

**CALIFORNIA COASTAL COMMISSION**

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# Th6b

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## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-23-0275

**Applicant:** Adelle and Rael Isacowitz

**Agent:** John Dilauro

**Location:** 16451 South Pacific Avenue, Sunset Beach, Orange County (APN: 178-514-19)

**Project Description:** Major remodel consisting of a 1,035 sq. ft. 3<sup>rd</sup> floor addition to a two-story, 24-ft. 6-in. high, 2,568 sq. ft. single family residence, resulting in a 3,655 sq. ft., three-story, 35-ft.-high single-family residence with 484 sq. ft. of new deck space, on a beachfront lot. The project includes the removal of an unpermitted deck encroachment and restoration of the area.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The proposed project includes a 3<sup>rd</sup> floor addition to an existing two story, 24-ft. 6-in. high, 2,568 sq. ft. single-family residence, as well as the construction of new 2<sup>nd</sup> and 3<sup>rd</sup> floor decks. The proposed project also includes the demolition of external walls and floor area on the seaward side of the property, so that the proposed residence will be set back 5 ft. from the seaward property line, consistent with recent Commissions actions on beach-fronting lots in Sunset Beach. Removal of all existing development that encroaches onto the adjacent public beach is also proposed. As well as restoration of the area of the public beach, including the area that will become exposed with

removal of the unpermitted deck encroachment. No new encroachments are proposed to be placed onto the adjacent sandy beach.

The subject site fronts Sunset Beach, a public beach located in the Sunset Beach community in the City of Huntington Beach, Orange County. The project site is in an uncertified area of the City of Huntington Beach. Therefore, the Commission is the permit-issuing entity for the proposed project and the standard of review is Chapter 3 of the Coastal Act. The City of Huntington Beach has reviewed the applicants' proposed plans and has approved the proposed project in concept.

An important question raised by this project is whether the proposal constitutes "redevelopment" of the existing house versus ordinary improvements to a single-family residence that are typically exempt from coastal development permitting requirements unless located in sensitive areas (i.e., Title 14, Division 5.5, Cal. Code Regs. §§ 13250, 13252). In past instances, the Commission has found that a structure will be considered redeveloped if 50% or more of the major structural components, or a 50% increase in gross floor area through alteration, would occur as a result of the proposed development. If so found, the entire redeveloped house must comply with Coastal Act policies.

In this case, while the applicant proposes to maintain most of the existing residence, the proposed 3<sup>rd</sup> floor addition would result in the demolition of 72% of the roof area. In addition, the applicant proposes to alter approximately 23% of all exterior walls. Thus, taken together, the proposed project entails such significant improvements to the existing residence that it will result in essentially a new home that is new development such that the entire home must comply with Coastal Act requirements, including its public access and recreation policies.

The project also raises potential coastal hazards issues. Most of Sunset Beach will be susceptible to hazards with expected future sea level rise, including this property towards the end of the economic life of the proposed house. Because the proposed major remodel constitutes new development, the residence is not entitled to shoreline protection under Section 30253 of the Coastal Act. Therefore, staff recommends the Commission impose **Special Condition 1** and **Special Condition 2**, requiring the applicants to acknowledge that no shoreline protective device may ever be constructed to protect the residence, even if it is threatened by coastal hazards in the future, and assume the risks of developing the residence in an inherently hazardous area.

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 3** which provides standards for the safe storage of construction materials and the safe disposal of construction debris. Staff also recommends the Commission impose **Special Condition 6**, which requires that all

vegetated landscaped areas only consist of native plants or non-native drought tolerant plants that are non-invasive.

To ensure that any prospective future owner(s) of the property is made aware of the applicability of the conditions of this permit, staff recommends the Commission impose **Special Condition 5** 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.

Staff is recommending APPROVAL of the proposed project with seven (7) special conditions: 1) no future shoreline protection device and removal of development under specific circumstances if threatened; 2) assumption of risk; 3) appropriate storage of construction materials, mechanized equipment and removal of construction debris; 4) the applicant's implementation of the dune restoration plan submitted with the application and prohibition of future encroachments; 5) recordation of a deed restriction against the property referencing all of the special conditions imposed by the Commission; 6) a landscaping plan which requires that vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants that are non-invasive; and 7) requirement to obtain a coastal development permit for future development.

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

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## **EXHIBITS**

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Encroachment Removal and Dune Restoration Plan](#)

[Exhibit 4 – CoSMoS Sea Level Rise Model Map](#)

## 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. 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 the Commissioners present.

