CALIFORNIA COASTAL COMMISSION
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W12a

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Staff: S. Amitay – SWP
Staff Report: 09/20/2024
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STAFF REPORT: APPEAL – DE NOVO

Application No.:	**A-5-DPT-22-0037**
Applicant:	**Ladan and Babak Fallahzadeh**
Agent:	Gaines & Stacey LLP, Attn: Kimberly A. Rible, Esq.
Project Location:	35525 Beach Road, Capistrano Beach, City of Dana Point, Orange County (APN: 691-161-05)
Project Description:	Construction of a new two-story, 28-ft. tall, 4,132 sq. ft. single-family residence with an attached 528 sq. ft. garage and elevated seaward-facing deck, all supported by caissons, and grading (350 cy. of cut), on a 4,809 sq. ft. vacant beach-fronting lot.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The project site is a 4,809 sq. ft. ocean-fronting lot located on sandy beach in Capistrano Beach, City of Dana Point (**Exhibit 1**). The site is currently vacant and consists of beach sand, minor vegetation, and a fence on the landward, street-facing side. The property extends to the ambulatory mean high tide line (MHTL) from Beach Road, and thus, the City of Dana Point's certified Local Coastal Program (LCP) and the Chapter 3 public access and public recreation policies of the Coastal Act are the standard of review. The proposed project includes the construction of a new, two-story, 28-ft. tall,[1] 4,132 sq. ft. single-family residence with an attached 528 sq. ft., two-car

[1] IP Sections 9.05.110 and 9.09.030 set the maximum height as 28 ft., as measured at 18 inches above the future base flood elevation (FBFE). The total height from grade is 36.5 ft.

garage and an elevated seaward-facing deck. The proposed caisson foundation would feature forty-five (45) caissons and grade beams in a grid pattern to elevate the residence, garage, and seaward-facing deck above beach grade. The attached garage would be constructed less than one foot above the Beach Road elevation, while the residence would be constructed approximately eight feet above the Beach Road elevation (**Exhibit 2, Page 8**).[2] No new shoreline armoring is proposed in association with this project, although there is evidence that at one point, there was unpermitted shoreline armoring found onsite, which was removed prior to the current applicants' acquisition of the property.

The subject site is an infill lot located within the Beach Road (Capistrano Bay) community, an established row of residential development with access to homes obtained solely through the private Beach Road located landward of the subject site. Further landward of Beach Road are railroad tracks, Pacific Coast Highway, and a coastal bluff supporting additional development. There is an existing lateral public access easement onsite, located immediately seaward of the LCP-defined patio stringline, that allows for public recreation on the beach, and which includes a privacy buffer across the ten most landward feet limiting public access to pass and repass when no other beach areas are available for recreation (**Exhibit 7**). The property is vulnerable to coastal hazards and flooding and is part of the Capistrano Bay Community Services District ("District"), a special tax-assessment district that owns and manages Beach Road, and which has recently broadened its authority to include protection of the road from erosion, waves, and rising sea levels.

As part of the de novo coastal development permit (CDP) review, Commission staff analyzed whether the siting and design of the proposed project would be adequate in the face of risks from coastal hazards, as exacerbated by sea level rise. The Dana Point LCP requires new development to be sited within or as close as possible to existing developed areas, where it can be accommodated and adequately served by public services (utilities and infrastructure) without adverse impacts to coastal resources, new development is required to minimize risks to life and property in areas of high geologic and flood hazard without reliance on the construction of protection devices, and new development is required to minimize alteration of natural landforms. To accomplish this, the applicants are proposing to elevate the habitable portions of the structure on caissons above the future base flood elevation (FBFE), which the applicants' consulting engineer estimates at +21 ft. NAVD88. As discussed in the Commission's staff engineer's technical memorandum in **Exhibit 4**, Jeremy Smith, P.E., finds that the proposed elevation of the residence would minimize risks to life and property to the extent feasible, and would thus be consistent with the requirements in LUP (COSE) Policy 2.16 and IP Chapter 9.31. Additionally, the proposed development would conform

[2] The finished floor elevation of the lowest habitable floor of the proposed residence will be +23.5 ft. NAVD88, the proposed garage will be at an elevation of +15.41 ft. NAVD88 (near the Beach Road elevation), and the proposed seaward-facing deck will be at an elevation of +18.2 ft. NAVD88.

with the stringline policies of the LCP, which dictate the allowable seaward extent of the residential structure and the beachfront patio for development on Beach Road.

Nevertheless, there are several deficiencies in the proposed project design that must be addressed to ensure that the new development minimizes risks to life and property arising from coastal hazards and sea level rise, and that it would minimize adverse impacts on coastal resources. First, the proposed at-grade garage will be enclosed on all four sides, with the ocean-fronting wall panels and street-facing garage door designed to act as breakaway walls, and there is a concern that the frequency of failure of the breakaway walls that enclose the garage would increase with the effects of sea level rise. Depending on how the breakaway panels fail, large chunks or sections could drift and pose hazards to nearby residences or to beachgoers. The garage may also be used for storage of electrical/mechanical equipment, cleaning chemicals, or other hazardous pollutants, and along with breakaway panel failures, extensive marine debris would be mobilized by waves and released into the nearshore marine environment when the garage is flooded. Mr. Smith thus recommends that breakaway panels be removed from the design, and the parking be designed as a carport instead of the proposed enclosed garage to allow floodwaters to flow unobstructed, necessitating an alternative design for the garage level with two solid “shear” walls perpendicular to the ocean and two openings parallel to the ocean and street, as described in more detail later in the report. Second, it is important to ensure that utilities are floodproofed and can adequately withstand coastal hazards, especially in consideration of the fact that many of the utility installations that the applicants propose will directly rely on the walls of the garage to convey connections up to the elevated habitable floors. Thus, revised utility plans are necessary. Lastly, the seaward-facing deck would be elevated on caissons, but it would be elevated below the FBFE and would be subject to uplift forces from waves. Given the concern that the deck would be exposed to coastal hazards due to its design and location, and the fact that removal of this accessory structure when damaged would be costly and complicated due to the proposed caisson foundation, a cantilevered deck that is attached to the principal residential structure and further set-back would be a preferable alternative. **Special Condition 1** would require the applicants to submit final revised plans with these changes. The applicants have indicated that they agree with this condition.

Even with the design modifications above, staff is concerned that toward the end of the life of the project, Beach Road itself, which is the main street for ingress and egress into and out of the community, will be heavily impacted by coastal hazards such as flooding and erosion, and as sea levels rise, may no longer provide adequate road access to the residences. In addition, municipal services such as sewer, gas, electrical, telephone, and water systems may be frequently inundated with floodwaters, leading to corrosion, impairment, and contamination. The Commission must therefore contemplate whether new development should be approved in light of these facts. In this particular case, the proposed development can be conditioned to be consistent with the LCP. Namely, if it is not safe to access or inhabit the residence because the road is consistently flooded or utilities are damaged beyond repair, development should accordingly be removed per **Special Condition 7**.

In addition, as sea levels rise, the MHTL will migrate landward over the life of the development, quite possibly underneath the residence and all the way to the road. In most of California's coastal areas, land seaward of the MHTL is owned by the State (or a designated grantee) in public ownership, otherwise known as Public Trust lands. It is important to ensure that the development remains on private land, and not public land, over time, in order to avoid ownership disputes, to maximize public access to and along the sea, and to limit encroachment of private uses on public lands. Moreover, the existing lateral public access easement on the site is likely to be "squeezed" (become narrower and get closer to the residence) as the beach erodes and sea levels rise over time, leading to the gradual loss of the public's ability to use and recreate on the beach or to access the tidelands seaward of the site. Thus, there is a question as to whether the development would adversely affect public access, public recreation, and the Public Trust lands over its expected life.

Staff recommends **Special Condition 7** to further specify that in the event that the Public Trust lands boundary migrates landward such that any portion of the approved development encroaches onto Public Trust lands based on a MHTL survey, the applicants shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to relocate and/or remove the development encroaching on Public Trust lands. Imposing a condition like **Special Condition 5** that requires a current MHTL survey prior-to-issuance of the permit, and periodic MHTL surveys every five years thereafter, will help provide evidence that the development is located on, and remains on, private property. If development is adequately and promptly removed as required, staff believes that the project would not impair Public Trust resources, and in the interim, the existing lateral public access easement onsite would provide adequate public access and recreational opportunities on the beach.

The shoreline is a dynamic environment, and although the proposed residence has been designed and conditioned to ensure structural stability relative to wave action and forecasted sea level rise to the extent feasible, it is not possible to completely preclude the possibility that conditions onsite could change, and the residence could be subject to greater wave action and tidal events in the future. Because there is no guarantee that the structure would continue to ensure structural stability in the face of increased future wave action, sea level rise, and tidal events, **Special Conditions 6** and **7** would not only ensure that no future shoreline protective device would be constructed onsite to protect the proposed development, but they would also require the landowner(s) to remove the development if a government agency orders that portions or all of the structures may not be occupied as a result of coastal hazards or property ownership issues identified in this staff report.

Because the risk of harm cannot be completely eliminated, the Commission typically requires applicants 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. **Special Condition 8** would ensure that the applicants are aware of, and acknowledge, the nature of the hazards that exist on the site. This condition will also ensure that the applicants are aware of the ambulatory nature of the seaward property boundary, and

that this boundary may move with sea level rise. It further ensures that future property owners will be made aware of the risks and limitations placed on the development by this permit, so that any future owners can properly assess risks before purchasing the property.

To avoid creating hazardous conditions or any new long-term adverse impacts on public access and recreation, water quality, visual resources, archaeological and tribal cultural resources, water quality, and/or marine birds and wildlife, staff recommends eighteen (18) special conditions: **1)** Final Revised Plans, **2)** Local Government Approval, **3)** Resource Agencies, **4)** Plans Conforming to Geotechnical Recommendations, **5)** Mean High Tide Line (MHTL) Surveys and Monitoring, **6)** Waiver of Rights to Future Shoreline Protective Devices, **7)** Development Removal, **8)** Hazard Risk and Indemnification, **9)** Sign Restriction, **10)** Public Rights, **11)** View Corridors, **12)** Erosion Control, Drainage, and Polluted Runoff Control Plans, **13)** Construction Responsibilities, **14)** Raptor and Bat Monitoring and Avoidance Plan, **15)** Archaeological, Paleontological, and Tribal Cultural Resource Treatment and Monitoring Plan, **16)** Participation in the Capistrano Bay District, **17)** Future Development, and **18)** Deed Restriction.

