway within an existing urban area, on an interior lot (not located between the first public road and the sea). In order to mitigate future potential sea level rise impacts, the applicant is proposing non-habitable development on the first floor, which will be constructed of block and concrete walls that include waterproofing. The applicant is also proposing that the access ways to the parking area and lobby be protected with temporary flooding shields when necessary, as a future adaptation measure.

Furthermore, the applicant states that the proposed project is consistent with the National Flood Insurance Program (NFIP) as determined by the City of Huntington Beach as a Federal Emergency Management Agency (FEMA) community member.

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 beachfronting 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 City has adopted essentially equivalent land use and zoning designations for the site as those set forth in the former Orange County LCP for Sunset Beach. However, the Commission has not yet certified land use designations or zoning for the Sunset Beach area since it was annexed into the City. Nevertheless, it is worth noting that the proposed project (mixed use building with a parking lot on the ground floor with a restaurant and townhome on the second and third floors) is consistent with many of the development standards that would have been applicable to the proposed project under the old Sunset Beach LCP, and under the City's current zoning. The old LCP and current City zoning designate the site Sunset Beach Tourist, which requires uses that cater to the needs of tourists, visitors, and the local community. The Sunset Beach Tourist designation also allows residential development when it is: located above the ground floor level, the required parking is provided, and the residential use does not exceed 50% of the gross square footage of the entire structure. The proposed

development is consistent with this designation. The height of the proposed structure will be 35 ft. above the finished grade, consistent with the City's current height limit for the site and the former County LCP height limit. In addition, the design of the proposed mixed used commercial/residential structure is consistent with existing surrounding development along Pacific Coast Highway in Sunset Beach.

There are no public coastal views from the project site or the adjacent segment of Pacific Coast Highway, so the project will not adversely impact public coastal views from the site.

Prior Permit

On March 6, 2019, the Commission approved CDP No. 5-18-0682 (Seidner) for the demolition of a vacant, commercial one-story structure and construction of a two-story, 30 ft. high, 4,330 sq. ft. mixed use structure including 2,015 sq. ft. of classic car sales on the first floor, and two 895 sq. ft. residential units on the second floor, with 300 sq. ft. of exterior deck area, an attached 600 sq. ft., three car garage, and a five vehicle space parking lot. The CDP was never issued and it expired on April 9, 2021. Prior to the site being sold to the current owner, the pre-existing structure on the site was demolished and the site cleared, and thus development without a coastal development permit took place. This will be described in greater detail and addressed in the Coastal Act Violations section of the Staff Report.

B. Public Access and Recreation

Section 30210 of the Coastal Act, Access; recreational opportunities; posting, 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 30214 of the Coastal Act, Implementation of public access policies; legislative intent, states, in relevant part (emphasis added):

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

Section 30221 of the Coastal Act, Oceanfront land; protection for recreational use and development; states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Coastal Act Section 30252, Maintenance and enhancement of public access, states, in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by ... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, ...

The project site is located approximately 200 ft. from the public, sandy beach which supports recreational uses and serves coastal visitors. Further east of the project site, approximately 300 ft. inland, there is a small harborfront beach suitable for launching small craft such as kayaks and paddleboards. In addition, there is a public boardwalk along the harborfront located approximately 1,200 ft from the project site. In order for the proposed development to be found consistent with the Coastal Act's requirement that public access be maximized, new development must not interfere with continued public access opportunities to both the sandy beach and the public amenities at the harbor.

Consistent with Coastal Act Section 30252, one of the ways the Commission assures that public access is maximized is by assuring that adequate parking is provided with new development and that new development not adversely impact the availability of existing public parking spaces.

There is a public parking area located on either side of the "greenbelt" located just steps from the project site and about 150 ft. from the sandy public beach. In addition, there are 72 parking spaces available to public beach-goers at Peter's Landing, located about 1,200 ft. from the project site. However, there is otherwise very limited on-street parking in Sunset Beach to serve public beach-goers and visitors to the harbor. During peak use periods, the parking demand exceeds the supply. This especially affects public use of Sunset Beach's public beach, which tends to be under-utilized compared to Bolsa Chica State Beach and Huntington City and State beaches located just downcoast. The downcoast beaches are adjacent to large public parking lots. Both the beach and harbor are great visitor destinations, especially in the summer. During the peak use periods, the lack of parking can interfere with public access when visitors cannot find an available space to park.

