

CALIFORNIA COASTAL COMMISSION

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Th6a

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-23-0296

Applicant: Christian Barney

Agent: Eric Lind, E.C. Lind Architect, LLP

Location: 16474 24th Street, Sunset Beach, Orange County
(APN: 178-514-04)

Project Description: Demolish an existing 2,142 sq. ft. two-story detached duplex unit and construct a new 2,837 sq. ft. three-story duplex unit with an attached 697 sq. ft. garage and a 960 sq. ft. rooftop deck. No work is proposed to the second detached duplex unit on site.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to demolish an existing two-story, 2,142 sq. ft. unit of a detached duplex, and construct a new 35 ft. high, three-story, 2,837 sq. ft. duplex unit with an attached 697 sq. ft. garage and a 960 sq. ft. rooftop deck.

Sunset Beach is an area that was formally 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. As conditioned, the proposed project conforms with Chapter 3 of the Coastal Act.

The project site is a 3,149 sq. ft., rectangular lot located approximately 200 ft. inland from the beach in an urbanized area characterized by a mix of commercial and residential (single-family and multi-family) developments. The project site is zoned Residential High Density – specific plan overlay (RH-sp), which permits single-family and multi-family residences to be developed. The proposed duplex unit is of a similar mass, scale, and character as the surrounding development, which includes single-family and multi-family residences and some commercial structures. There will be no net change in the number of housing units as the project will maintain two residential units onsite. There are no public coastal views within the vicinity of the project site, so the project will not adversely impact coastal views. Additionally, the applicant provided a construction staging plan that states that no staging shall occur on the beach, the route to the beach, or any public parking spaces, therefore the project will not adversely impact public access to the beach.

Although the project site is not located within the first line of development adjacent to the ocean, the site is within a large, low-lying coastal area that is vulnerable to flooding under a minimum of 3.3 feet of sea level rise. Given the project site's location within a potentially hazardous area, the applicants have proposed to elevate the finished floor of the foundation to be 16.14 ft. NAVD88, as well as waterproofing the exterior of all concrete foundation walls. While the applicants have attempted to account for coastal flooding risks, the adaptation measure of elevating the structure and waterproofing the foundation may not be enough to withstand the flooding that is projected to impact the project site with a minimum 3.3 ft. of sea level rise. Because the proposed detached duplex unit 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 Condition 1** and **Special Condition 2**, requiring the applicants to acknowledge that no shoreline protective device may ever be constructed to protect the duplex unit, 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 5**, which requires that all vegetated landscaped areas only consist of native plants or non-native drought tolerant plants that are non-invasive.

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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 4** 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.

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

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EXHIBITS

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – 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. 5-23-0296 including, but not limited to, the residence, garages, balconies, patio, roof deck, 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. 5-23-0296 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 is 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 permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim

of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

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. 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.

5. 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.

FINDINGS AND DECLARATIONS

A. Project Description and Location

The applicant is proposing to demolish an existing two-story, 2,142 sq. ft. detached duplex unit, and construct a 35-ft. high, three-story, 2,837 sq. ft. duplex unit with a 697 sq. ft. attached three-car garage and a 960 sq. ft. rooftop deck with stairwell access ([Exhibit 2](#)). The garage will take access from North Pacific Avenue. No work is proposed to the second detached duplex unit on site.

The subject site is located at 16474 24th Street 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, on an interior (non-waterfront) lot located in the area between Pacific Coast Highway and the beach-front residential development located on South Pacific Avenue.

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.

There is a public parking area located on either side of the “greenbelt” located just steps from the subject site and about 100 feet from the sandy public beach. However, there is otherwise very limited on-street parking in Sunset Beach to serve public beach-goers and visitors to the harbor. During peak use periods, the parking demand exceeds the supply. This especially affects public use of Sunset Beach’s public beach, which tends to be under utilized compared to Bolsa Chica State Beach and Huntington City and State beaches, located just downcoast. The downcoast beaches are adjacent to large parking lots. Both the beach and the harbor are great visitor destinations, especially in the summer. During the peak use periods, the lack of parking can interfere with public access when visitors cannot find an available space to park.