Staff believes that the proposed project, with the recommended conditions, minimizes impacts on coastal resources and is consistent with the Dana Point certified LCP and the Chapter 3 public access and recreation policies of the Coastal Act. Thus, Commission staff recommends that the Commission **APPROVE** coastal development permit application A-5-DPT-22-0037 with eighteen special conditions. The motion to carry out the staff recommendation is on page 7.

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EXHIBITS

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit No. A-5-DPT-22-0037 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Certified Local Coastal Plan and the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the applicants or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced by the proposed date of July 3, 2023, the permit shall expire. Development shall be pursued in a diligent manner and completed in a reasonable period of time.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land**. These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicants to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Final Revised Plans. PRIOR TO ISSUANCE OF THIS PERMIT, the applicants shall submit, for review and written approval of the Executive Director, two full-size sets of final plans that have been reviewed and approved by the City. The revised plans shall substantially conform with the Site Development Plan submitted to the Commission, titled "Fallahzadeh Residence," by CCH Design Group, Inc., dated December 21, 2021, Grading Plan prepared by TOAL engineering dated April 29, 2021, Utilities and Storage Plan prepared by SHAHIM Engineering Group dated July 20, 2022 and supplemented on November 18, 2023, Foundation Plan prepared by Lovelace Engineering dated August 22, 2022, and Construction Staging Plan prepared by CCH Design Group, Inc., dated November 18, 2023 (as shown in **Exhibit 2**), except that they shall be modified to reflect the following:

A. **Future Base Flood Elevation (FBFE).** All plan elements shall depict the same finished foundation of the new residence, no lower than the FBFE of +21 ft. NAVD88, and a finished floor elevation of the new residence no lower than +22.5 ft. NAVD88.

B. **Design.**

i. All plan elements depicting encroachments (e.g., stairs) beyond the patio stringline on the seaward side of the residence shall be relocated landward of the patio stringline, which spans the width of the property connecting a point located 137 ft. seaward of the roadside property line along the west property line, and a point located 139 ft. seaward of the roadside property along the east property line;

ii. The proposed wooden, caisson-supported seaward deck shall be removed, and alternatively, a cantilevered deck, made of plastic-free and pressure-treated-free materials, extending no more than 8 ft. beyond the structure stringline may be allowed if it assures structural integrity under hazardous conditions while not requiring new caissons for the deck or an increase in the size or embedment depth of the caissons supporting the principal residential structure. The structure stringline spans the width of the property 116 ft. seaward of the roadside property line. All deck railing systems and screen walls shall not exceed 42 inches in height; and

iii. Along the patio stringline at beach grade, no fences shall be allowed, except a simple wooden rope-and-post barrier not exceeding 42 inches in height.

C. **Roof.**

i. A roof deck may be allowed, but any such roof deck, including any permanent objects included therewith, shall be screened from all sides of the structure so as not to be visually obtrusive from public vantage points, including from the beach and public streets and trails. Solid screening may include guardrails, roof features, parapet walls, or other methods visually

compatible with the structure and surrounding environment, and they shall not exceed the overall height limit of +50.5 ft. NAVD88; and

ii. Exterior stairways and other access features such as stairwells or elevators for roof access shall not exceed the overall height limit in (i) above.

D. **Bird Strike Prevention.** Final revised architectural plans shall depict the location, design, height and materials of deck railings, fences, screen walls and gates. Deck railing systems, fences, screen walls, windows, and gates shall use materials designed to minimize bird strikes with the deck railings, fences, gates, windows, and doors. Project plans for the proposed development shall comply with bird-safe building standards for façade treatments, landscaping, lighting, and building interiors, as follows:

i. Acceptable glazing treatments for exterior glass include: fritting, netting, permanent stencils, frosted, non-reflective or angled glass, exterior screens, decorative latticework or grills, physical grids placed on the exterior of glazing, ultraviolet patterns visible to birds, or similar treatments, as approved by the Executive Director.

1. Where applicable, vertical elements within the treatment pattern should be at least 1/4” wide, at a maximum spacing of 4”;
2. Where applicable, horizontal elements within the treatment pattern should be at least 1/8” wide, at a maximum spacing of two inches 2”; and
3. No glazing shall have a “Reflectivity Out” coefficient exceeding thirty percent (30%). That is, the fraction of radiant energy that is reflected from glass or glazed surfaces shall not exceed 30%.
4. Equivalent treatments recommended by a qualified biologist may be used if approved by the Executive Director.

ii. Trees and other vegetation shall be sited so as to avoid or obscure reflection on building facades;

iii. Avoid the use of “bird traps” such as glass courtyards, interior atriums, windows installed opposite each other, clear glass walls, and transparent building corners;

iv. Clear glass, reflective glass, or Plexiglas shall not be installed;

v. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications; and

vi. The residence shall be designed with minimal exterior lighting and shall minimize light pollution from interior lighting to the extent feasible to prevent nighttime bird strikes. The permittees shall implement the Lighting Plan required by Subpart (I) below.

E. **Caisson Treatment and Exposure Plan.** The applicants shall submit, for the review and written approval of the Executive Director, a plan to address the potential visual impacts of the proposed caissons on public views from Coast Highway, the California Coastal Trail, the public beach, or other relevant public viewpoints, including in the event that the caissons are exposed as a result of erosion, wave runup, or other circumstances. The plan shall include the following.

   i. Acceptable treatment of the caissons shall be limited to mottled texture and limited to colors compatible with the surrounding environment (earth and water tones) including shades of blue, tan, brown and gray with no white or black shades and no stark or bright tones;

   ii. The colors, contours, and textures compatible with the surrounding environment shall be maintained in good visual condition throughout the life of the structure;

   iii. If any piling is exposed, the Permittees or successors and assigns shall immediately dye and/or treat the exposed pilings such that they will continue to match the surrounding environment; and

   iv. Within 60 days of foundation and/or subsurface elements (including but not limited to pilings, grade beams, retaining walls, etc.) becoming exposed, the Permittees or successors and assigns shall submit a CDP amendment application to the Commission identifying measures to eliminate or minimize the exposure while avoiding adverse impacts to shoreline sand supply. Such measures shall be implemented in the time and manner, and subject to the terms and conditions, of the CDP amendment shall it be approved.

F. **Parking (Carport).** The two-car, 528 sq. ft. garage, as depicted in **Exhibit 2** of this staff report, shall be modified as such:

   i. The applicants shall submit final revised floor and elevation plans showing a visually permeable, two-stall covered carport beneath the finished floor of the elevated caisson-supported residence with unobstructed vertical clearance in accordance with **Special Condition 11**. Should the carport be surfaced (e.g., concrete slab), it may be caisson-supported;

   ii. Only walls needed for structural support consistent with FEMA standards may be retained at ground level, and neither breakaway panel walls nor garage door(s) shall be constructed. A maximum of two structural (“shear”) walls may be constructed perpendicular to the shore. The carport shall not be converted to a garage or other enclosed space at any time;

   iii. Storage of unsecured materials (including hazardous materials such as paints, solvents, household chemicals), other than motorized vehicles, within the carport shall be prohibited;

   iv. The applicants shall submit final revised foundation plans, if necessary, reflecting the open carport and a maximum of two structural walls and any

augmentation of the proposed caisson-and-grade-beam foundation system; and

v. The applicants shall submit final revised floor plans for mechanical components or mechanical storage space on floors above the carport level.

G. **Utilities.** All mechanical and utility connections and extensions serving the project shall be installed underground, or otherwise mounted on the residential structure consistent with the view corridors in **Special Condition 11**. The final revised plans shall demonstrate and enumerate measures to floodproof utility connections and ensure their functionality in the face of flooding and wave attack. The plans shall also demonstrate how the utility infrastructure will be conveyed to the elevated habitable floor area, via the caissons, structural shear walls, or otherwise.

H. **Landscaping.** The applicants shall submit a Landscaping Plan that includes at least the following:

i. Any areas disturbed/affected by construction activities in the rear of the site (seaward-facing) and landward of the patio stringline shall be maintained and may be planted for native habitat enhancement purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent beach areas, all rear yard, beach-fronting landscaping shall consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. Landscaped areas in the front yard (street-facing) area or side yard areas shall consist of native drought tolerant plant species and shall be consistent with **Special Condition 11**;

ii. No plant species listed in any category on the California Invasive Plant Inventory by the California Invasive Plant Council (http://www.cal-ipc.org/), shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: http://ucanr.edu/sites/WUCOLS/files/183514.pdf and http://ucanr.edu/sites/WUCOLS/files/183488.pdf);

iii. No permanent in-ground irrigation systems shall be installed onsite. Temporary above ground irrigation is allowed to establish plantings. Use of reclaimed water for irrigation is encouraged. Any permanent irrigation system shall be low volume (drip, micro jet, etc.) and shall only be permitted on the street facing portion of the lots. Other water conservation measures shall be considered, such as weather-based irrigation controllers; and

iv. All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance.

I. **Lighting.** The applicants shall submit, for the review and approval of the Executive Director, plans to protect the shoreline environment from light generated by the project. The Lighting Plan shall implement the following restrictions to exterior night lighting that is allowed on the site:

i. All lighting within any future development shall be directed and shielded so that light is directed downward and away from the shoreline environment and view corridors, including public viewing areas such as Coast Highway, the California Coastal Trail, the beach, or other relevant public viewpoints. Furthermore, no skyward-casting lighting shall be used. “Shielded,” as used herein, shall mean that the light rays are directed onto the site, and the light source (e.g., bulb, tube, etc.) is not visible beyond the property boundary of the site of the light source;

ii. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting. Lighting shall use bulbs that do not exceed 750 lumens (or 60 watt incandescent equivalent) and maximum color temperature of 2,700 degrees Kelvin, unless a higher wattage or color temperature is authorized by the Executive Director. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness;

iii. No lighting shall produce an illumination level greater than one footcandle (10.76 lumens) beyond the developed portion of the subject property;

iv. The number of light fixtures shall be limited to the minimum necessary for safe vehicular use of the driveway and carport, and to light walkways used for entry and exit to the structure, including parking areas, on the site. No lighting for aesthetic purposes shall be allowed; and

v. Security lighting attached to the structures shall use a control device or automatic switch system with equivalent functions to minimize lighting.