The proposed development is a mixed-use restaurant and residential project. The City's zoning requirement for residential use is two parking spaces per residential unit. The proposed project includes two parking spaces within a garage located on the first floor of the development to serve the residential unit, which meets the City's parking standard. In addition, the proposed development includes 1,200 sq. ft. of restaurant serving area. The City's zoning requirement for restaurant use in the Sunset Beach

area is one parking space for each 100 sq. ft. of serving area (generating a parking demand of twelve spaces). The proposed development would provide twelve parking spaces on the ground floor (first floor). Thus, as proposed, the development will provide adequate parking to serve the proposed uses.

To further assure public access is maximized, another parking consideration with new development is whether the project would have adverse impacts on existing, public parking such as on-street parking available to the general public. In this case public parking spaces are currently available adjacent to the site along Pacific Coast Highway and 18th Street. No changes to the 18th Street parking would result from the proposed development. The existing 30-ft. wide driveway along Pacific Coast Highway will be reduced to 26 ft. wide and shifted to the northwest. There are currently two on-street parking spaces on Pacific Coast Highway and two on street parking spaces will remain with the shift of the driveway. Thus, as proposed the project would not reduce any currently available, on-street public parking. There currently is no public parking available along North Pacific Avenue, and, although there will be a new driveway to serve the ground floor parking area, no change to the current public parking condition would result from the proposed project. North Pacific Avenue parking is available for residential permit holders only. The Commission has never reviewed or accepted this permit parking status. However, this applicant has no control over whether the area is available for public parking or limited to permit parking only. To assure that the applicant is aware of the importance of retaining on-street public parking now and in the future and that this development not interfere with continuance of that publicly available on-street parking, the Commission imposes **Special Condition No. 1**, which informs the applicant of this requirement.

In the past, the Commission has used the 2019 California Green Building Code (CALGreen) as guidance for electric vehicle requirements in commercial, retail and other nonresidential locations.¹ However, in recent actions,² the Commission has required commercial development projects to provide actual Electric Vehicle Charging Stations (EVCS) concurrent with the development. Based on CALGreen, the proposed project requires one “EV Capable” space, which is defined as: “Installation of “raceway” (the enclosed conduit that forms the physical pathway for electrical wiring to protect it from damage) and adequate panel capacity to accommodate future installation of a dedicated branch circuit and charging station(s).” However, the applicant has gone above what is required pursuant to CALGreen by proposing one EVCS and proposing to have another space EV Capable so in the future an EVCS can be installed. Thus, the project is consistent with the requirements pursuant to CALGreen and would be

¹ The 2019 California Green Building Code does not require all EVCS to be constructed; it suggests that installation of electrical infrastructure and conduit to provide capacity for future EV Charging Stations may satisfy requirements.

² A-5-DPT-18-0046-(Cannons) approved by the Commission at the February 2021 Commission hearing.

consistent with recent Commission actions to provide public access to people with electric vehicles.

Sea Level Rise

As reflected in the Coastal Act Sections cited above, the Coastal Act requires that public access to the shoreline be maximized. Coastal Act Section 30221 requires that oceanfront land suitable for recreational use be protected for recreational use, unless demand for such a use is or likely will be provided elsewhere in the area. With expected future sea level rise and resulting coastal erosion, it is likely that future demand for public recreational activities, such as use of the sandy beach, will need to be accommodated on smaller, narrower beaches. In addition, the general population is expected to continue to increase. Section 30214 of the Coastal Act recognizes the inherent conflicts likely to arise when private property abuts public use areas, but the Coastal Act prioritizes public access needs. Although the sandy beach in this area is currently wide, the width is expected to narrow as the sea rises.

As described below, and as indicated by the best available science for this area, the project site and surrounding area are vulnerable to impacts of sea level rise. Review of CoSMoS modeling in the immediate project vicinity indicates the currently wide sandy beach will likely narrow significantly over the 75-year life of the proposed mixed-use development. The loss of sandy public beach area due to sea level rise will increasingly limit the sandy beach areas available for public use. **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.

Therefore, as conditioned, the project will not impact public access to the coast, consistent with Sections 30210, 30214, 30221 and 30252 of the Coastal Act.