The 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 replacement unit for a detached duplex) 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 unit for the detached duplex is consistent with this designation. The project meets the old LCP’s height restriction of 35 feet for the Sunset Beach Residential zone, which is also the City’s current height limit. In addition, the design of the proposed detached duplex unit is consistent with existing surrounding residential development along 24th Street in Sunset Beach. The neighborhood in which the project site is located is characterized by a mix of residential (single-family and multi-family) and commercial developments, ranging from one to three-stories and 781 sq. ft. to 6,000 sq. ft. in size. The proposed residence, at 35 feet in height and 2,837 sq. ft., is of a similar mass and scale as the surrounding development and will not be out of character with the area.

B. 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.

The proposed project is sited in a low-lying area that is inherently vulnerable to flooding. Thus, potential hazards issues that must be addressed include the potential for flooding and storm hazards. These hazards may be exacerbated by the sea level rise that is expected to occur over the coming decades.

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

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. On November 7, 2018, the Commission adopted a science update to its Sea level Rise Policy Guidance. This document provides interpretive guidelines to ensure that projects are designed and built in a way that minimizes sea level rise risks to the development and avoids related impacts to coastal resources, consistent with Coastal Act Section 30253. These guidelines state, “to comply with Coastal Act Section 30253 or the equivalent LCP section, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development.” The most recent projections in the statewide sea level rise guidance indicate that sea levels in this area may rise between 3.2 ft. and 6.7 ft. by the year 2100, though there is a risk of more significant sea level rise depending on various uncertainties, including the dynamics of ice sheet loss. The projection is given in a range largely because researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea level rise are tracking along the

higher projections) as well as the inherent uncertainty regarding the exact rate of future sea level rise, the Ocean Protection Council and the Natural Resources Agency have continued to recommend that we avoid relying on the lower projections in planning and decision-making processes.

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear, and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

On the California coast, the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore in many locations, which will result in increased flooding, erosion, and storm impacts to coastal areas. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

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

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

Sunset Beach, would likely be at increased risk from flooding, and shoreline areas would be at risk from erosion. With rising sea level, these risks are likely to increase unless the interventions become larger or more frequent to keep up with the future hazards.

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

According to the CoSMoS sea level rise model, the project site and area is susceptible to flooding if 3.3 ft. of sea level rise occurs in combination with an astronomical tide, even without a storm scenario, which may occur before the end of the structure’s 75-year expected life ([Exhibit 3](#)). Using the CoSMoS sea level rise model and applying a 100-year storm scenario, the project site and area is even more vulnerable to flooding, with 1.6 ft. sea level rise ([Exhibit 3](#)). Given the project site’s potentially hazardous location, the applicant prepared a coastal hazards study (Sea Level Rise Discussion, 16474 24th Street, Sunset Beach, Orange County, California prepared by Geosoils, Inc. dated June 12, 2023). The applicant’s study analyzes potential risks to the project site resulting from coastal flooding and other hazards (including wave uprush and coastal erosion) and it states that the proposed residence would be “reasonably safe from hazards” for the expected 75-year lifespan of the development despite the flood risk present at the project site. It also states that the finished first floor will be at elevation 16.14 ft. NAVD88. In order to mitigate future potential sea level rise impacts, the applicants have proposed to incorporate adaptation measures into the project, such as

applying a waterproof coating to the exterior of all concrete foundation walls and providing 3 ft. high removal flood shields at all exterior door openings.

In this case, because with future sea level rise, the project site may be threatened from both the harbor side as well as the ocean side, consideration of impacts to the development – and impacts the development may have on an eroding shoreline – must be considered not just from the ocean, but from the harbor as well. If the site is threatened by coastal hazards from the harbor side of development, as exacerbated by expected future sea level rise, then impacts will have also occurred to Pacific Coast Highway, where the project site is located, and the surrounding streets. This will disrupt the provision of essential services such as access by public roads and the site's ability to be served by public infrastructure in the current manner. As shown through CoSMoS, the project site and area would still be susceptible to flooding if 3.3 ft. of sea level rise with no storm scenario and from flooding with a 100-year storm scenario with 1.6 ft. of sea level rise. The flooding that may affect the site with future sea level rise may mean the project site is no longer located on private property due to the migration of the public trust boundary.