J. **Removal Plan.** The proposed development, including the caisson foundation, shall be designed to facilitate removal and/or relocation of the structure and its foundation in the future, in the event of endangerment of the residential structure pursuant to **Special Condition 7**. The final foundation plans shall be accompanied by supporting documentation that clearly describes the ability of the foundation to be removed, or where infeasible, abandoned-in-place below anticipated scour elevations**.** The applicants shall submit the removal plan for the review and written approval of the Executive Director, formally certified by an appropriately qualified, licensed engineer, that describes in detail the phases, timing, and equipment necessary for the removal process of the residence, its foundation, and accessory development as may be required in the future. The plan must also describe how all necessary equipment would be employed while removing the residence and all appurtenant structures and any staging areas necessary to carry out the removal process from start to completion.

K. **Front Setback.** The residence may include a reduced front yard setback from Beach Road, if approved by the City. No amendment to the subject permit would be required for a project revision that includes relocating or expanding the structure to accommodate a reduced front yard setback, consistent with all other policies of the certified Local Coastal Program (LCP) including height, off-street parking, and public view corridors.

The Permittees shall undertake development in conformance with the approved final revised plans, unless the Commission amends this permit, the City or Commission approves a new coastal development permit, or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. Local Government Approval. The proposed development is subject to the review and approval of the City of Dana Point (City). This action has no effect on terms and conditions imposed by the City pursuant to an authority other than the Coastal Act. The Permittees should comply with all of the conditions attached to the City's approval of Coastal Development Permit No. 20-0006, Site Development Permit No. 20-0009, and Administrative Modification of Standards No. 22-0002, as listed in Resolution No. 23-01-09-01 (**Exhibit 3** of this staff report), except as specifically modified by this approval and any subsequent amendments to this permit. In the event of conflict between the terms and conditions imposed by the City and those of this coastal development permit, the terms and conditions of Coastal Development Permit No. A-5-DPT-22-0037 shall prevail, and any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to this Coastal Development Permit is required.

3. Resource Agencies. The Permittees shall comply with all requirements, requests and mitigation measures from the California State Lands Commission (CSLC), California Department of Fish and Wildlife (CDFW), the Regional Water Quality Control Board (RWQCB), the U.S. Army Corps of Engineers (USACE), and the U.S. Fish and Wildlife Service (USFWS) with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

4. Plans Conforming to Geotechnical Recommendations.

A. PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY, the applicants shall provide to the Executive Director a copy of a Flood Elevation Certificate, prepared by a qualified, registered land surveyor, engineer, or architect, and approved by the City of Dana Point Building and Safety Division, demonstrating that the finished foundation and finished floor elevation of the residence would be compliant with **Special Condition 1(A)** above. The applicants shall inform the Executive Director of any changes to the flood elevation requirements imposed by the City's Building and Safety Division or recommended by the applicants'

consultant(s). Such changes shall not be incorporated into the project until the applicants obtain an amendment to this permit or a new Coastal Development Permit, unless the Executive Director determines that no amendment is legally necessary.

B. BY ACCEPTANCE OF THIS PERMIT, the Permittees agree to comply with the recommendations contained in the submitted coastal engineering and geology, geotechnical, and/or soils reports, including those listed in **Appendix A** (Substantive File Documents) of this staff report. These recommendations, including, but not limited to, recommendations concerning foundations, construction, grading, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant(s) prior to commencement of development.

C. The final plans approved by the consultant(s) shall be in substantial conformance with the final revised plans (**Special Condition 1**) approved by the Commission and City relative to the design and construction of the development, including, but not limited to, the foundation, the primary structure, accessory development, landscaping and grading, drainage, and utilities. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant(s) shall require an amendment to this permit or a new Coastal Development Permit, unless the Executive Director determines that no amendment is legally required.

5. Mean High Tide Line (MHTL) Surveys and Monitoring.

A. PRIOR TO ISSUANCE OF THIS PERMIT, the applicants shall submit to the Commission's Executive Director for review and written approval:

i. One printed copy and one digital copy of a new MHTL survey of the subject property subject to the criteria in Subpart (B) below.

ii. A MHTL monitoring plan that includes surveying the MHTL on the subject property at least every five (5) years following the initial MHTL survey required above. The plan shall indicate that each survey will be prepared subject to the criteria in Subpart (B) below and specify that the landowner will submit each 5-year MHTL survey no later than December 31st of each fifth year after the date of receipt, by the Executive Director, of the initial survey required above.

B. The surveys required in Subpart (A) above shall be subject to the following criteria. Such surveys of the subject property shall be based on field data collected within 12 months of the date submitted to the Executive Director, that may include multiple surveys from more than one season in a given survey year, but must include at least one survey during the winter storm season (December – March). Such surveys shall be at the landowner's expense, or if conducted by the Capistrano Bay District ("District"), the landowner shall be responsible for providing such surveys to the Executive Director and ensuring their compliance with the criteria below. The surveys shall be conducted in consultation with the California State Lands Commission (CSLC) staff. Such surveys shall:

i. Use the National Oceanic and Atmospheric Administration published Mean High Water (MHW) tidal datum elevation for the current tidal epoch either from the tide station closest to the project or a linear interpolation between two nearby tide stations, depending on the most appropriate approach in light of tidal regime characteristics.

ii. Use local, published control benchmarks to determine elevations at the survey site. Control benchmarks are the monuments on the ground that have been precisely located and referenced to the local tide stations and vertical datum used to calculate the MHW elevation.

iii. Reference all elevations and contour lines to a clearly identified vertical datum such as the North American Vertical Datum of 1988.

iv. Note survey date, vertical reference datum, and MHW elevation.

C. The landowner shall implement the approved MHTL monitoring plan in accordance with this condition. Any proposed changes to the final approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. Waiver of Rights to Future Shoreline Protective Devices. BY ACCEPTANCE OF THIS PERMIT, the Permittees agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-5-DPT-22-0037, including, but not limited to, the single-family residence, foundation, and accessory development, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, or other coastal hazards in the future, and as may be exacerbated by sea level rise. Thus, by acceptance of this Permit, the Permittees hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under applicable law.

7. Development Removal.

A. BY ACCEPTANCE OF THIS PERMIT, the Permittees further agree, on behalf of themselves and all successors and assigns, that they are required to remove all of the development authorized by the permit, and restore the site, if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that:

i. The structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, landslide, sea level rise, elevated groundwater, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of shoreline protective devices;

ii. Essential services to the site (e.g., utilities, roads) have been disrupted without plan in place to restore them, can no longer feasibly be maintained, or cannot be safely provided due to the coastal hazards listed above;

iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or

iv. The development must rely on new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

B. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. The landowner(s) shall obtain a coastal development permit for removal of approved development and recoverable debris unless the City and/or Coastal Commission, as applicable based on permitting authority, provide(s) a written determination that no coastal development permit is legally required.

C. BY ACCEPTANCE OF THIS PERMIT, the Permittees further agree that this development approval does not permit any of the authorized, private development to ever be located on lands subject to the Public Trust, and any development that comes to be located on such lands due to the movement of the mean high tide line must be removed. In the event that the public trust boundary migrates landward such that any portion of the approved development comes to be located on land impressed with a public trust interest, based on one or more MHTL surveys prepared in compliance with State Lands Commission survey standards (including, but not limited to, a MHTL survey prepared pursuant to **Special Condition 5**), the Permittees and successors in interest shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to relocate, and/or remove the development encroaching upon the public trust, unless the Executive Director grants additional time in writing for good cause. The permit amendment application shall include a complete evaluation of all feasible alternatives to modify the residential development to ensure that it is located entirely on private property and provides the required minimum setback from the MHTL. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative for addressing shoreline protection, public access, and sensitive resource issues under the Coastal Act and the City of Dana Point certified LCP. Failure to submit a timely permit amendment application and/or remove the development in a timely manner in accordance with a Coastal Act/LCP authorization shall constitute a violation of the terms and conditions of this coastal development permit.

8. Hazard Risk and Indemnification. BY ACCEPTANCE OF THIS PERMIT, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns: (i) that the site may be in or near a flood-prone low lying area and as

such subject to hazards from sea level rise, flooding, shallow groundwater levels, and wave uprush; (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; and (v) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable.

The Permittees further agree, on behalf of themselves and any successors and assigns, that the intent of this permit is to allow for the approved project to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains reasonably safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance to protect it from coastal hazards, and for only as long as the approved project remains on private property and is safely accessible from Beach Road; all documents related to any future marketing and sale of the subject property, including but not limited to marketing materials, sales contracts, deeds, and similar documents shall notify buyers of the terms and conditions of this Coastal Development Permit; and any adverse effects to property caused by the permitted project shall be fully the responsibility of the owner(s) of the property on which the permitted project is located.

9. **Sign Restriction.** No signs shall be posted on the property subject to this permit that (a) explicitly or implicitly indicate that the lateral public access easement area described in Instrument No. 87-020385 and shown in **Exhibit 7** is private or otherwise not open to the public, or (b) contains similar messages that attempt to prohibit public use of this portion of the beach.

10. **Public Rights.**

    A. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The Permittees shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.

    B. This permit does not authorize the development to physically interfere with any public access rights that may exist now or at any future date.

11. **View Corridors.** BY ACCEPTANCE OF THIS PERMIT, the Permittees agree to maintain, at a minimum, view corridors of no less than three feet, six inches (3'6") on each side of the approved structure, extending the width of the property. Additionally, the Permittees agree to maintain a view corridor beneath the residence (through the carport) and across the property. No portion of any

structure shall extend into the view corridors above the elevation of the adjacent street, except for structural members and stairways. Fencing within the view corridors shall be prohibited, except for a simple rope-and-post barrier measuring 42 inches in height along the patio stringline at beach grade, and the view corridors shall be permanently maintained as visually permeable. Any landscaping in this area shall include only low-growing species not exceeding 42 inches in height such that they will not obscure or block coastal views.

12. **Erosion Control, Drainage, and Polluted Runoff Control Plans.** PRIOR TO THE ISSUANCE OF THIS PERMIT, the applicants shall submit for the review and approval of the Executive Director: a) a Local Storm Water Pollution Prevention (SWPPP) Plan to control erosion and contain polluted runoff during the construction phase of the project; and b) a Stormwater Management Plan (SWMP) for the management and treatment of post-construction storm water and polluted runoff. The plans shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public Works, and include the information and measures outlined below.

