

**CALIFORNIA COASTAL COMMISSION**

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



# Th8c

Filed: 04/07/22  
180<sup>th</sup> Day: 10/04/22  
Staff: V. Lee-LB  
Staff Report: 05/19/22  
Hearing Date: 06/09/22

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-22-0063

**Applicant:** Michael Jowdy

**Agent:** Bryce Sigourney

**Location:** 715 Marvista Avenue, City of Seal Beach, Orange County (APN: 199-182-06)

**Project Description:** Demolish an existing 1-story, 1,310 sq. ft. single-family residence and construct a new 2-story, 3,246 sq. ft. single-family residence with an attached 2-car garage and a roof deck.

**Staff Recommendation:** Approval with conditions.

---

## SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to demolish an existing one-story, 1,310 sq. ft. single family residence, and construct a new two-story, 3,246 sq. ft. single family residence with an attached 2-car garage and a roof deck.

The City of Seal beach does not have a certified Local Coastal Program (LCP) or a certified Land Use Plan (LUP). Therefore, the standard of review for this permit is Chapter 3 of the Coastal Act.

The project site is a 5,000 square foot, rectangular-shaped lot located 0.5 mile inland from the public beach in an urbanized area characterized by residential developments.

The project site is zoned Residential Low Density-9 (RLD-9), which permits single-family residences to be developed. The proposed residence is of a similar mass, scale, and character as the surrounding development. There will be no net change in the number of housing units as the project will maintain one residential unit onsite. There are no public coastal views within the vicinity of the project site, so the project will not adversely impact public 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 associated with sea level rise. According to CoSMoS sea level rise models, the project site is susceptible to flooding under the medium-high risk aversion scenario of 6.6 ft. of sea level rise, not including a storm scenario, which may occur before the anticipated end of the structure's 75-year expected life. Flooding could be more severe during a storm or king tide event. 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 residence in a hazardous location, staff recommends the Commission impose **Special Condition 1**, 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 5**, 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 6**, which requires the applicant obtain a permit amendment or new permit for any future improvements to the residence, garage, decks, or foundations. As proposed by the applicant and as 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 5-22-0063 with **seven** special conditions. The motion and resolution can be found on **Page 4**.

## **TABLE OF CONTENTS**

MOTION AND RESOLUTION.....	4
STANDARD CONDITIONS.....	4
SPECIAL CONDITIONS .....	5
FINDINGS AND DECLARATIONS.....	9
A. Project Description and Background .....	9
B. Hazards.....	9
C. Development.....	13
D. Public Access.....	14
E. Water Quality .....	14
F. Deed Restriction.....	15
G. Local Coastal Program .....	15
H. California Environmental Quality Act.....	16
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....	16

## **EXHIBITS**

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – CoSMoS Flood Map Analyses](#)

## 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. 5-22-0063 including, but not limited to, the residence, garage, balcony, patio, deck, 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. By acceptance of this permit, the permittee acknowledges that the development authorized by this permit – including, but not limited to, the residence, garage, balcony, patio, deck and any other future improvements – constitutes new development under the Coastal Act, and is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act. Thus, by acceptance of this permit, the permittee hereby waives, on behalf of itself and all successors and assigns, any rights to construct such shoreline protective devices to protect the development approved pursuant to CDP No. 5-22-0063.
- B. By acceptance of this Permit, the permittee further agrees, on behalf of itself and all successors and assigns, that they are required to remove all or a portion of the development authorized by the permit, including, but not limited to, the residence, garage, balcony, patio, deck, and any other future improvements, and restore the site, if: (1) the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of shoreline protective devices; (2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; (3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

- 2. 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: <https://ucanr.edu/sites/WUCOLS/files/183488.pdf>).
- 3. Drainage Plans.**

  - A.** The applicant shall undertake development in accordance with the drainage and run-off control plan received by the Commission on March 4, 2022 showing that roof and surface runoff will be captured by an on-site drainage system that connects to the municipal storm drain system. The drainage features and BMPs shall be maintained in a functional state for as long as the residential development exists on the site.
  - B.** Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- 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 applicant acknowledges and agrees (i) that the site may be subject to hazards including but not limited to waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the 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. 5-22-0063. Pursuant to Title 14 of the California Code of Regulations Section 13250(b), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by CDP No. 5-22-0063. Accordingly, any future improvements to the residence, garage, 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. 5-22-0063 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 applicant 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, 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 applicant is proposing to demolish an existing 1-story, 1,310 sq. ft. single-family residence and construct a new 2-story, 3,246 sq. ft. single-family residence with an attached 2-car garage and a roof deck ([Exhibit 2](#)). The project site is a 5,000 sq. ft., rectangular-shaped lot in an urbanized area characterized by single-family residential development ([Exhibit 1](#)). The project site is zoned Residential Low Density-9 (RLD-9), which permits single-family residences to be developed. The neighborhood in which the project site is located is characterized by one and two-story single-family residences, ranging between 1,195 and 3,790 sq. ft. in size. The proposed residence, at 25 ft. in height and 3,246 sq. ft. in size, is of a similar mass and scale as the surrounding development and will not be out of character with the area. There are no public coastal views within the vicinity of the project site, so the project will not adversely impact public coastal views. No grading is proposed for the project.