## 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.

## SPECIAL CONDITIONS

1. **No Future Shoreline Protective Device.**
  - A. By acceptance of this permit, the permittee agrees, on behalf of themselves and any successors and assigns, that no shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-23-0275 including, but not limited to, the residence,

garage, decks, foundation 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 permittee hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.

- B. By acceptance of this Permit, the permittee further agrees, on behalf of themselves and any successors and assigns, that they are required to remove all or a portion of the development authorized by the permit and restore the site, if:
- i. 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, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no measures that could make the structures suitable for habitation or use without the use of 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; or
  - iii. Removal is required pursuant to future 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. 5-23-0275 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, encroachments onto public trust lands are subject to approval by the State Lands Commission or other designated trustee agency.

- 2. 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 permittees 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.

**3. 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.
- 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.

**4. Implementation of Dune Restoration Plan.**

- A. As proposed and by acceptance of this permit, the permittee shall implement the dune restoration plan submitted as a part of this application (CDP No. 5-23-0275) and titled Encroachment Removal and Dune Restoration Plan 16451 South Pacific Avenue Sunset Beach CDP Application No. 5-23-0275, for the beach area seaward of the subject property. No private encroachments are permitted in the area of the dune restoration.
- B. The permittee shall implement the Encroachment Removal and Dune Restoration Plan within 60 days of its approval by the Coastal Commission Executive Director and implement the plan 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.
- C. Following receipt of each annual report, the Coastal Commission may visit the restoration site to confirm the reports and to verify compliance with all permit conditions. After receipt of the final report, the Coastal Commission may visit the restoration site to confirm completion of the restoration project.

- 5. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant/ landowner shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) has/have executed and recorded against the parcel governed by this permit 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 recorded against title to the property shall include a legal description of that entire parcel. 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.

## **6. Landscaping Plan.**

- A. 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>).
- 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.

- 7. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-23-0275. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-23-0275. Accordingly, any future improvements to the single-family residence authorized by this permit shall require an amendment to Permit No. 5-23-0275 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. In addition, an amendment to CDP No. 5-23-0275 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance to the redeveloped residence identified as requiring a permit pursuant to PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

## **FINDINGS AND DECLARATIONS**

### **A. Project Description and Location**

The applicant is proposing a 1,035 sq. ft. 3<sup>rd</sup> floor addition to and remodel of a two-story, 24-ft. 6-in. high, 2,568 sq. ft. single-family residence. The resultant structure would be a 3,655 sq. ft., three-story, 35-ft. high single-family residence with 484 sq. ft. of new deck

space. Alterations to the existing residence include demolition of 55 linear ft. of exterior walls on the first floor, and demolition of 41 linear ft. of exterior walls on the second floor. In addition to removing exterior walls, 144 sq. ft. of floor area is proposed to be demolished on the seaward side of the residence. The remodel also consists of the demolition of 1,413 sq. ft. of the existing roof.

Staff has concluded that violations of the Coastal Act are present on the subject property, including private unpermitted development that encroaches beyond the applicant's seaward property line. This unpermitted development consists of an approximately 40-ft.-wide wood deck that encroaches 20 ft. beyond the property line out onto the public sand beach, and an area of cleared sand extending approximately 50 ft. beyond the wood deck. All aforementioned unpermitted development and beach encroachments will be removed. All of the proposed new residential development and any appurtenances are located within private property lines on the subject lot. Other than the removal of the encroaching deck and restoration of the encroachment area, no development beyond the private property lines is proposed under this coastal development permit application. Project plans are included as [Exhibit 2](#) and the Encroachment Removal and Dune Restoration Plan is included as [Exhibit 3](#). The proposed residence will be set back 5 ft. from the seaward property line. A raised deck is proposed within the area between the seaward property line and the proposed residence. No other development, including upper-level decks, is proposed with the seaward setback area.

The subject site is located at 16451 South Pacific Avenue in the Sunset Beach community of the City of Huntington Beach, Orange County ([Exhibit 1](#)). Sunset Beach is located on a low lying, relatively narrow strip of land between two waterbodies –the Pacific Ocean to the southwest of the site and Huntington Harbor to the northeast. The project is located within an existing urban residential area, between 23<sup>rd</sup> and 24<sup>th</sup> Streets. The subject lot is located between the first public road (South Pacific Avenue) and the sea. The site fronts the approximately 350 ft. wide sandy public beach known as Sunset Beach located between the subject property and the Pacific Ocean. The project was approved in concept by the City of Huntington Beach on 3/27/2023.