    A. Local Storm Water Pollution Prevention Plan (SWPPP), for the construction phase of the project, shall include at a minimum the following:

        i. Property limits, prior-to-grading contours, and details of terrain and area drainage

        ii. Locations of any buildings or structures on the property where the work is to be performed and the location of any building or structures of adjacent owners that are within 15 ft of the property or that may be affected by the proposed grading operations.

        iii. Locations and cross sections of all proposed temporary and permanent cut-and-fill slopes, retaining structures, buttresses, etc., that will result in an alteration to existing site topography (identify benches, surface/subsurface drainage, etc.)

        iv. Area (square feet) and volume (cubic yards) of all grading (identify cut, fill, import, export volumes separately), and the locations where sediment will be stockpiled or disposed

        v. Elevation of finished contours to be achieved by the grading, proposed drainage channels, and related construction.

        vi. Details for the protection of existing vegetation from damage from construction equipment, for example: (a) grading areas should be minimized to protect vegetation; (b) areas with sensitive or endangered species should be demarcated and fenced off; and (c) native trees that are located close to the construction site should be protected by wrapping trunks with protective materials, avoiding placing fill of any type against the base of trunks, and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.

vii. Information on potential flow paths where erosion may occur during construction

viii. Proposed erosion and sediment prevention and control best management practices (BMPs), both structural and non-structural, for implementation during construction, such as:

1. Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method.
2. Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method.
3. Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site.
4. Prevent blowing dust from exposed soils.

ix. Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:

1. Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials.
2. Site washout areas more than fifty feet from a storm drain, open ditch, or surface water and ensure that runoff flows from such activities do not enter receiving water bodies.
3. Provide sanitary facilities for construction workers.
4. Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.

B. Storm Water Management Plan (SWMP), for the management of post construction storm water and polluted runoff shall at a minimum include the following:

i. Site design and source control BMPs that will be implemented to minimize or prevent post-construction polluted runoff

ii. Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)

iii. Potential flow paths where erosion may occur after construction

iv. Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements

v. Storm drainage improvement measures to mitigate any offsite/downstream negative impacts due the proposed development, including, but not limited to:

1. Mitigating increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the 100-year clear flow storm event (note; Q/100 is calculated using the Caltrans Nomograph for converting to any frequency, from the

Caltrans "Hydraulic Design and Procedures Manual"). The detention basin/facility is to be designed to provide attenuation and released in stages through orifices for 2-year, 10-year and 100-year flow rates, and the required storage volume of the basin/facility is to be based upon 1-inch of rainfall over the proposed impervious surfaces plus 1/2-inch of rainfall over the permeable surfaces. All on-site drainage devices, including pipe, channel, and/or street & gutter, shall be sized to cumulatively convey a 100 year clear flow storm event to the detention facility, or;

2. Demonstrating by submission of hydrology/hydraulic report by a California Registered Civil Engineer that determines entire downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for 25-year storm event, or;
3. Constructing necessary off-site storm drain improvements to satisfy the above, or;
4. Other measures accomplishing the goal of mitigating all offsite/downstream impacts.

13. Construction Responsibilities.

A. PRIOR TO THE ISSUANCE OF THIS PERMIT, the applicants shall submit to the Executive Director a Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

i. 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.

ii. 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. No machinery shall be allowed in the intertidal zone at any time.

iii. 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.

iv. 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.

v. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day. All construction debris shall be removed from the beach daily and at the completion of development.

vi. The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.

vii. Debris shall be disposed of at a permitted disposal site or recycled at a permitted 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.

viii. All stockpiles 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. No stockpiling of dirt or construction materials shall occur on the beach.

ix. All grading shall be properly covered and sandbags, ditches, or other BMPs shall be used to prevent runoff and siltation

x. 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.

xi. The discharge of any hazardous materials into any receiving waters shall be prohibited.

xii. 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.

xiii. 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. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work

xiv. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. The final Construction BMPs Plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

14. Raptor and Bat Monitoring and Avoidance Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, a Raptor and Bat Monitoring and Avoidance Plan that shall include, but not be limited to, the following provisions:

A. If project activities must occur during between February 1 through August 31, a qualified biologist, with experience conducting bird and bat surveys, shall survey for active bird nests and bat roosts within 7 days prior to commencement of project activities, and once a week thereafter during construction, to detect any such activity within 500 feet of the project area.

B. If an active raptor nest is located within 500 feet of construction activities, or a bat roost is located within 300 feet of construction activities, the qualified biologist shall halt construction activities to enable the permittee to employ best management practices (BMPs) to ensure that construction activities do not disturb or disrupt nesting/roosting activities.

C. Noise levels at active nest sites must not exceed 65 dB unless a noise study has determined that ambient noise in the immediate area exceeds that level. If this is the case, noise levels at the nest site must not exceed the ambient noise level measured. Noise reducing BMPs may include using alternative equipment, equipment noise buffering, sound blankets, etc. Alternatively, construction activities and schedules may be adjusted to avoid active nest or roost areas until the respective young birds or bats have fledged.

D. Unrestricted construction activities may resume when no active nests or roosts remain in the construction area.

E. The qualified biological monitor may stop construction at any point if the monitor finds it is necessary to protect nesting raptors and roosting bats. Construction shall not restart until the qualified biological monitor finds the best management practices in place will adequately protect the nesting raptors or roosting bats or until the nesting raptors or roosting bats or their young have left the project site and surrounding buffer.

F. Results of nesting bird and roosting bat surveys, ambient noise surveys, and any follow-up construction avoidance measures shall be documented in monthly reports by the qualified biologist and submitted to the Executive Director throughout the breeding season.

15. Archaeological, Paleontological, and Tribal Cultural Resource Treatment and Monitoring Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, an Archaeological, Paleontological, and Tribal Cultural Resources Treatment and Monitoring Plan (Plan) prepared by a qualified resource specialist in consultation with Juaneño (Acjachemen)-affiliated Native American representatives, which shall incorporate the following measures and procedures:

A. All representatives of Juaneño (Acjachemen)-affiliated Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list for the area shall be invited to consult on the preparation of the Plan and all who accept the invitation shall be allowed to consult and shall be meaningfully considered in the plan's development. Evidence of written notification shall be made available to the Executive Director.

B. The Plan shall ensure that any archaeological, paleontological, or tribal cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. The methods of protection of Tribal Cultural Resources shall be developed in consultation with the Native American tribal government(s). If there is disagreement regarding the method(s) of protection of resources, the methods that are most protective of coastal resources shall be selected. To this end, the Plan shall require that the Juaneño (Acjachemen)-affiliated representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list for the area be invited to be present and monitor all ground-disturbing activities and arrange for any invited Tribal representative that requests to monitor and a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources. The monitor(s) shall have experience monitoring for archaeological, tribal/cultural, and/or paleontological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains.

C. There shall be at least one pre-grading conference with the project manager and grading contractor at the project site to discuss the potential for the discovery of archaeological/tribal cultural or paleontological resources. Prior to grading operations, a copy of all archaeological documents and reports shall be provided to the Native American monitors.

D. The Permittees shall provide sufficient paleontological, archaeological, and Juaneño (Acjachemen)-affiliated Native American monitors to assure that all project grading and subsurface construction activities that have any potential to uncover or otherwise disturb cultural deposits are monitored at all times.

E. If any archaeological, paleontological, or cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts relating to the use or habitation sites, all construction shall cease. Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and Native American monitor(s) shall notify the County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. The Native American group/person deemed acceptable by the NAHC shall participate in the identification process, pursuant to Public Resources Code Section 5097.98. Should the human remains be determined to be that of a Native American, the Permittees shall comply with the requirements of Section 5097.98. Within five (5) calendar days of such notification, the Permittees shall notify the Executive Director of the discovery of human remains. Treatment of any archaeological, paleontological, or cultural resource discovery shall be determined by the appropriate monitor(s) or the Most Likely Descendant (MLD) when state law mandates the identification of an MLD. If there is disagreement

amongst monitors regarding the treatment of any resource discovery, the treatment that is the most protective of coastal resources shall prevail. Significance testing may be carried out only if acceptable to the affected Native American Tribe(s), in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (**Appendix B**). The Permittees shall report all discovered resources as soon as possible, by phone and/or by email to the Executive Director. The Permittees shall provide the significance testing results and analysis to the Executive Director, if applicable. Applicants seeking to recommence construction activities shall follow the procedures set forth in **Appendix B**.

If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe(s) is in conflict with the approved development plan, the Permittees shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. Development shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

The Permittees shall implement the approved Archaeological, Paleontological, and Tribal Cultural Resources Treatment and Monitoring Plan in accordance with this condition. Any proposed changes to the final approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

16. **Participation in the Capistrano Bay District.** BY ACCEPTANCE OF THIS PERMIT, the Permittees or successors and assigns shall actively participate in the activities and efforts of the Capistrano Bay Community Services District (“District”), or successor entity, on a fair and equitable basis, to implement sea level rise adaptation efforts, for as long as the development subject to this permit exists.

17. **Future Development.** This permit is only for the development described in Coastal Development Permit No. A-5-DPT-22-0037. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) and the analogous provisions in the City of Dana Point certified LCP shall not apply to any future development on any portion of the parcel. Accordingly, any future improvements to any of the property, including but not limited to the single family residence, carport (including conversion of the carport to an enclosed garage), foundations, deck, railing, stairs, driveway, new or replacement landscaping, hardscape, and grading other than as provided for in the approved plans, shall require an amendment to Coastal Development Permit No. A-5-DPT-22-0037 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government based on permitting authority.

18. **Deed Restriction.** PRIOR TO ISSUANCE OF THIS PERMIT, the applicants shall submit to the Executive Director for review and written approval documentation

demonstrating that the landowners have executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicants' entire parcel or parcels. 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.

IV. FINDINGS AND DECLARATIONS

A. Project Location and Description

The project site is a 4,809 sq. ft. ocean-fronting lot located on sandy beach in Capistrano Beach, City of Dana Point (**Exhibit 1**). The property extends to the ambulatory mean high tide line (MHTL) from Beach Road, and thus, the City of Dana Point's certified Local Coastal Program (LCP) and the Chapter 3 public access and public recreation policies of the Coastal Act are the standard of review. The property is located within the Capistrano Beach Community Association, an established row of residential development with access to homes obtained solely through the private Beach Road located landward of the subject site. Further landward of Beach Road are railroad tracks, Pacific Coast Highway, and a coastal bluff supporting additional development.

