

**CALIFORNIA COASTAL COMMISSION**

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# Th14d

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**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 5-22-0115

**Applicant:** Brian Mullally

**Agent:** John Cataldo

**Location:** 156 12<sup>th</sup> Street, Seal Beach, Orange County (APN: 199-076-30)

**Project Description:** Demolish an existing one-story, 830 square foot single-family residence and build a new two-story, 20-foot tall, 1,573 square foot single-family residence and an attached two-story 491 square foot ADU. An existing 440 square foot detached ADU will remain onsite.

**Staff Recommendation:** Approval with Conditions

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**SUMMARY OF STAFF RECOMMENDATION**

The applicant is proposing to demolish an existing one-story, 830 square foot single family residence and detached garage, and construct a 20-foot high, two-story, 1,573 square foot single-family residence with an attached two-story, 491 square foot junior accessory dwelling unit (JADU) and attached two-car garage. An existing 440 square-foot accessory dwelling unit (ADU) will remain onsite and will continue to be used as an ADU.

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 3,075 square foot, rectangular-shaped lot located 0.19 miles inland from the beach in an urbanized area characterized by single-family residences. The project site is zoned Residential High Density-20 (RHD-20), which permits single-family residences and multifamily residences to be developed. The proposed residence is of a similar mass, scale, and character as the surrounding development, which includes mostly single-family residences and some multi-family structures. There will be no net decrease in the number of housing units as the project will maintain one full residential unit and two accessory dwelling units onsite. There are no public coastal views within the vicinity of the project site, so the project will not adversely impact coastal views. The project provides adequate onsite vehicle parking, and thus is consistent with the Coastal Act's public access policies. Landscaping will consist only of non-invasive, drought-tolerant plantings. The project does not propose any grading.

Although the project site is not located within the first line of development, the site is within a large, low-lying coastal area that is vulnerable to flooding with 3.3 feet or more of sea level rise. Staff has asked the applicant to provide adaptation measures to address the inherent flooding risk on the project site. In response, the applicant proposed to raise the lowest finished floor level by one foot from 9.33 feet to 10.33 feet NAVD88. In addition, a urethane coating would be utilized on the foundation to protect the structure from scouring and saltwater intrusion that could result from coastal flooding. While the applicant has attempted to adapt the proposed residence to account for coastal flooding risks, the fact remains that even modest adaptation measures may not be enough to withstand the flooding that is projected to impact the project site with even 3.3 feet of sea level rise. Because the proposed single-family residence constitutes new development, the residence is not entitled to shoreline protection under Section 30235 of the Coastal Act. Therefore, staff recommends the Commission impose **Special Conditions 1, 2, and 5** requiring the applicant to submit final revised plans that show the proposed adaptation measures for the residence, including the revised lowest finished floor level and urethane coating details; acknowledge that no shoreline protective device may ever be constructed to protect the new single-family residence, even if it is threatened by coastal hazards in the future; and assume the risks of developing a new single-family residence in an inherently hazardous area. In further consideration of the hazardous project location, **Special Condition 7** requires an amendment to Coastal Development Permit (CDP) No. 5-22-0115, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions. As proposed by the applicant and conditioned by the Commission, the project can be found to be consistent with Section 30253 of the Coastal Act.

Violations of the Coastal Act have occurred on the subject site, including but not limited to demolition of the 830 sq. ft. single-family residence, without benefit of the necessary coastal development permit.

As explained above, the applicant is proposing to seek an after-the-fact approval for demolition of the 830 sq. ft. single-family residence and construction of a new single-family residence and an attached JADU. Approval of this application pursuant to the staff recommendation would result in a resolution of violations remaining on the subject property. Pursuant to Section 13055 of the Commission’s regulations (Division 5.5, Title 14, California Code of Regulations), after-the-fact approvals are subject to additional fees equaling 5 times the total fee that would apply to the unpermitted development. Therefore, the Commission imposes **Special Condition 6** requiring the applicant to submit the requested after-the-fact fee before a final CDP can be issued.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-22-0115 with **seven** special conditions. The motion and resolution can be found on **Page 5**.

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## EXHIBITS

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – CoSMoS Pictures](#)

## MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit No. 5-22-0115 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 the Commissioners present.

### Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act 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.

## I. 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 assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind

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

## II. SPECIAL CONDITIONS

### 1. Revised Final Plans

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of the following final plans, bearing an approval in concept stamp from the City of Seal Beach:

1. Floor plans indicating that the lowest finished floor level is elevated a to a minimum of 10.33 feet NAVD88.
2. Foundation plans that identify the use of the proposed urethane coating and all structural elements of the foundation.
3. Landscaping plans, which shall include and be consistent with the following:
  - a. Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<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>).
  - b. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

B. All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission’s approval and with the recommendations of any required technical reports.

C. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

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

A. By acceptance of this permit, the applicant/landowner agrees, on behalf of himself and any successors and assigns, that no new shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-22-0115 including, but not limited to, the residence, accessory dwelling unit, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant/landowner hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under applicable law.