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 does not adequately address a number of issues of current

concern including appropriate development setbacks from the seaward property line of beach-fronting lots and sea level rise concerns, which are likely to be a significant issue in the new LCP, given the high degree of sea level rise vulnerability in the area.

The City has adopted 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 (a major remodel to an existing single-family residence) is consistent with many of the development standards that would have been applicable to the proposed project under the old Sunset Beach LCP. The old LCP designated the site Sunset Beach Residential – High Density. The proposed single-family residence is consistent with this designation. The project meets the old LCP’s height restriction of 35 ft. for the Sunset Beach Residential zone, which is also the City’s current height limit. In addition, the design of the proposed residence is consistent with existing surrounding residential development along South Pacific Avenue in Sunset Beach. Within the area of Sunset Beach where the subject site is located (beach fronting lots along South Pacific Avenue), the majority of lots are developed with single-family residences, similar to the proposed project, including similar heights and square footage.

Previously, the County had been issuing Encroachment Permits for development (i.e., decks) that encroached onto the public beach under a certified LCP regulation which states: *“Permanent above-ground structures on the beach and sand areas shall be prohibited, except for: a) Lifeguard Towers, b) Other facilities necessary for public safety, c) Temporary uses and structures accessory to residential development on contiguous Sunset Beach Residential properties subject to a Coastal Development Permit and a Public Property Encroachment Permit.”* To date, there are no identified records showing that the current beach encroachments in front of the project site were permitted by a County or Coastal Commission issued coastal development permit. In any case, the applicant is proposing to remove all beach encroachments, including the approximately 20 ft. by 40 ft. wood deck located seaward of the subject site.

## **B. Development**

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

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30251 of the Coastal Act states, in pertinent 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 zoned Residential High Density – specific plan overlay (RH-sp), which permits single-family and multi-family residences to be developed. The proposed residence is of a similar mass, scale, and character as the surrounding development, which includes single-family and multi-family residences and some commercial structures. Overall, the project is consistent with Section 30251 regarding community character and visual resources. There are no public coastal views within the vicinity of the project site, so the project will not adversely impact coastal views. The proposed project meets the old LCP’s height restriction of 35 ft. for the Sunset Beach Residential zone, which is also the City’s current height limit. Additionally, the project setbacks are consistent with the local guidelines. The project site currently contains one single family residence. The proposed project will result in no change in the number of housing units, as one single family residence would remain on site.

### **Major Remodel**

The issue of whether this project constitutes “new development”, or “redevelopment” or more ordinary improvements is important because, as discussed more fully below, “New development” must comply with all Coastal Act Chapter 3 policies—and, hence, include sufficient setbacks from public beach areas. (14, Cal. Code Regs. §§ 13250).

While the dividing line between an improvement (or repair and maintenance) and “redevelopment” is not always clear, at a certain point, substantial alterations to a home can no longer be considered minor improvements, but instead must be considered new development. In previous actions, the Commission has found<sup>1</sup> that a structure is considered redeveloped if one of the following takes place: 1) 50% or more of the major structural components are replaced; 2) there is a 50% increase in gross floor area; 3) replacement of less than 50% of a major structural component results in cumulative alterations exceeding 50% or more of that major structural component (taking into account previous replacement work undertaken); and/or 4) less than a 50% increase in floor area where the alteration would result in a cumulative addition of 50% or more of the floor area, taking into account previous additions to the structure.

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<sup>1</sup> (See A-5-VEN-17-0009 (Thomas), A-5-LGB-18-0012 (Bracamonte); 6-18-0182 (Harris); 5-18-0223 (Walsh))

In this case, although the 1,035 sq. ft. 3<sup>rd</sup> floor addition and 26 sq. ft. 1<sup>st</sup> floor addition are less than 50% of the existing square footage of the 2,568 sq. ft. residence, the proposed 3<sup>rd</sup> floor addition would alter approximately 72% of the existing roof. In addition to this substantial alteration of the existing roof, the applicant proposes additional alterations to the existing structure, including demolition of a 55 ft. portion of what is currently the front (seaward) wall of the existing structure on the first floor, and demolition of a 41 ft. portion of what is currently the front (seaward) wall of the existing structure on the second floor. Of the 412 linear ft. of existing exterior wall area, 97 linear ft. of exterior wall area will be altered, resulting in alteration of approximately 23% of existing exterior wall area. In addition to removing exterior walls, 144 sq. ft. of floor area is proposed to be demolished on the seaward side of the residence. Interior alterations are also proposed to the existing structure.