The subject site is designated as "Residential 0-3.5" in the City's certified Land Use Element (LUE) of the LUP and "Residential Beach Road 12" in the certified IP, and "Floodplain Overlay District (FP-3)" in the certified LUP of the LCP. The site is also located in the certified LCP "Coastal Overlay District" (California Coastal Zone) and the appeal jurisdiction of the Coastal Commission.

The site is currently vacant and consists of beach sand, minor vegetation, and a fence on the landward, street-facing side. Aerial photographic records show that over the past few decades, the site has been intermittently developed with temporary structures (e.g., palapas, grassy lawns), likely serving a recreational purpose to neighbors and/or members of the Beach Road community. The applicants and the City have not confirmed whether shoreline protective devices exist onsite, and although there is no permit history for armoring at the site, aerial photographic records show that at one point there was shoreline armoring found onsite, which was removed prior to the current applicants' acquisition of the property.

The proposed project includes the construction of a new, two-story, 28-ft. tall,[3] 4,132 sq. ft. single-family residence with an attached 528 sq. ft., two-car garage and an elevated seaward-facing deck. The proposed caisson foundation would feature forty-five (45) caissons and grade beams in a grid pattern to elevate the residence, garage, and seaward-facing deck above beach grade. The attached garage would be constructed less than one foot above the Beach Road elevation, while the residence would be constructed approximately eight feet above the Beach Road elevation (**Exhibit 2, Page 8**).[4] No new shoreline protection devices are proposed in association with this project.

The City approved an 18-ft.-wide, second-story balcony extending 8 ft. beyond the structure stringline,[5] a 26 ft. wide section of stairs and landing that extend 3 ft. seaward of the structure stringline, and a 3.5-ft.-wide set of stairs extending 3 ft. beyond the patio stringline[6] that would provide access from the ocean-fronting deck to the beach (**Exhibit 2**).

Lateral Public Access Easement

In 1986, the Commission approved coastal development permit CDP 5-85-864 for development at this site (**Exhibit 6**). That permit allowed for the construction of a two-story, 3,203 sq. ft. single-family residence on the vacant lot. The home was never constructed. Nonetheless, as a condition of approval prior to issuance of the permit, Special Condition 1 of said permit required the property owner to offer to dedicate an easement for lateral public access and passive recreational use of the area along the shoreline seaward of the dripline of the approved deck. The offer was required to be irrevocable for 21 years from the date of recordation. The offer-to-dedicate (OTD) was recorded on January 13, 1987, and on July 23, 2002, the Orange County Board of Supervisors accepted the OTD per Resolution No. 02-215 (**Exhibit 7**). The dripline of the ocean-fronting deck proposed under CDP 5-85-864 nearly exactly corresponds to the patio stringline for the subject property as provided in IP Section 9.09.040(a)(1). The recorded easement designates the first 10 ft. immediately seaward of the deck dripline as a “privacy buffer” where public access is restricted to pass and repass only, and available only when no other dry beach areas are available for lateral public access. The remaining areas seaward of the privacy buffer are available for passive recreation of various forms. The public enjoys approximately 90 ft. of beach under average

[3] IP Sections 9.05.110 and 9.09.030 set the maximum height as 28 ft., as measured at 18 inches above the future base flood elevation (FBFE). The total height from grade is 36.5 ft.

[4] The finished floor elevation of the lowest habitable floor of the proposed residence will be +23.5 ft. NAVD88, the proposed garage will be at an elevation of +15.41 ft. NAVD88 (near the Beach Road elevation), and the proposed seaward-facing deck will be at an elevation of +18.2 ft. NAVD88.

[5] IP Section 9.09.040(a)(1) specifically outlines that, for 35525 Beach Road, the structure stringline spans the width of the property 116 ft. seaward of the roadside property line.

[6] IP Section 9.09.040(a)(1) specifically outlines that, for 35525 Beach Road, the patio stringline is 137 ft. seaward from the roadside property line along the west property line, and 139 ft. seaward from the roadside property line along the east property line.

contemporary conditions during the summertime, but the beach oscillates seasonally and is anticipated to become much narrower over time. The City did not require a new easement dedication with the current project approval, as the former recorded easement onsite is still valid.

B. Standard of Review

Section 30604(b) of the Coastal Act states:

> (b) After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

Section 30604(c) of the Coastal Act states:

> (c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

Dana Point is a shoreline community in southern Orange County that was incorporated as a city in 1989. The City of Dana Point presently has two groups of documents that, together, serve as its LCP. There is an older set of documents that were originally certified as part of the County of Orange LCP when Dana Point was unincorporated, which were then adopted by the City when it incorporated, and which still apply to the central geographic area of the City. These older documents have generally been referred to as the Dana Point Specific Plan Local Coastal Program or '1986' LCP, which the Commission recertified on September 13, 1989 upon the City's incorporation. In addition, there is a more recent group of documents that includes three elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation Open Space Element), the City's Zoning Code, the Monarch Beach Resort Specific Plan, the Headlands Development Conservation Plan, and the Dana Point Town Center Plan, which apply to those areas of the City that are not covered by the 1986 LCP. These more recent documents are referred to as the '1996 LCP.'[7] At the project site, the applicable documents are the City's certified 1996 LCP, namely the relevant sections of the City's General Plan (referenced in this staff report as the Land Use Plan, or "LUP") and the certified portions of the City's Zoning Code (referenced in this staff report as the Implementation Plan, or "IP").

Pursuant to Section 30604(b) of the Coastal Act, the standard of review for the Coastal Commission's de novo hearing on this project includes the City of Dana Point's certified

[7] However, this is now a misnomer because the three relevant elements of the City's General Plan and the City's Zoning Code (LUP and IP, respectively) were extended to the Capistrano Beach area in 1999 (LCP Amendment No. 1-98), and the Headlands Development Conservation Plan and the Dana Point Town Center Plan were adopted after 1996.

Local Coastal Program (LCP). Since the project site is located between the first public road and the sea, pursuant to Section 30604(c), the project must also be consistent with the Chapter 3 public access and recreation policies of the Coastal Act.

C. Shoreline Development, Coastal Hazards, and Sea Level Rise

The certified policies of the City of Dana Point LCP are applicable and included, in relevant part, in **Appendix C** due to length.

LUP (LUE) Policy 1.3 requires that land use intensities be made consistent with the capacities of existing and planned public service facilities, and where existing (or planned) public service facilities are constrained, ensuring that residential development does not preclude other land uses of higher priority; LUP (LUE) Policy 2.1 requires consideration of new development's impacts on surrounding land uses and infrastructure; LUP (LUE) Policy 3.1 requires new development to contribute its equitable share of the cost of providing necessary public services and facilities, and; LUP (COSE) Policy 5.1 requires safe and efficient vehicular access to streets to ensure efficient vehicular ingress/egress. IP Chapter 9.35 ensures that all land uses provide safe access to and on the site and that they do not negatively affect the safety, use of, or vehicular circulation within public rights-of-way.

LUE Policy 4.2 requiring consideration of natural and manmade hazards in the siting and design of new development; LUE Policy 4.10 requiring the regulation of construction of residential construction in coastal areas with high predicted storm wave runup to minimize risk of life and property damage; COSE Policy 2.1 placing restrictions on development of floodplain areas, beaches, and potentially hazardous areas; COSE Policy 2.5 requiring minimizing beach erosion and natural changes or manmade activities that adversely impact the replenishment of sand to beaches; COSE Policy 2.8 minimizing risks to life and property by requiring that siting and clustering of new development be away from unstable slopes and exclusion of beach areas from increasing density potential; COSE Policy 2.9 requiring new development to preserve significant natural features and to minimize alteration of natural landforms, including in areas adjacent to beaches; COSE Policy 2.15 requiring that all new seaward construction or seaward additions to existing beachfront single family structures assure public safety in a manner that, to the maximum extent feasible, does not interfere with public access along the beach, and; COSE Policy 2.16 requiring identification of flood hazard areas and appropriate land use regulations therefor in order to minimize risks to life and property, such as requirements for new development in flood-prone areas to elevate the lowest floor (including basement) above the base flood elevation.

IP Section 9.69.070(e) requires that the permitting authority, in this case the Commission on appeal, ensure that the proposed development will minimize alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood hazards. Further, IP Chapter 9.31 (Floodplain Overlay District, otherwise known as the "Floodplain Ordinance") implements the LUP policies referenced above in floodplain overlay districts, including in coastal high hazard areas as designated on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM).

The entirety of the Beach Road community is designated on the FIRM as "VE," and in the Floodplain Ordinance as "FP-3" (Floodplain Overlay District 3), indicating that this is a coastal area subject to wave action where strict regulations apply to new development to minimize flood hazards and damage, erosion, and unnatural diversion of floodwaters. The Floodplain Ordinance includes several provisions for flood hazard reduction, including elevation of all new construction on adequately anchored and secured pilings or columns such that the lowest floor is elevated to or above the base flood elevation (BFE), ensuring that the space below the lowest floor of new construction remain free of obstruction and not be used for human habitation, floodproofing utilities and avoiding their impairment or floodwater intrusion thereto, and adequate drainage to guide floodwaters around and away from structures. The BFE for new development is determined using, at minimum, FEMA's FIRM data and a site-specific Coastal Floodplain Development Study prepared by the applicant, and where such BFE data has not been provided, then BFE and floodway data from other sources may be utilized; the structure must be certified by a registered professional engineer or surveyor and inspected to verify that it is properly elevated.

Finally, although not cited or incorporated by reference in the LCP, nor part of the public access and public recreation policies of Chapter 3 of the Coastal Act, and thus not a legal standard of review, it is also noted that the Coastal Act requires that the Commission consider the effects of sea level rise and related hazards in making its decisions. Section 30270 of the Coastal Act states:

> The Commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

Danger from Wave Runup and Erosion

The proposed project is for the construction of a single-family residence with an attached garage and deck, all supported by caissons, on a vacant sandy beachfront lot seaward of the first public road (Coast Highway) in the City of Dana Point. The subject site is an infill lot within the existing residential Beach Road (Capistrano Bay) community, constrained by neighboring residences on both sides, a private road to the east and the Pacific Ocean to the west. The property is part of the Capistrano Bay Community Services District ("District"), a special tax-assessment district that owns and manages the private Beach Road, and which has recently broadened its authority to include protection of the road from erosion, waves, and rising sea levels.[8]

The subject beachfront lot for which new development is proposed is within a coastal high hazard area (as designated by FEMA and the City's certified LCP), and as such, is already subject to coastal hazards, such as wave uprush, flooding, and erosion. This part of the Dana Point coast, Capistrano Beach, is in an acutely erosional state, the

[8] Resolution No. 9-5-23, September 5, 2023.

cause of which is not well understood but has been attributed to reduced sediment supply, shifts in wave climate, and delayed effects from changes to nearshore wave dynamics from the construction of Dana Point Harbor in the 1970s. Capistrano Beach has experienced an accelerated decades long erosional trend starting in the late 1990s, and beach erosion has been the fastest and most severe at the northern and southern ends of the Beach Road community. Mean high tide line (MHTL) surveys collected by the District and satellite-derived shoreline data suggest this trend has been approximately six feet per year since 2007. Aerial imagery also shows that since ca. 2015, there are intermittent periods where there is effectively no dry beach along Beach Road, and the visible beach is limited to very low tides.