B. By acceptance of this Permit, the applicant/landowner further agrees, on behalf of himself and any successors and assigns, that the landowner is required to remove the development authorized by the permit, including, but not limited to, the residence, accessory dwelling unit, and any other future improvements, if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices; if essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; or if removal is required pursuant to relevant state law, Coastal Act policies, or LCP policies.

C. In the event that portions of the development fall to the beach or are submerged before they are removed, the applicant/ landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site and relocate any salvageable portions of the development inland. Such removal shall require a coastal development permit.

## **3. Water Quality, Drainage and Landscaping Plans.**

A. The applicant shall undertake development in accordance with the drainage and run-off control plan received by Commission staff on January 24, 2022 showing that roof and surface runoff will be captured and filtered with downspouts and permeable lava pavers and connect to the municipal storm drain system through a drain pipe. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. The applicant shall incorporate Best Management Practices (BMPs) into the construction and post-construction

phases of the subject development. The applicant has stated that they shall also comply with the applicable water efficiency and conservation measures of the City's adopted CALGreen standards concerning irrigation systems, and efficient fixtures and appliances.

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 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 permittee 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 permittee acknowledges and agrees (i) that the site may be subject to hazards from flooding, sea level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
6. **After-the-Fact Fees. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT,** the applicant shall submit to the Executive Director after-the-fact (ATF) fees as a penalty for the unpermitted conversion of the existing duplex to a single-family residence. The ATF fees shall equal five times (5x) the application fee that was submitted to Commission staff on January 24, 2022.
7. **Future Development.** This permit is only for the development described in CDP No. 5-22-0115. Pursuant to Title 14 of the California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 shall not apply to the development governed by CDP No. 5-22-0115. 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. 5-22-0115 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.

- 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) 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.

### **III. FINDINGS AND DECLARATIONS**

#### **A. Project Description and Background**

The applicant is requesting an after-the-fact approval for the demolition of an existing one-story, 830 square foot residence and detached garage, as well as an approval to construct a 20-foot high, two-story, 1,575 square foot single family residence and an attached two-story, 491 square foot JADU. An existing 441 square-foot detached ADU located at the rear of the lot will remain onsite, will be re-stuccoed to match the new proposed residence, and will remain in use as an ADU. Landscaping is proposed and will consist only of noninvasive, drought-tolerant plants. The project does not propose any grading ([Exhibit 1](#)).

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 states, in pertinent part:

“New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in hazardous areas, including areas subject to flooding. New development must also not significantly contribute to erosion or destruction of the site or surrounding area or require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed project raises potential hazards concerns related to the project site’s location in a low-lying area that is inherently vulnerable to flooding. Thus, potential hazards issues that must be addressed include the potential for flooding and storm hazards associated with locating development in an area that is currently vulnerable to flooding. These hazards may be exacerbated by the sea level rise that is expected to occur over the coming decades.

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

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. On November 7, 2018, the Commission adopted a science update to its Sea level Rise Policy Guidance. This document provides interpretive guidelines to ensure that projects are designed and built in a way that minimizes sea level rise risks to the development and avoids related impacts to coastal resources, consistent with Coastal Act Section 30253. These guidelines state, “to comply with Coastal Act Section 30253 or the equivalent LCP section, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development.” The most recent projections in the statewide sea level rise guidance indicate that sea levels in this area may rise between 5.5 feet and 6.8 feet by the year 2100, though there is a risk of much 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), 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, 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, the site is within a large, low-lying coastal area that is particularly vulnerable to flooding. This vulnerability is further exacerbated with sea level rise and increased storm surge activity.

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.

Given the project site’s location within a potentially hazardous area, Commission staff asked the applicant to prepare a coastal hazards study to analyze potential risks to the project site resulting from coastal flooding and other hazards (including wave uprush and coastal erosion). The applicant’s report states that the proposed residence would be relatively safe from hazards for the expected 80-year lifespan of the development despite the flood risk present at the project site. However, according to CoSMoS sea level rise models, the project site is susceptible to flooding under 3.3 feet or more of sea level rise and no storm scenario, which may occur far before the anticipated end of the structure’s life ([Exhibit 3](#)).

Given the risk of flooding before the end of the project’s expected life, adaptation measures to address the inherent flooding risk on the project site are required. In response, the applicant proposed to raise the slab foundation by one foot. The current project plans list the lowest finished floor elevation at 9.33 ft. NAVD88. With the additional one-foot rise in the foundation, the lowest floor elevation would be increased to 10.33 NAVD88. In addition, a urethane coating would be utilized on the foundation to protect the structure from scouring and saltwater intrusion that could result from coastal flooding. While the applicant has attempted to adapt the proposed residence to account for coastal flooding risks, the fact remains that even modest adaptation measures may not be enough to withstand the flooding that is projected to impact the project site at even 3.3 feet of sea level rise. Because the project is located inland of the first line of homes and the bay, it is not expected to be subject to wave action. But flooding may occur during the life of the development, which may affect the home and the surrounding streets and utilities.