C. Hazards

Section 30253 of the Coastal Act, Minimization of adverse impacts, 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 located in the Sunset Beach community that is within a large, low-lying coastal area that is particularly vulnerable to flooding from both the ocean and the harbor. This vulnerability is further exacerbated with sea level rise and increased storm surge activity.

The Sunset Beach community has historically experienced flooding and damage from storm waves, and areas adjacent to the harbor can flood now during high tides, or high tides combined with storms. In response to these recurring flood problems, the community has developed several programs to minimize beach loss and flood risk. The US Army Corps of Engineers (USACE), in conjunction with the city and county, undertakes a periodic beach replenishment program that is on-going for more than 50 years. The County, and now the City of Huntington Beach, also constructs a seasonal berm across the beach each winter for protection from storm waves. Both of these programs enhance the beach areas and reduce flooding, but such efforts happen only with a sustained financial commitment from the different funding agencies. Without ongoing interventions, much of the lower lying areas of Huntington Beach, including Sunset Beach, would likely be at increased risk from flooding, and shoreline areas would be at risk from erosion. With rising sea level, these risks are likely to increase unless the interventions become larger or more frequent to keep up with the future hazards.

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 and commercial 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 the CoSMoS sea level rise model, the project site and area is susceptible to flooding if 1.6 ft. of sea level rise occurs in combination with an astronomical tide, even without a storm scenario, which may occur before the end of the structure’s 75-year expected life ([Exhibit 6](#)). Using the CoSMoS sea level rise model and applying a 100-year storm scenario, the project site and area is even more vulnerable to flooding under current conditions, with no sea level rise ([Exhibit 6](#)). Given the project site’s potentially hazardous location, the applicant prepared a coastal hazards study (Sea Level Rise Hazard Discussion, 16655 Pacific Coast Highway, Sunset Beach, Orange County, California prepared by Geosoils, Inc. dated February 11, 2021). The applicant’s study analyzes potential risks to the project site resulting from coastal flooding and other hazards (including wave uprush and coastal erosion) and it states that the proposed restaurant and 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 floor (ground floor/first floor) will be the parking garage at about elevation 8.0 ft. NAVD88 and lobby access for the restaurant above with a finished floor at about +8.3 ft. NAVD88. The second and third floors contain the restaurant and the residential townhome. The lowest restaurant and residential townhome finished floor elevation is at +17.9 ft. NAVD88. In order to mitigate future potential sea level rise impacts, the hazards analysis states that adaptation measures have been incorporated into the project, such as having the lowest floor consist of non-habitable development and being constructed of block and concrete walls that include waterproofing. In addition, the access ways to the parking area and lobby can be protected with temporary flooding shields. The analysis also indicates that the proposed project is consistent with the National Flood Insurance Program (NFIP) as determined by the City of Huntington Beach as a Federal Emergency Management Agency (FEMA) community member. Such requirements of the NFIP, consist of

requiring the building to be constructed of materials resistant to damage from immersion in flood waters, construction with methods and practices that minimize flood damage, provision of adequate drainage to reduce exposure to flood hazards, etc.

In this case, because with future sea level rise, the project site may be threatened from both the harbor side as well as the ocean side, consideration of impacts to the development – and impacts the development may have on an eroding shoreline – must be considered not just from the ocean, but from the harbor as well. If the site is threatened by coastal hazards from the harbor side of development, as exacerbated by expected future sea level rise, then impacts will have also occurred to Pacific Coast Highway, where the project site is located, and the surrounding streets. This will disrupt the provision of essential services such as access by public roads and the site's ability to be served by public infrastructure in the current manner. As shown through CoSMoS, the project site and area would still be susceptible to flooding if 1.6 ft. of sea level rise with no storm scenario and from flooding with a 100-year storm scenario today. The flooding that may affect the site with future sea level rise may mean the project site is no longer located on private property due to the migration of the public trust boundary.