The Commission notes that, historically, the beaches in the area within the Capistrano Bight have historically been subject to additional wave uprush damage, flooding, and erosion during heightened or extreme storm conditions (e.g., 1982-1983 and 1997-1998 El Niño seasons, the 2022-2023 winter storm season, and Hurricane Hilary in 2023), but also during moderate to large summer southerly swell events that coincide with high tides, such as in the later summers of 2020 and 2021. Due to the geometry and orientation of this coastal stretch, very long-period waves can sometimes propagate inland as large bores, which can overtop and affect low-lying coastal structures.

Some existing residences located along Beach Road are already struggling with these hazards, exemplified by Emergency Permit Nos. G-5-20-0053 (35099 Beach Road) and G-5-21-0037 (35127 Beach Road) for residences located very near the project site. The emergency work in both cases included installation of sand cubes to protect existing single-family residences from wave action and erosion to their foundations and illustrates the need for projects in this area to be designed for safety against shoreline hazards in the present day, let alone in the long-term future. The Commission also notes that enforcement staff has identified over 90 cases of unpermitted shoreline armoring seaward of the homes along Beach Road (e.g., seawalls, revetments, riprap, sandbags, berms); many of the unpermitted shoreline protective devices have been installed in response to the beach's particularly severe erosion over the past few years, and these devices in-and-of-themselves can exacerbate erosion through modification of shoreline processes, resulting in even narrower beach widths.

Of the 202 residential lots along Beach Road, 14 parcels are currently vacant or unimproved, and they form four clearly visible "gaps" in the existing row of development. Although there are no direct reports of overtopping and flooding of Beach Road during large wave events, it is possible that floodwaters have historically entered through these gaps during extreme events (including potentially during the 1982-1983 El Niño), since the elevation of the road is between +13 and +17.5 ft. NAVD88 and thus portions of the road are lower than extreme total water level elevations. Nonetheless, armored development along Beach Road and the current backshore profile likely do provide some protection to the road from wave overtopping under the current range of conditions.

In addition to the shoreline armoring present along this stretch, the beach currently has a considerable exposed cobble component, which is visible in aerial imagery extending

back to 2004. The cobble does not appear to have slowed the erosional trend observed in satellite-derived data, suggesting it may not have a significant effect on the equilibrium erosional trend. Although the potential for cobble to make up a larger portion of the active beach profile *could* reduce the potential rate of erosion in the future, there is currently little information about the subsurface composition of the beach and the proportion of cobble.

The beach width as of June 2021 was approximately 90 feet from the line of development to the MHTL at the subject site, as surveyed by the District (**Exhibit 9**).[9] With an average erosion rate of 5.5 feet per year and no accelerated sea level rise, the MHTL could reach the line of development (patio stringline) at the site in less than 17 years. Even if the Commission were to estimate a 50% reduction factor in the erosion rate assuming the beach transitions to a cobble-dominated beach, which is generous and likely not representative of real-world declines in erosion rates, the MHTL could reach the line of development (patio stringline) at the site in less than 33 years, which demonstrates that erosion is and will continue to be a serious threat along Beach Road and the subject site in the near- to medium-term.

Thus, ample evidence exists that all beachfront residential development in the Beach Road community is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The proposed development will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future, including as exacerbated by sea level rise, which is discussed next.

Sea Level Rise

Sea level rise (SLR) is expected to exacerbate existing coastal hazards by raising mean water levels, extending flood zones inland, and increasing the potential for marine erosion of bluffs and cliffs along the shoreline. SLR will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today.

In California, SLR will result in increased flooding, erosion, and storm impacts to coastal areas. On a relatively flat beach, such as the beach encompassing the subject project site, with an approximate slope of 30:1, a simple geometric model of the coast indicates that every centimeter of SLR will result in a 30 cm landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as the proposed grade-level garage, an increase in sea level will increase the inundation of the structure.

In addition to increased flooding, erosion, and storm impacts, SLR may also lead to groundwater rise, which may result in earlier, more severe, or longer-term hazards,

[9] The Commission notes that the MHW measurement is a snapshot in time, and this beach is known to have a very substantial standard deviation (variation) in the MHW location. Thus, the surveys provided by the District, which are conducted during summertime, are not necessarily indicative of the typical beach profile.

especially for buried infrastructure and areas with shallow water tables and adjacent to streams/creeks, such as the subject property.

The exact rate and amount of SLR will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research.

Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance Update (OPC 2024) and is reflected in the Draft 2024 Update to the Coastal Commission Sea Level Rise Policy Guidance (CCC 2024). These documents present five SLR scenarios ("low" to "high") for fourteen locations (tide gauges) along the California coast, and provide recommendations for which projections to use in various planning contexts based on level of risk aversion and project type. Medium-high risk aversion applications, such as those projects with greater consequences and/or a lower capacity to adapt, like residential and commercial development, should analyze the "Intermediate-High Scenario."

In this case, the proposed project is located at roughly the midway point between the Los Angeles and La Jolla Tidal Gauges, and thus an average of the two tidal gauges yields approximately 3.0 to 4.7 ft. of predicted SLR by the year 2100[10] under the Intermediate to Intermediate-High scenarios (with upwards of 6.5 ft. under the High Scenario). The range of SLR projections for this site should also be analyzed in combination with a 100-year storm scenario in order to assess the upper-end potential inundation, shoreline retreat, and beach loss.

Consistent with IP Section 9.31.050, the City required the preparation of a Wave Runup Analysis and Base Flood Elevation Determination for the project, prepared by GeoSoils, Inc., dated February 28, 2020. The Wave Runup Analysis and Base Flood Elevation Determination, which the City relied upon in the local action, analyzed the proposed development in relation to coastal hazards under a 5.6 ft. SLR projection (assuming no shoreline protection devices) and provided a recommended finished floor elevation. Using 5.6 ft. of SLR on top of the current maximum observed still water level for the La Jolla tidal gauge, in combination with a breaking wave height of 11.6 feet at the structure, the applicants' consultant estimated a future potential breaking wave crest elevation of approximately +21 ft. NAVD88; thus, the recommended minimum elevation for the bottom of the lowest horizontal structural members was +21.0 ft. NAVD88, and the recommended minimum finished floor elevation for the habitable space was +22.5 ft. NAVD88. The proposed seaward-facing deck would be elevated lower than the breaking wave crest elevation, at +18.2 ft. NAVD88, and the proposed garage would be at ground level to allow for vehicular entry from Beach Road, at an elevation of +15.4 ft.

[10] Although many jurisdictions with LCPs specify design lives for certain types of development, the City of Dana Point certified LCP does not assign an appropriate design life for purposes of evaluating hazards for new beachfront development in the Capistrano Beach area. The design life of the subject development should be approximately 75 to 100 years, consistent with the minimum 75-year timeframe used in the applicants' consultant's coastal hazards study and recommended in the Commission's SLR Guidance for new residential development or redevelopment.

NAVD88. The City approved the proposal on the basis that it is consistent with the requirement of the City's certified Floodplain Ordinance (IP Chapter 9.31).

At the time of this study, the Commission's 2018 Sea Level Rise Policy Guidance recommended the use of region-specific SLR projections contained in the OPC 2018 SLR Guidance as the best available science. The Commission's 2018 Sea Level Rise Policy Guidance states that the appropriate region-specific SLR projection for the year 2100 for the midway point between Los Angeles and La Jolla (i.e., an average of the two tidal gauges) could be as high as 6.9 ft. under the medium-high risk aversion scenario (and as high as 7.1 ft. for the La Jolla Tidal Gauge, specifically). So, the applicant's 2020 Wave Runup Analysis and Base Flood Elevation Determination and subsequent revisions thereto somewhat underestimated SLR projection per the Commission's SLR Guidance at the time.

Current best available science, however, as adopted by the OPC in 2024, estimates up to approximately 4.7 ft SLR by 2100. The difference in SLR projections between the projection used in the original Wave Uprush Study and Coastal Engineering Report for the proposed project (5.6 ft.) and the updated and best available SLR science (up to 4.7 ft.) is less than a foot, which is not significant and would not change the overall conclusions of the analysis about the required finished floor elevation, setbacks, and the safety of the proposed structure from coastal hazard risks and SLR. With the recommendations for engineering design, the applicants' consultant concludes that the residence will be relatively safe from hazards over the proposed 75-year project life.

The Commission's staff coastal engineer, Jeremy Smith, P.E., has reviewed the numerous reports and studies (listed in **Appendix A**) submitted by the applicants' consultants and the City's third-party reviewers, and undertaken a thorough analysis of the site in relation to coastal hazards (see memorandum in **Exhibit 4**). Mr. Smith also reviewed recent scientific literature for the Capistrano Beach area, including but not limited to, the City of Dana Point's Sea Level Rise Vulnerability Assessment and a study conducted by University of California Irvine.[11] In his memorandum, Mr. Smith assesses the baseline coastal hazard conditions at the site and in the region at present; evaluates the potential risks to the proposed development, to the Beach Road community, and to coastal and Public Trust resources in the future, and; makes conclusions and recommendations as necessary to ensure the minimization of risks and the proposed development's adverse impacts to the environment in the face of coastal hazards, as exacerbated by SLR.