Because the proposed single-family residence constitutes new development, the residence is not entitled to shoreline protection under Section 30235 of the Coastal Act. Therefore, the Commission imposes conditions to ensure that the applicant develops the project to adapt to sea level rise, waives the right to future shoreline protection, and assumes the risks of the development. **Special Condition 1** requires the applicant to submit final revised plans that show the proposed adaptation measures for the residence, including the 10.33-foot NAVD88 lowest finished floor level and urethane coating details. **Special Condition 2** requires the applicant to acknowledge that no shoreline protective device may ever be constructed to protect the new single-family residence, even if it is threatened by coastal hazards in the future. **Special Condition 5** requires the applicant to assume the risks of developing a new single-family residence in an inherently hazardous area. Furthermore, any potential changes to the proposed project may result in adverse impacts to coastal resources. In further consideration of

the hazardous project location, **Special Condition No. 7** requires an amendment to CDP No. 5-22-0115, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions. As proposed by the applicant and conditioned by the Commission, the project can be found to be consistent with Section 30253 of the Coastal Act pertaining to hazards.

### **C. Public Access**

Section 30210 of the Coastal Act 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 30212 of the Coastal Act states, in part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
  - (2) Adequate access exists nearby, ...

The project site is located landward of the first public road parallel to the sea. Public access to the beach exists along 12<sup>th</sup> Street, which is adjacent to the project site. The proposed residence is consistent with all of the local setback requirements and does not encroach into any public rights-of-way.

Three vehicle parking spaces will be provided onsite and will be accessed through an alleyway parallel to 12<sup>th</sup> Street. This alleyway is used to access garages along 12<sup>th</sup> Street, but it does not provide public parking spaces. The project also does not propose any curb cuts along 12<sup>th</sup> Street, 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 12<sup>th</sup> Street. 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 or public access to the coast or to nearby recreational facilities. Thus, the proposed development conforms with Sections 30210 and 30212 of the Coastal Act.

### **D. Development**

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

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public

services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The project site is a 3,075 square foot, rectangular-shaped lot located 0.19 miles inland from the beach in an urbanized area characterized by single-family residences ([Exhibit 2](#)). The project site is zoned Residential High Density-20 (RHD-20), which permits single-family residences and multifamily residences to be developed. The surrounding neighborhood is characterized by one- and two-story single-family residences and multifamily structures that range between 400 and 4,900 square feet in size. The proposed residence, at 20 feet in height and 1,573 square feet 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 coastal views. Given that the existing single-family residence is proposed to be replaced with another single-family residence and two ADUs, the project will also maintain the existing residential density onsite. Furthermore, given the project site's RHD-20 designation, a single-family residence with one ADU and one JADU is consistent with the City's zoning code requirements.

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, of the Coastal Act.

## **E. Water Quality**

Section 30230 of the Coastal Act 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 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

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 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. The applicant has indicated that roof and surface runoff will be managed onsite through the use of downspouts, a drainage pipe, and permeable landscaped areas to capture and filter runoff and direct flow to the public storm drains located along 12<sup>th</sup> Street and the rear alleyway.

The project plans indicate that landscaping will consist of California native and water wise landscaping. While the proposed landscaping consists of non-invasive and drought tolerant plants, future landscaping may not consist of such plants. For water conservation, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). In order to make sure that any onsite landscaping minimizes the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition 3**, 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 to require construction-related requirements and best management practices, and non-invasive drought-tolerant landscaping, 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. Unpermitted Development

Violations of the Coastal Act have occurred on the subject site, including but not limited to demolition of the 830 sq. ft. single-family residence, without benefit of the necessary coastal development permit. According to the applicant, the demolition took place in April, 2022. Although the applicant received a demolition permit from the local government, no CDP was issued for demolition. 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.

As explained above, the applicant is proposing to seek an after-the-fact approval for demolition of the 830 sq. ft. single-family residence and construction of a new single-family residence and an attached JADU. Approval of this application pursuant to the staff recommendation would result in a resolution of violations remaining on the subject property. Pursuant to Section 13055 of the Commission's regulations (Division 5.5, Title 14, California Code of Regulations), after-the-fact approvals are subject to additional fees equaling 5 times the total fee that would apply to the unpermitted development. Therefore, the Commission imposes **Special Condition 6** requiring the applicant to submit the requested after-the-fact fee before a final CDP can be issued.

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. 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 8**, requiring that 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, this permit ensures that any prospective future owner will have actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development.



## **H. Local Coastal Program (LCP)**

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 will be 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 a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

## **I. California Environmental Quality Act**

Section 13096 of the Commission’s administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (“CEQA”). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. As the lead agency under CEQA, the City of Seal Beach determined the project to be a ministerial (exempt) project under CEQA on September 6, 2018. The project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed project is consistent with CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Coastal Development Permit Application No. 5-22-0115 and associated file documents