Therefore, taken together, the Commission finds that the proposal entails such significant improvements to the existing residence that the project, if approved, would for all practical purposes result in a new house, and cannot be treated as minor improvements under the Coastal Act and implementing regulations. Thus, the redeveloped residence must comply with the applicable standards of the Coastal Act, discussed below in the Public Access Section of the staff report. As described in more detail later in the report, the applicant is proposing to meet the Commission's 5-ft. setback requirement.

The proposed remodel and addition could be found to be consistent with the Chapter 3 development policies cited above. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. Section 30610(a) of the Coastal Act provides that certain improvements to existing single-family homes do not require a coastal development permit, subject to Section 13250 of the Commission's regulations, which lists certain improvements to single-family structures that require a coastal development permit because they involve a risk of adverse environmental effect, including those improvements to a structure that is located on a beach (13250(b)(1)). The Commission finds that exemption from coastal development permit requirements for certain improvements to existing single-family homes per section 30610(a) does not apply to the proposed single-family structure because it is located on a beach. Thus, to assure that future improvements are consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that it is necessary to impose **Special Condition 7** prohibiting the construction of future improvements to the proposed single-family structure without first obtaining an amendment to this permit or a new coastal development permit.

Therefore, as conditioned, the development conforms to the Chapter 3 policies of the Coastal Act.

## C. Public Access and Recreation

Coastal Act Section 30210 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 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:

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

### Development Setback

The project site is a beach-fronting site located within and along a row of beach fronting, residentially developed lots along South Pacific Avenue. Vertical access from South Pacific Avenue to the public beach is available approximately 50 ft. northwest (upcoast) of the subject site at the end of 24th Street and approximately 150 ft. southeast (downcoast) of the site, at the end of 23rd Street.

As reflected in the policies 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 population is expected to continue to increase. The

amount of sandy beach will decrease while the demand for sandy beach areas will increase.

Section 30214 of the Coastal Act recognizes the inherent conflicts likely to arise when private property abuts public use areas, but the Act prioritizes public access needs. This means that the private property owner's need for privacy must be accommodated on the private property itself, not by burdening the increasingly limited public beach area available for public use. When such conflicts are not addressed at the planning/permitting stage of development, and adjacent residential development is allowed too close to public beach areas, the resulting lack of privacy could lead to future demands by residents to curtail public use of the public area in order to afford privacy. Sunset Beach is a public beach, and new development should not be allowed to be constructed in a manner that could foreclose the ability of the homeowner to maintain privacy. This issue is likely to arise, especially as the beach narrows as it is expected to do, with increasing demands on the public beach and concentrating the public area increasingly closer to the public/private border.

The Commission recognizes the historic pattern of development on beach-fronting properties in Sunset Beach over the last few decades has been to allow a zero-foot or minimal setback from the seaward property line. However, with more recent development, the Commission has begun imposing seaward setbacks for beach fronting development in Sunset Beach as necessary to maximize public access, especially considering the impacts from sea level rise.

The proposed residence will be set back at least 5 ft. from the seaward property line, on all three levels. A raised deck is proposed within the setback area. The proposed 5 ft. seaward setback allows the resident to conduct maintenance activities typically necessary to maintain a residence without encroaching onto the public beach. These activities include washing or repairing windows, and painting or making repairs to the residence on its seaward side. In addition, with the proposed 5 ft. seaward setback, the resident would be able to exit the proposed home on its seaward side, without needing to step directly onto the public beach.

As proposed with the 5 ft. seaward setback, the project would be consistent with the requirements of Coastal Act Section 30210 to maximize public access. The proposed 5 ft. setback means that the proposed development will be consistent with Section 30221, in that it will not interfere with land suitable for recreational use (the sandy public beach area). Finally, the proposed residence with the 5 ft. seaward setback will balance the competing demands of public use and privacy in a manner that emphasizes public recreation and access, as is required by Section 30214 of the Coastal Act. The residence as proposed to be setback 5 ft. from the seaward property line will reduce some of the pressure due to the public/private interface described above. A minimum 5-ft. structural setback from the seaward property line also allows the applicant to conduct routine maintenance on the structure from within the private property lines, without

encroaching onto public beach area. Additionally, the proposed 5-ft. seaward setback would provide space that could provide a degree of privacy for residents of the proposed structure. Moreover, the effects of the “self-imposed” buffer would also be reduced. Therefore, as proposed, the project is consistent with Sections 30210, 30221, and 30214 of the Coastal Act.