Because the site-specific hazards study provided by the applicant's coastal engineering consultant maintains that, even with expected future sea level rise, the proposed development is not expected to be threatened by coastal hazards and thus is not expected to need shoreline protection over the life of the development, the project can be found to conform with the hazards policies of the Coastal Act. However, given the dynamic nature of coastal beaches, as well as the Commission's review of data indicating that the property could be impacted by sea level rise at some point in the future, it is important to ensure that the risks of developing on these inland lots are borne by the applicant, not the public at large.

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

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

However, as discussed, the best available science indicates that sea level rise is occurring, and coastal hazards may threaten the project site before the end of the structure’s anticipated 75-year economic life. Therefore, **Special Condition 1** requires that if any part of the proposed development becomes threatened by coastal hazards in the future, the threatened development must be removed rather than protected in place. This condition recognizes that predictions of the future cannot be made with certainty, thereby allowing for development that is currently safe and expected to be safe for the life of the development but ensuring that the future risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of new development, and not the public.

The Commission also finds that due to the possibility of flooding and other coastal hazards, if the applicant chooses to build in this location despite those risks, they should assume the risks of development in a hazardous area as a condition of project approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. The applicant’s Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition 2**, will ensure that the applicant is aware of and understands the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the subject development, and will effectuate the necessary assumption of those risks by the applicant.

The proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act, which requires that risks to life and property be minimized, that stability and structural integrity are assured, and that proposed new development neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

C. Public Access and Recreation

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 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30252 states, in pertinent part:

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

Section 30210 of the Coastal Act requires that public access to the coast be provided and Section 30211 requires that new residential development shall be located where it will not have cumulative adverse impacts on coastal resources, including public access.

Vertical public access to the beach is located approximately 170 ft. west of the site at the end of 24th Street, which is perpendicular the project site. As such, public access is available near the site and the proposed project will not adversely impact that access consistent with Section 30210 of the Coastal Act.

Consistent with 30252, one of the ways the Commission assures that public access is maximized is by assuring that adequate parking is provided with new development and that new development does not adversely impact the availability of existing public parking spaces. The proposed project provides parking consistent with the standard of two parking spaces per residential dwelling unit, which the Commission has regularly used for development in Sunset Beach. An attached three-car garage will be provided on-site, which will be accessed from N. Pacific Ave. There is also an existing carport in the second detached duplex unit that will not be altered by the project. Additionally, the applicant has provided a construction staging plan which states that no staging shall occur on the beach, the route to the beach, or any public parking spaces.

Therefore, only as conditioned, can the project be found to be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

D. 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 and scuppers to capture and filter runoff and direct flow to two rock gardens on the sides of the property. The rock gardens are designed with filter fabric and gravel that provide natural percolation into the soil.

The applicants have also indicated that no landscaping will be proposed. While no landscaping is proposed now, future landscaping shall only consist of non-invasive and drought tolerant plants. For water conservation, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). In order to make sure that any future onsite landscaping minimizes the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition 5**, 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 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.

E. 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.

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 feet 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 two detached duplex units. The proposed project will demolish one existing detached duplex unit and replace it with another detached duplex unit. No work is proposed to the second detached duplex unit on site. The proposed project will result in no change in the number of housing units, as two detached duplex units would remain on site. 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 duplex unit 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.

As conditioned, the Commission finds that the proposed development conforms with Sections 30250 and 30251 of the Coastal Act.

F. 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. 4**, 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.

G. Local Coastal Program (LCP)

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. Orange County's LCP for Sunset Beach was effectively certified in 1982 and updated in 1992. However, Sunset Beach was annexed into the City of Huntington Beach effective August 2011. This annexation terminated the County's LCP permitting jurisdiction for the area. The Sunset Beach annexation area has not yet been incorporated into the City of Huntington Beach certified LCP. Thus,

there is not currently an effective certified LCP for Sunset Beach and, therefore, the Chapter 3 policies of the Coastal Act provide the standard of review for coastal development permits in the area.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. California Environmental Quality Act (CEQA)

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

In this case, the City of Huntington Beach is the lead agency, and the Commission is a responsible agency for the purposes of CEQA. The City of Huntington Beach determined that the proposed development is exempt under Section 15302 of CEQA. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment, either individually or cumulatively with other past, present, or reasonably foreseeable probable future projects. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit Application Number 5-23-0296 and associated file documents
- Sea Level Rise Discussion for 16474 24th St., Sunset Beach, Orange County, California prepared by GeoSoils, Inc., dated June 12, 2023.