First, based on projections of shoreline changes caused by SLR, the MHTL is expected to migrate inland and underneath the proposed residence with as little as 2.5 ft. of SLR, which is within the anticipated project lifespan. While the applicants' consultant considered engineering design with a future base flood elevation (FBFE) that accounts

[11] Kahl, Daniel T., et al. (2024). *Northern Capistrano Bight Shoreline Dynamics Investigation, Final Report Prepared for the City of Dana Point*. University of California Irvine.

for 5.6 ft. of SLR, it does *not* imply that the residence will be safe from flooding for up to 5.6 ft. of SLR. In fact, regardless of the proposed FBFE, Mr. Smith finds that:

> While the proposed residence will be elevated on piles, the structure will still be subject to significant direct wave attack, wave runup, and overtopping. Aspects of the structure such as the proposed elevated deck, piles, and garage, below the future base flood elevation, will experience repeated stresses from wave impact and will likely experience accelerated degradation with the additional effects of abrasion from repeated impact from sand and cobbles and corrosion and spalling from the marine environment. It is likely that major repairs will be needed to these more exposed parts of the structure prior to repairs of the habitable portions.

Moreover, the residence is also reliant on its connection to Beach Road, which itself would be exposed to erosion and flooding well ahead of 5.6 ft. of SLR. In terms of the potential SLR risks to the community, Mr. Smith states the following:

> In the future, climate change and resulting sea level rise will increase the exposure of Beach Road to coastal flooding. Beach recession will allow large waves to break closer to the road and higher sea levels will increase the elevations of wave-related flooding. […]
>
> With one foot of sea level rise, the frequency that water from overtopping waves reaches the road (leading to temporary ponding) will increase but likely will still be limited to extreme events (i.e., less than 10% annual exceedance probability). With two feet of sea level rise, wave overtopping may temporarily flood the road (when the berm is eroded) during the winter season approximately once per year on average due to higher water levels and sea level rise-induced beach recession. With three to four feet of sea level rise, flooding of Beach Road could worsen during extreme events (near 1% annual exceedance probability) to the point where waves consistently overtop the road with great force during a storm event, leaving the road in a dangerous, impassable condition for the duration of high tide. With five feet of sea level rise, the road at its current elevation could experience wave overtopping nearly daily and serious flooding at least once a year. With greater than five feet of sea level rise, the Beach Road community would rely on significant investments in coastal flood reduction infrastructure to maintain reliable access during average coastal conditions.

Finally, in terms of the potential SLR risks to coastal resources, the applicants are not proposing shoreline armoring in connection with the project, and so natural shoreline processes will generally be able to continue at the site. This approach is consistent with the requirements in LUP (COSE) Policies 2.5, 2.9, and 2.15, as well as IP Section 9.31.040(d)(3), which in concert prohibit the use of shoreline protective devices in new development. This is because interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile that result from a reduced beach berm width, alter the usable area

under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on coastal resources is through a progressive loss of sand as shore material is not available to nourish the nearshore sand bar. The lack of an effective bar deepens the nearshore profile and can allow higher wave energy on the shoreline whereby materials may be swept up by the larger waves and carried far offshore where they are no longer available to nourish the beach. This affects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads can cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonally-eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach could also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the shoreline protective device is only acted upon during severe storm events, beach scour will be accelerated because there is less beach area to dissipate the wave's energy, and more wave energy will be reflected off the face of the shoreline protective device.

Even though the proposed project would not involve the placement of shoreline protective devices onsite, Mr. Smith finds that as the MHTL migrates inland and underneath the residence as sea levels rise, there would be project elements beneath the FBFE, such as the caisson foundation and garage, that could very well have adverse impacts on coastal resources and Public Trust land, asserting that:

> Because the proposed development includes deep pile foundations into beach sands that could foreseeably become public trust lands in the future, consideration should be given to the future removal of the proposed development. This could be achieved through special conditions requiring monitoring and removal of the proposed piles by the applicant. Removal of piles can be logistically challenging. While specialized equipment exists for pile removal, these methods are not always able to operate in beach settings with limited access. Furthermore, should the MHTL migrate landward enough to be underneath the structure, wave action will be present at least daily making removal with large equipment challenging and potentially requiring the use of temporary coffer dams or large scale sand placement to create sufficient working conditions. The cost of full removal of the piles will likely be extremely high. Alternatives such as partial removal to depths great enough to minimize the likelihood of future exposure could be considered, though this type of removal may still be very costly. […]
>
> Another potential impact of the proposed development on coastal resources (as it relates to coastal hazards) comes from the proposed garage level, which will be fully enclosed and subject to intense wave forces. The City's flood ordinance (which is informed by national flood insurance program standards)

> allows for enclosed areas below the design flood elevation when they are designed with breakaway panels to allow waves to freely pass through the space. […]
>
> The frequency of failure of these breakaway panels will increase with sea level rise, increasing the risk that debris from the breakaway panels and any unsecured material stored in the garage area (e.g., trash, toxic cleaning supplies) would be mobilized by waves and released into the nearshore marine environment. Automobiles which would be stored in the garage are also known sources of contaminants to the marine environment such as tire particulates, motor oil, gasoline, coolants, etc. all of which would be potentially exposed to wave attack and increase the risk of their release into the marine environment.

The project site is subject to significant coastal hazards that will only exacerbate with SLR, and Beach Road itself, a private road with already limited access that serves an entire community of approximately 200 homes, could become increasingly impassable over the next 75 years. Since safe access to and from the site is likely to be compromised during the anticipated project lifespan, which is a regional issue that cannot be overcome through consideration of this project alone, a question is then raised as to whether the Commission should be contemplating approval of new development along Beach Road. The Commission examines the project's siting and regional context next.

Project Siting and Regional Issues

The Commission and the City of Dana Point have previously permitted many new residential developments along Beach Road, and as mentioned above, there are only 14 remaining vacant sites along this stretch of 202 homes. Typically, there are no more than one or two vacant lots between existing structures in this area, and thus new development would often be considered "infill."

The Commission recognizes that the infilling of residential development between existing structures, if sited and designed correctly, typically would not result in significant adverse effects to coastal resources within these existing developed shoreline areas. The area surrounding the subject site is characterized as a substantially developed beach, and in the case of the proposed development, the single-family residence can be sited and designed such that it is considered as infill development within an existing developed area.

Nevertheless, as mentioned before, Beach Road itself, which is the only street for ingress and egress into and out of the community, will be heavily impacted by coastal hazards such as flooding and erosion in the near- to long-term future, and as sea levels rise, may no longer provide adequate road access to the residences. In addition, municipal services such as sewer, gas, electrical, telephone, and water systems may be frequently inundated with floodwaters, leading to corrosion, impairment, and contamination. LUP (LUE) Policies 1.3, 2.1, and 3.1 require the Commission to consider

the impacts of new development on surrounding land uses and infrastructure and ensure that new development contributes its fair share to the provision and maintenance of vital public services. And LUP (COSE) Policy 5.1 and IP Chapter 9.35 require that residential development maintain safe vehicular access to streets and public rights-of-way. The Commission must therefore contemplate whether new development should be approved in light of these facts. In this particular case, the development can be designed and conditioned to be consistent with the LCP, including, as discussed below, future removal of the development if it is not safe to access or inhabit the residence because the road is consistently flooded, or if utilities are damaged beyond repair. In other situations, however, if proposed beachfront residential development is inconsistent with LCP hazards policies, the Commission may have to consider whether denial of that development will take private property for public use, inconsistent with the provisions of Section 30010.

Special Condition 7(A) requires the landowner to remove the development if (1) any government agency has ordered that the structure not be occupied due to coastal hazards, or requires the structure to be removed; (2) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (4) the development requires new shoreline protective devices that conflict with LCP or relevant Coastal Act policies. This condition is required to ensure that proposed development accounts for hazards toward the latter end of the project lifespan, at which time the development may no longer be safe, habitable, or serviced by public infrastructure.

In the event that portions of the development fall to the beach before they are removed, **Special Condition 7(B)** requires the applicants or successor(s) in interest to remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a CDP, unless the Commission's Executive Director determines otherwise.

In addition, IP Section 9.31.060(f)(2) requires that all new construction in coastal high hazard areas be located on the landward side of the reach of the mean high tide. The Public Trust boundary may migrate landward in response to rising sea levels, and it is important to ensure that the development remains on private land over time, in order to remain consistent with LCP requirements and to limit encroachment of private uses on public lands. The Commission thus imposes **Special Condition 7(C)** specifying that in the event that the Public Trust boundary migrates landward such that any portion of the approved development comes to be located on land impressed with a Public Trust interest, based on a MHTL survey (including, but not limited to, a MHTL survey prepared pursuant to **Special Condition 5**), the applicants or successors shall submit a complete CDP amendment application within 180 days of the subject MHTL survey date to seek authorization to relocate and/or remove the development encroaching upon the Public Trust. The Commission notes that, where the MHTL, and therefore Public Trust land, is within close distance to the residential development, IP Section 9.27.030(a)(4)(I) requires a 10-ft. shoreline setback. Therefore, if portions of the development are to be retained, then the applicants or successors must demonstrate that they are located entirely on private property and provide the required minimum setback from the MHTL.

While Mr. Smith recommends consideration of removal of the proposed development in the future per the triggers outlined above, he recognizes that the removal of the development could be logistically challenging. The proposed structure will be constructed on a caisson-and-grade-beam foundation system consisting of: seventeen (17) 36-in.-diameter, 26-ft.-deep caissons and eleven (11) 42-in.-diameter, 26-ft.-deep caissons underlying the principal residential structure; eight (8) 36-in.-diameter, 26-ft.-deep caissons and three (3) 42-in.-diameter, 26-ft.-deep caissons to support the at-grade garage, and; six (6) 30-in.-diameter, 26-ft.-deep caissons to elevate the seaward-facing deck. The applicants' consulting engineer confirmed that the caisson size and embedment depth proposed is the minimum necessary to comply with building and safety codes and FEMA standards. There are no other project alternatives without the reliance on a heavy-duty caisson-and-grade-beam foundation system, and in fact, LUP (COSE) Policy 2.16 and IP Section 9.31.060(f)(1) require the residential structure to be raised on adequately anchored pilings or columns such that the lowest floor is above the FBFE. Specialized equipment does exist for caisson removal, but the caissons are designed to resist flood damage and prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. The cost of full removal of the piles will thus likely be extremely high. Furthermore, methods for caisson foundation removal are not always able to operate in beach settings with limited access. Should the MHTL migrate landward enough to be underneath the structure, wave action will be present at least daily making removal with large equipment challenging and potentially requiring the use of temporary cofferdams or large-scale sand placement to create sufficient working conditions. Mr. Smith notes that there could be alternatives such as partial removal of the caissons to depths below elevations likely to be exposed, which could be somewhat less costly and more practicable.