It should also be noted, however, that the Commission finds that an even greater setback than proposed with this project may be appropriate in the future with future development, and that this issue should be carefully evaluated as part of the future LCP amendment to incorporate this annexed area into the City’s LCP. In this case, the proposed 5-ft. setback from the seaward property line should be considered the minimum setback necessary to allow for normal construction, repair and maintenance activities of the residence on site to occur on the applicant’s property without requiring encroachment into public beach, provide a minimum privacy buffer, avoid the appearance of privatization of the public sandy beach area, and generally help to minimize potential conflicts between private property owners and members of the public visiting Sunset Beach.

### **Encroachments**

The Coastal Act requires that public access and recreation be maximized. The subject site is located adjacent to a currently wide, sandy public beach. The issues discussed above regarding impacts to public access due to an insufficient seaward setback of private property from the public beach will also occur when private development occurs directly on the public beach, only the issues are intensified due to the actual physical displacement of public beach area by the private development.

Seaward of all the beach-fronting residences in Sunset Beach is a berm that was constructed by the County of Orange sometime in the early 1980s to protect development in Sunset Beach following severe flooding resulting from the 1982/83 El Niño. The berm has remained in place ever since and has helped prevent flooding from the ocean in the area according to numerous wave runup and coastal hazards studies submitted over the years for development in this area, including the Coastal Hazard Study submitted for the proposed development. Over time, the berm has come to function in the manner of a natural, though degraded, dune. This dune is degraded due to the lack of native dune plants and coverage by non-native species such as Hottentot-fig, crystalline ice plant, small flowered ice plant, natal plum, and baby sun rose. Notwithstanding its degraded state, the dune exhibits dune morphology and dune substrate.

In addition, western snowy plovers are known to be present in Sunset Beach area. They are listed as federally threatened and are also a California Species of Special Concern. The most recent documented sighting of the western snowy plovers in the area known to Commission staff was on April 15, 2018, when 17 western snowy plovers were spotted at Sunset Beach. The Commission acknowledges that the western snowy

plover may not be expected to utilize beach area seaward of the project site for nesting or substantial foraging due to beach maintenance and daily human activity. Nevertheless, increased dune habitat in the area may prove beneficial to the threatened western snowy plover.

An unpermitted, approximately 20 ft. by 40 ft. wood deck is currently located immediately seaward of the seaward property line. This unpermitted deck occupies approximately 800 sq. ft. of public beach and encroaches into the aforementioned dune area. In order to remove adverse impacts to public access identified above in the discussion regarding the seaward setback, the applicant has proposed to remove all existing encroachments located seaward of the property line (including the approximately 20 ft. by 40 ft. wood deck). To assure that the existing seaward encroachments are removed as proposed by the applicant, the Commission imposes **Special Condition 4** which requires that the removal of the encroachments be carried out as proposed in the Encroachment Removal and Dune Restoration Plan.

In conjunction with the removal of the private encroachments from the public beach, it is important that the area of the unpermitted development be returned to its former state. Simply removing the encroachments from the restoration area alone will not restore the area to its former state in the long term. Restoration of the area of unpermitted development would aid in the effort toward resolving the violation resulting from the unpermitted presence of the encroaching development. To that end, the applicant has submitted an Encroachment Removal and Dune Restoration Plan ([Exhibit 3](#)) for the area where the unpermitted encroachments (proposed to be removed by the applicant) are located. The restoration area proposed by the applicant includes the area of the 40 ft. wide unpermitted deck that extends 20 ft. seaward of the seaward property line, as well as the area of non-native vegetation and sand that has been cleared of vegetation located within the area approximately 50 ft. seaward of the unpermitted deck.

The Encroachment Removal and Dune Restoration Plan provides for removal of all non-native plants within the restoration area. In addition to removing all non-native plants, it is important that the restoration area be planted with appropriate native dune plants. Without such planting, onshore wind and storms would blow the sand away, displacing sand inland, onto developed areas creating issues for the adjacent streets and area residents from blown sand. Thus, once the encroachments are removed and all non-native plants are removed, the area will be planted to provide long term stability. Most of the dune/berm along Sunset Beach is vegetated primarily with ice plant and other non-natives. However, the dune restoration area will be planted with dune plants native to coastal southern California. This will have the dual benefit of stabilizing the berm and, potentially, increasing the habitat value. Moreover, native dune plants would be more visually pleasing than ice plant, which is important in this public beach area.

The locations of the initial native dune plantings (both seed and container plantings) are depicted graphically in the *Encroachment Removal and Dune Restoration Plan*. It is important to know where these plants will be placed in the restoration area to better understand and assess the overall Plan. The Plan also addresses irrigation, and notes that it should be avoided to the extent feasible and allows spot watering with a hose or watering can, with care to avoid trampling the plantings.