The project site is an inland lot that is sited in a developed area located 0.5 mile inland from the public beach and 0.3 mile inland from the San Gabriel River ([Exhibit 1](#)). However, the project site is located in a low-lying coastal area that is subject to coastal hazards. The primary issue 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.

The City of Seal beach does not have a certified Local Coastal Program (LCP) or a certified Land Use Plan (LUP). Therefore, the standard of review for this permit is Chapter 3 of the Coastal Act.

### **B. Hazards**

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 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.

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

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

According to CoSMoS sea level rise models, under the medium-high risk aversion scenario, the project site is susceptible to flooding if 6.6 ft. of sea level rise occurs without any storm, which may occur before the anticipated end of the structure’s 75 year expected life ([Exhibit 3](#)). Using CoSMoS sea level rise models and imposing a 100-year storm scenario, the project site is even more vulnerable to flooding, at a lower amount of sea level rise of 4.9 ft. While the City’s existing flood control system (levees) provides some level of protection, as shown through CoSMoS, the project site would still be susceptible to flooding if 6.6 ft. of sea level rise occurs even with these levees in place, because flooding may come from the bay which is not bound by levees, and may seep up through the stormdrain system as already occurs during king tides. So while the project is located inland of the first line of residences and the nearby San Gabriel River, Anaheim Bay, and Seal Beach National Wildlife Sanctuary, and is not expected to be subject to wave action, flooding may still occur during the lifetime of the development and affect the residences and surrounding streets and utilities.

Given the dynamic nature of coastal beaches, as well as the Commission's review of data indicating that the property could be impacted by sea level rise at some point in the future, it is important to ensure that the risks of developing on these inland lots are borne by the applicant, not the public at large.

Section 30253 prohibits new development that would require construction of a protective device that would substantially alter natural landforms along bluffs or cliffs. Here, the applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the applicant or a successor-in-interest could request a shoreline protection device at some point in the future. Although the project site is not a beachfront site, with expected sea level rise and flooding, the area between the project site and ocean waters is expected to narrow with time. Likewise, flooding from the San Gabriel River, Anaheim Bay and Seal Beach National Wildlife Sanctuary harbor is expected to approach the project site in the future, which in turn raises the question of a possible request for future shoreline protection at the site. Therefore, it must be clear that, as new development, the entire development approved by this permit is not entitled to a shoreline protection device now or in the future. **Special Condition 1** is imposed to require the applicant to acknowledge that the applicant has no right to a shoreline protective device for the project and that no future shoreline protective device will be allowed on site to protect the proposed development.

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

However, as discussed, the best available science indicates that sea level rise is occurring and coastal hazards may threaten the project site to some extent before the end of its economic life, although there are uncertainties inherent in predicting exactly how and when the impacts discussed above will occur. Therefore, **Special Condition 1** requires that if the structures are deemed 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, 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/landowner's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 5**, requires awareness of 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 6**, which states that any future improvements to the residences, garages, balconies, patios, roof decks, foundations, authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13250(b)(6) shall require an amendment from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. This condition ensures that any future development on this site that may affect shoreline processes receives review under the Coastal Act (or future certified LCP) by the appropriate regulatory body.

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

### **C. 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 single-family residence is proposed to be replaced with another single-family residence, 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.

#### **D. Public Access**

Two vehicle parking spaces will be provided onsite and will be accessed through Marvista Avenue. The project does not propose any curb cuts along Marvista Avenue, 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 Marvista Avenue. 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 proposed, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### **E. 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 applicant has indicated that roof and surface runoff will be managed onsite through the use of downspouts, graded drainage swale, catch basins, and permeable landscaping to capture and filter runoff and direct excess waterflow to the public storm drains located along Marvista Avenue.

Landscaping on a lot to be improved with a new single family residence must 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. 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 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 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.

## **F. Deed Restriction**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 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.

## **G. 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. On July 28, 1983, the Commission denied the proposed City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of Title 14 of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time. However, the City received an LCP Grant from the Commission in 2016 and is working toward the completion of a sea level rise vulnerability assessment and Local Coastal Program update.

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.

## **H. 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 Seal Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Seal Beach determined that the proposed development is exempt under Section 15301(e) 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. 5-22-0063 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