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 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 by the Commission 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, and may threaten not only the lower floor but the viability of the restaurant and residential use before the end of the structure's anticipated 75-year economic life. 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 ensure 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 parking area, garage, restaurant, residence, roof deck, or foundation, 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 13253(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 Preliminary Water Quality Management Plan (PWQMP) that minimizes impacts to water quality the proposed project may have after construction. The WQMP states that post development roof drainage will be collected by roof downspouts and directed into an rain water storage chambers on the property. The storage chamber will be directly connected to a bio clean water polisher system and then pumped out to the street through a curb drain at 18th Street. The remaining site drainage sheet flows and will be collected with area and strip drains and directed into the rain water storage chambers onsite.

Plastic pollution is a persistent and growing problem worldwide that significantly impacts the health of our oceans and coasts. Roughly 8 million metric tons of plastics are estimated to enter the ocean each year, and the United States is one of the top 20 contributors to plastic pollution.³ Plastic has been found in a wide range of marine environments including the seafloor, surface water, the water column, and on beaches and shorelines. California communities are estimated to spend more than \$428 million annually to clean up and control plastic pollution. Plastic never truly degrades into its chemical components; instead it physically breaks down into smaller and smaller pieces. Plastics under 5 millimeters in size are called microplastics, and are found worldwide, even in places considered pristine. Plastics have been found in the digestive tracts of marine organisms ranging from zooplankton to whales, and microplastics have been found in drinking water and food, including shellfish, salt, beer,

³ Ocean Protection Council <https://www.opc.ca.gov/programs-summary/marine-pollution/plastics/>

and honey.⁴ In particular, the use of single-use plastics in food and beverage packaging or serveware make up seven of the top ten items found on Coastal Cleanup Day. Taken together food serveware and food and beverage packaging make up nearly 37% of the items found on the beach; therefore, this makes reducing single-use plastics at restaurants a high priority. Styrofoam or other single-use materials that often are used at restaurants could result in adverse effects to marine wildlife, since these materials can make their way to the ocean, causing fish, seabirds, sea turtles, and marine mammals to become entangled in or ingest plastic debris, causing suffocation, starvation, and drowning. The elimination of non-reusable, non-recyclable, and non-compostable products and the reduction of packaging is an effective way to protect the health of wildlife and the environment.

The proposed project includes a restaurant, which historically is a type of use that uses a large volume of plastics daily. There is an opportunity here with the proposed project to help reduce plastic pollution. Therefore, to ensure that the applicant protects marine resources and water quality, the Commission imposes **Special Condition No. 6**, which requires the applicant to participate in a marine debris reduction program, meet all mandatory criteria of the selected program, and become a fully certified member of the selected program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders.

Landscaping is part of the project and the applicant has provided Landscaping Plans. 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. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra-low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

Commission staff has reviewed the submitted landscaping plan and determined that it contains non-invasive and drought tolerant plants. While the proposed landscaping consists of non-invasive and drought tolerant plants, future landscaping may not consist of such plants. Therefore in order to make sure that any onsite landscaping minimizes

⁴ Ocean Protection Council <https://www.opc.ca.gov/programs-summary/marine-pollution/plastics/>

the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition No. 7**, which imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

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

E. Deed Restriction

To ensure that any prospective future owner of the property is made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 8**, which requires the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

F. Coastal Act Violations

Violations of the Coastal Act have occurred on the project site, including but not limited to the demolition of an existing one-story commercial building and clearing of the site 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 applicant has submitted a de minimis waiver fee five times the amount for that associated fee for the unpermitted demolition of the building and clearing of the site.

The proposed project includes the construction of a mixed-use building consisting of a parking area on the ground floor and a restaurant and residential townhome on the second and third floors.

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).

G. Local Coastal Program (LCP)

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

H. 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 Huntington Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Huntington Beach Planning Department determined that the proposed development is categorically exempt on November 16, 2020. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the public access and recreation, hazards, biological resources, and water quality 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 Huntington Beach Approval-In-Concept dated November 16, 2020.

City of Huntington Beach CUP No. 20-002

Sea Level Rise Hazard Discussion, 16655 Pacific Coast Highway, Sunset Beach, Orange County, California prepared by Geosoils, Inc. dated February 11, 2021

Revised Sea Level Rise Hazard Discussion, 16655 Pacific Coast Highway, Sunset Beach, Orange County, California prepared by Geosoils, Inc. dated May 18, 2021

Preliminary Water Quality Management Plan (PWQMP) prepared for Vision Development, LLC by Jones, Cahl & Associates, Inc.