The Encroachment Removal and Dune Restoration Plan requires the dune restoration area be maintained free of invasive and non-native plant species. In addition, for successful dune restoration to occur, no native dune species that establish within this area shall be removed or harmed. Additionally, future private encroachments, including any placement of any items not needed for the restoration, are prohibited in the area seaward of the private property, including within the entire restoration area. And it is important that the dune restoration occurs within a timely manner to encourage the impacts from the unpermitted encroachments to be offset in as timely a manner as possible.

For the reasons described above, the Commission imposes **Special Condition 4** which requires the applicant to implement the *Encroachment Removal and Dune Restoration Plan* that was submitted as a part of this application (CDP No. 5-23-0275), and which incorporates all the components described above. In order to assure that the proposed restoration area is protected and to assure no further private development of public beach area occurs, this condition also prohibits any future private encroachments onto the public beach (other than as necessary to carry out the approved revised restoration plan).

The proposed development, as conditioned by **Special Condition 4**, will protect the public's ability to gain access to, and to use the public beach area and will protect and enhance sensitive habitat. Furthermore, as conditioned to require a waiver of future shoreline protection (**Special Condition 1**), approval of the proposed development further ensures protection of coastal public access by avoiding potentially significant adverse impacts to the beach which are generally known to occur with placement of shoreline protective devices on or near the beach. (See discussion above.) Therefore, the Commission finds the proposed development, as conditioned, is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

## D. Coastal Hazards

Section 30253 of the Coastal Act states, in pertinent part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Due to its low-lying location between the oceanfront and the harbor, an inherently dynamic and potentially hazardous area, the project site must be examined for the potential for erosion, flooding, wave attack and wave runup hazards, including consideration of potential impacts due to severe storm events. Moreover, these hazards may be exacerbated by expected future sea level rise, which must also be considered.

The Sunset Beach community, where the subject site is located, has historically been subject to flooding and damage resulting from wave action during storm conditions, as well as flooding from the harbor area during high tides, which worsens under storm conditions. Past occurrences of ocean flooding and storms have resulted in millions of dollars of public costs for public service (including the U.S. Army Corps of Engineers - led periodic beach replenishment program that has been ongoing for more than 50 years; and annual construction of a seasonal berm across the beach, originally constructed by the County, and now by the City of Huntington Beach). Specifically, the El Niño storms of 1982/83 caused significant damage in both Sunset Beach and neighboring Surfside, both from the ocean and from flooding from the harbor. Indeed, it was the damage from this storm that led to the annual construction (without benefit of a CDP) of the seasonal berm across Sunset Beach, and in the one-time construction of the "vegetated berm" (also without a CDP) located just seaward of the beachfront residential development in Sunset Beach. Moreover, flooding of areas along Pacific Coast Highway from Huntington Harbor occurs in Sunset Beach now with extreme high tides. This flooding is worsened when high tides occur together with storm activity. Moreover, USGS CoSMoS, the best available regional sea level rise modeling tool, shows that the subject site and surrounding area may be significantly impacted by future sea level rise ([Exhibit 4](#)) and related flooding. Impacts due to expected future sea level rise flooding will be worse when storm activity is also factored in. Public costs are incurred with each incident, including for pumping flooded areas, clearing blocked storm drains, and clean up.

The main concerns raised by the proposed development include the potential exposure of the proposed development to coastal flood and/or erosion hazards and whether future hazardous conditions (including the possibility of flooding from either the beach or harbor) might eventually lead to a request to build a shoreline protection device to protect the proposed development.

Sea level rise models suggest the site will likely become at risk within the expected 75-year life of the proposed residence ([Exhibit 4](#)). To address questions raised by these issues, the applicant's coastal engineer provided a Coastal Hazard Study (Coastal

Hazard & Wave Runup Study for 16451 South Pacific Avenue, Sunset Beach, prepared by GeoSoils, Inc., 5/25/2023). The Study concludes:

Based upon the CoSMoS modeling, the development is reasonably safe from SLR with 100-year wave flooding over the design life of the development due to the proposed elevation of the finished floor above the area drainage, and the existing pile foundation.

The Study finds that with sea level rise of 4.9 ft. and a 100-year storm event, the subject site is likely not going to be impacted by coastal hazards because the proposed elevation of the first floor is higher than the maximum wave runup calculated in the report under this SLR scenario (first floor = 15.96 ft. NAVD88). However, the 2018 OPC State Sea Level Rise Guidance and 2018 Coastal Commission Sea Level Rise Policy Guidance, which contain the current best available science on sea level rise, provide that proposals for residential structures, such as the proposed development, should use the sea level rise projections associated with Medium-High risk aversion, which is 6.7 ft. of sea level rise by the year 2100 and about 6 ft. by the year 2095. These SLR scenarios are higher than the consultant's 4.9-ft. scenario.

Based on CoSMoS modeling, the site will begin to become threatened with about 4.9 ft. of sea level rise and no storm or with 4.1 ft. of SLR with a 100-year storm ([Exhibit 4](#)). SLR medium-high risk aversion projections for the Los Angeles tide gauge indicate that 4.9 ft. of SLR is expected to occur sometime between 2080 and 2090, and 4.1 ft. of sea level rise is expected to occur sometime between 2070 and 2080. Thus, applying the best available science standard, the proposed development may be threatened prior to the end of its expected 75-year life, as soon as sometime between 2070 and 2080. In addition, the updated Rising Seas science report and OPC Guidance also recognize the possibility of an extreme scenario (termed the "H++" scenario) of 9.9 ft. of sea level rise by 2100 associated with possible future rapid ice sheet loss.

The best available science indicates the proposed development may be threatened by coastal hazards as a result of sea level rise before the end of its 75-year life. In this case, the applicant's coastal hazards analysis included a list of adaptation measures to ensure the safety of the residence, including dry flood proofing with the use of sealant systems and removable flood shields as well as wet flood proofing. The applicant is proposing to incorporate these adaptation measures into the project. With the inclusion of adaptation measures, the proposed residence has been designed to minimize risks to life and property in a high flood hazard.

### **Adverse Coastal Impacts Due to Shoreline Protection Devices**

The Coastal Act discourages shoreline protection devices because they generally cause significant impacts on coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. This is expected to be exacerbated with future sea level rise. Shoreline protective devices, by their very nature, tend to conflict with

various Commission approved LCP and Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could "...create [or] 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." Coastal hazards and shoreline protective devices also raise public trust concerns. The common law public trust doctrine protects the public's right to access tidelands, submerged lands, and navigable waters, which the State holds in trust for the public's use and enjoyment. Private residential uses are not public trust uses and the existence of private residential uses, such as the proposed project, on future public trust lands likely would conflict with the public's right to use and enjoy such lands.

In order to ensure that new development is sited and designed to not create or contribute significantly to the destruction of the site or surrounding area through construction of protective devices, it is important to assure that new development (such as a major remodel which constitutes new development, as is being proposed here) not be permitted shoreline protection to the extent such shoreline protection would be inconsistent with Coastal Act Chapter 3 coastal resource policies. If it is known that the development requires shoreline protection, it would be unlikely that such development could be found to be consistent with Section 30253 of the Coastal Act which, as stated above, requires that new development not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, given the well-known coastal resource impacts that shoreline protection typically causes.

In this case, the applicant is not proposing any shoreline protective devices. Nonetheless, the Commission imposes **Special Condition 1** to require the applicant to acknowledge that the applicant has no right to a shoreline protective device for the project and no future shoreline protective device will be constructed 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. Section 30253 does not prohibit development in a potentially hazardous area; rather, an applicant must demonstrate that risks to life and property are minimized. Here, it is important to note that the site is not currently threatened by coastal hazards and is unlikely to be for many years, and has been designed to be stable and structurally sound under current conditions.

As discussed, the proposed development constitutes *new* development, rather than a minor remodel or addition, and essentially “re-starts” the life of the project. Consequently, it is important to note that, if the redeveloped home is threatened it must be removed, even though portions of the redeveloped house may currently exist at the site. Thus, **Special Condition 1** is applicable to the entire redeveloped structure, not just the proposed addition and improvements.

Moreover, **Special Condition 1** requires the applicant to remove the development (consisting of the entire redeveloped home, garage, foundation, and any future improvements) if 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. **Special Condition 1** requires that if any part of the proposed development becomes threatened by coastal hazards in the future, then the threatened development must be removed rather than protected in place. All or a portion of the development authorized by this permit shall also be removed if essential services to the site can no longer feasibly be maintained due to coastal hazards, if removal is required pursuant to LCP policies for sea level rise adaptation planning, or if the development requires new and/or augmented shoreline proactive devices that conflict with relevant LCP or Coastal Act policies. In addition, the public trust boundary may migrate landward in response to rising sea levels. If the public trust boundary does migrate landward and encompasses the development approved under CDP No. 5-23-0275, the development would need to be removed pursuant to **Special Condition 1**. 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 for approximately 50 years with 4.1 ft. of sea level rise and up to approximately 65 years if sea level rise is about 4.9 ft., 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.

### **Assumption of Risk**

The Commission also finds that due to the possibility of storm waves, surges, flooding, erosion and other coastal hazards, the applicant shall assume the risks of development in a hazardous area as a condition of 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 which 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 2**, will show that the applicant is aware of and understands the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicant.

## Conclusion

The proposed development, as conditioned, can be found to be 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 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.

## E. Unpermitted Development

Violations of the Coastal Act that are associated with the subject residence have been undertaken on the public beach adjacent to the subject property. As stated above, this unpermitted development consists of an approximately 40-ft.-wide wood deck that encroaches 20 ft. (totaling 800 sq. ft.) beyond the applicant's seaward property line out onto the sand beach, and an area of cleared sand extending approximately 50 ft. beyond the wood deck.

In an effort to offset adverse impacts resulting from the unpermitted placement of the encroachments, the property owner (applicant) has agreed to take remedial action, including removal of the unpermitted encroachments, restoration of the area of the removed encroachments to dune habitat, including revegetating the area with plants native to southern California coastal dunes.

For background, the Commission notes that the formerly certified LCP for the Sunset Beach area included provisions for private encroachments beyond the seaward property line onto the adjacent public beach. Encroachments were allowed under the former LCP upon receipt of a coastal development permit and there is no evidence that one was ever granted for the encroachment at issue. The encroaching deck was present when this applicant purchased the property in December of 2022; however, this does not affect the applicant's liability for the violation. The applicant is voluntarily proposing to remove the encroachment through this application.

Nevertheless, there were impacts to public access and dune habitat that occurred for a period of time due to the presence of the unpermitted encroaching deck. These impacts due to the unpermitted deck development must be addressed. To address and offset these impacts that accrued due to the unpermitted development, the Commission finds that in addition to removal of the encroachments, the encroachment area, including adjacent beach area, must be restored to natural dune habitat (as described earlier in this report).

If the staff recommendation is approved by the Commission, and if the encroachments are removed as proposed by the applicant, and if the site is restored consistent with the requirements of **Special Condition 4** pursuant to the staff recommendation, and the permit is issued, and the applicant complies with all of its terms and conditions, the

violation regarding the unpermitted private development on the public beach will be resolved. However, if the removal of the deck does not occur as proposed, and/or if the encroachment area is not restored consistent with the Encroachment Removal and Dune Restoration Plan, enforcement staff will consider action to address the violations of the Coastal Act, including but not necessarily limited to action pursuant to Coastal Act Section 30821, which authorizes the Commission to impose civil penalties for violations of the Coastal Act's public access provisions, with certain exceptions that do not apply here.

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. 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 above described violations going forward.

## **F. 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 waterflow, 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 the cumulative adverse impacts on water quality resulting from incremental increases in impervious surfaces associated with additional development. The applicants have provided a drainage plan which indicates that roof and surface runoff will be managed onsite through the use of downspouts to capture and filter runoff and direct flow to trench

drains, catch basins, and gravel pits on the property. The gravel pits are designed with filter fabric that provide natural percolation into the soil.

The proposed landscaping consists of two planter areas with drought tolerant, non-invasive 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 6**, which imposes landscape controls that require that all vegetated landscaped areas consist of native or non-native, drought tolerant plants, which are non-invasive and to implement the proposed drainage plan so that water is captured and filtered on site.

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 waters 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 3**, 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 permittees 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.

## **G. Deed Restriction**

To ensure that any prospective future owner(s) of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 5**, which requires the applicant 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. Thus, as conditioned, this permit ensures that any prospective future owner(s) 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.

## **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. 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 where appropriate. 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.

## **I. California Environmental Quality Act (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

The City of Huntington Beach is the lead agency responsible for CEQA review. The City determined that the project qualifies for a CEQA exemption. Typically, projects are exempt from CEQA pursuant to section 15303(a) of the CEQA Guidelines when they consist of construction of one single-family residence located within an urbanized residential zone. As conditioned, there are no additional feasible alternatives or additional feasible mitigation measures available which will substantially lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified possible impacts, is consistent with CEQA and the policies of the Coastal Act.

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

- Coastal Development Permit Application Number 5-23-0275 and associated file documents
- Coastal Hazard & Wave Runup Study for 16451 South Pacific Avenue, Sunset Beach, Orange County, California prepared by GeoSoils, Inc., dated May 25, 2023.