Thus, to be able to implement **Special Condition 7**, **Special Condition 1(J)** requires the applicants to submit a removal plan for the development (formally certified by an appropriately qualified, licensed engineer) if and when it becomes necessary to remove the residence, and shall describe, in detail, the phases, timing, and equipment necessary for the removal process. By requiring this removal plan be submitted prior to issuance of the permit, the applicants would address how the proposed development, including the caisson-and-grade-beam foundation, would be designed to facilitate relocation and/or removal of the structure and its foundation in the future, if necessary to avoid encroachment onto the Public Trust or to prevent future endangerment of the structure. The removal plan should further detail how utility systems would be disconnected, how sections of the structure would be separated and disengaged from the foundation system, how the caissons would be removed (and if not fully, how they would be capped and abandoned-in-place below the anticipated scour elevation), and how all demolished portions of the development would be hauled away from the site and disposed of.

During the operable life of the development, prior to triggers for removal, the Commission must explore project alternatives that ensure maximum public access and minimize risks from coastal hazards, as well as minimize adverse effects to coastal processes, shoreline sand supply, and public views. As a means of controlling seaward

encroachment of residential structures on the beach, the Commission could consider siting the proposed development in the most landward feasible location possible. However, as already discussed, additional setbacks from the shoreline at this time would not necessarily minimize the risks from wave attack, wave runup, and overtopping over the course of the project life, since the entire site is relatively low-lying, and with about 3 to 4 ft. of SLR, the entire site could be regularly inundated all the way to the Beach Road street frontage. Rather than minimizing the development's footprint, the Commission finds that in this case it is more appropriate to ensure that the development is sufficiently elevated on securely anchored caissons. The Commission therefore agrees with the City that the proposed infill residential development should be limited to the "stringlines" established in the certified LCP, especially given the prevailing development pattern in the Beach Road community.

Stringlines are typically considered when reviewing development in largely developed beachfront communities. As applied to beachfront development, a stringline limits the seaward extension of a structure and is often a line drawn between the nearest comers of adjacent structures, and decks are similarly limited to a line that is often drawn between the nearest corners of the adjacent decks. However, in the case of the Dana Point certified LCP, IP Section 9.09.040(a)(1) sets predetermined structure and patio stringlines for each residential lot along Beach Road. In the case of this project at 35525 Beach Road, the structure stringline spans the width of the property 116 ft. seaward of the roadside property line. The patio stringline is 137 ft. seaward from the roadside property line along the west property line, and 139 ft. seaward from the roadside property line along the east property line.

The project, as proposed, will have several encroachments beyond the structure and patio stringlines, but those are expressly permitted by the LCP. Nonetheless, as mentioned in Section IV.A (Project Location and Description) of this staff report, there is an existing lateral public access easement recorded on the site extending from the ambulatory MHTL to the patio stringline as provided in IP Section 9.09.040(a)(1) (**Exhibit 7**), and thus the set of beach stairs connecting the seaward-facing deck and the beach would result in the seaward encroachment of residential development into the easement. The Commission imposes **Special Condition 1(B)** requiring removal of the stairs beyond the patio stringline encroaching three feet into the public beach. The Commission finds that the development, only as conditioned, would be consistent with the relevant sections of the Dana Point LCP relative to seaward encroachment.

Project Design

Given that the project site is subject to significant coastal hazards that will only exacerbate with SLR, Mr. Smith makes certain recommendations to ensure that the proposed development would minimize risk and avoid adverse impacts to coastal resources to the greatest extent feasible. These recommendations include specific changes to the design of the project, which are discussed as follows.

Future Base Flood Elevation (FBFE)

The certified LCP does not specify how FBFE estimates should be calculated, and estimating FBFEs includes a large degree of uncertainty. One approach, taken by the applicants' consultant in this case, and supported by the City, is to estimate the breaking wave elevation at the base of the structure in the next 75 years. GeoSoils estimates a FBFE of +21 ft. NAVD88, which is a two-foot increase from the current FEMA BFE estimate of +19 ft. NAVD88. While the City's third-party consultant, Moffat & Nichol, published a memorandum on April 6, 2022 providing support for the +21 ft. NAVD88 FBFE estimation, in an earlier memorandum dated November 17, 2021, Moffat & Nichol states that GeoSoils had previously assumed that the beach would transition to a cobble beach over time, and there is disagreement as to whether this would substantially reduce the rate of erosion. The Commission's staff engineer, Mr. Smith, finds that it is indeed unlikely that cobble will be present across the entire beach profile, and therefore the original analysis overestimates the impeding effect of cobble on overall beach erosion, the assumptions of which have cascading effects on the ultimate conclusions about the combined effects of coastal hazards at the site (**Exhibit 4**). GeoSoils' assumptions about the effects of a transition to a cobble beach on erosion and wave conditions, as well as assumptions about SLR scenarios, still raise questions as to whether the full scope of SLR risk (including future shoreline change) was considered.

Despite remaining disagreements about how to arrive at the ultimate design FBFE, Mr. Smith finds the proposed FBFE of +21 ft. NAVD88 to be a reasonable effort to minimize the risk from flooding to the proposed residence; still, he emphasizes that the residence would still be sited on an eroding beach with significant risk of wave hazards including the potential for flooding and direct wave impact, including from potentially significant uplift forces. The future wave hazard conditions at the site are determined by the combination of future erosion and water levels, which interact in nonlinear ways that make estimates highly uncertain, and maximum wave runup may be higher than anticipated and the rate of erosion may accelerate faster than projected if there are changes in the frequency or effectiveness of beach nourishment activities or changes to sediment management in the area; thus, it is very difficult to say with reasonable confidence to what degree or amount of SLR the proposed residence would be safe from flooding as elevated.

In a letter dated December 30, 2022, GeoSoils' hazards analysis provides additional suggested adaptations, such as flood shields during the incidence of very high tides, high waves, and eroded beach conditions. In Case C, which is the worst case scenario with 1% probability, additional adaptation measures would include removal of threatened portions of the development, shoreline protection (if allowed), and removal of the entire development if necessary. More recently, the applicants submitted a Grading Plan prepared by TOAL Engineering, Inc., dated April 29, 2021 and a Utilities and Storage Plan prepared by SHAHIM Engineering Group dated July 20, 2022 (supplemented on November 18, 2023), which show a FBFE raised by a foot (resulting in an elevation of +22 ft. NAVD88, and a finished floor elevation of +23.5 ft. NAVD88). The applicants clarified that the intended FBFE is still the original proposal of +21 ft.

NAVD88. As such, **Special Condition 1(A)** memorializes the applicants' proposal and ensures that the proposed FBFE is clearly reflected on all sheets of the final revised plans.

Garage

The City's findings in its local approval suggest that inundation of the non-habitable garage may be an acceptable option to avoid impacts to the primary residence (which will be elevated approximately eight feet above the garage). In fact, the LCP requires that the garage be designed in this way. If a garage is proposed, then IP Section 9.31.060(f)(3) states that "[a]ll new construction and substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls," and Subsection (f)(12) states that "[g]arages may be constructed at the existing beach elevation and below the base flood elevation if they are anchored on pilings or columns and designed with breakaway panel walls" [emphasis added]. Beach Road is at approximately +15-16 ft. NAVD88 elevation, and it is the only accessway for the Capistrano Bay community; by their very nature, garages are to facilitate site ingress and egress and off-street parking of vehicles, and thus in order to take access from the street, the entrance to the garage must be more or less level with the road, at an elevation substantially below the FBFE. Ultimately, the City and its consulting reviewers, Moffatt & Nichol, found it acceptable that wave runup occurring on the eroded beach underneath the residence would flood the garage and Beach Road and exert uplift forces on the structure's foundation, so long as the habitable first floor and above would remain relatively safe from hazards.

As noted in Mr. Smith's memorandum (**Exhibit 4**), there are several concerns with the proposed at-grade garage. First, Mr. Smith notes that the aspects of the structure that are below the FBFE, such as the garage, will experience repeated stresses from wave impact and will likely experience accelerated degradation with the additional effects of abrasion from repeated impact from sand and cobbles and corrosion and spalling from the marine environment. It is likely that major repairs will be needed to the more exposed parts of the structure prior to repairs of the habitable portions that are sufficiently elevated.

IP Section 9.75.020 defines breakaway walls as having "a safe design loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot," and further states that "[b]reakaway wall collapse shall result from a water load less than that which would occur during the base flood." These requirements are to ensure that the walls of the garage would not function like seawalls. While the flood resistance loads were not specified in the applicants' submittal, and it is unclear whether the proposal would conform with the LCP requirements, the applicants' engineering consultant confirmed that the walls parallel to the shore and Beach Road would be constructed with breakaway panels are designed to fail at much lower load conditions than those exerted by wave bores or during base flood conditions. Though the rear (ocean-fronting) breakaway wall would be approximately 80 ft. landward of the seaward line of development, it is very plausible that wave bores could reach the garage, especially as sea levels rise. Mr. Smith estimates that a fast moving bore from a wave

running up or flowing across the project site impacting the breakaway panels could cause failure with depths of less than a foot. Furthermore, with SLR, sand levels towards the back of the lot are expected to increase as the equilibrium beach berm elevation increases to match sea levels; this means that the garage will increasingly be at risk of sand breaking through the breakaway panels as it piles up. Since the frequency of failure of these breakaway panels will increase with SLR, there is an increased risk that debris from the breakaway panels would be mobilized by waves and released into the nearshore marine environment. Depending on how the breakaway panels fail, large chunks or sections could drift and pose hazards to nearby residences or to beachgoers.

The garage may also be used for storage of electrical/mechanical equipment, cleaning chemicals, or other hazardous pollutants. Inundation of the garage could thus result in release of harmful toxins into the marine environment, and/or impacts to water quality and surrounding coastal habitats via the creation of marine debris. Additionally, an enclosed garage could give the property owners a false sense of security, and the storage of automobiles in a confined environment could still give rise to the mobilization of contaminants such as tire particulates, motor oil, gasoline, coolants, etc., all of which would be potentially exposed to wave attack when the breakaway panel walls inevitably fail.

In the future, the applicants or successors in interest could seek shoreline armoring to protect the at-grade garage. **Special Condition 6,** however**,** would expressly prohibit the construction of shoreline protective devices at this site to protect the residence, including the garage.

Finally, as discussed in Section IV.E (Visual Resources) of this staff report, the garage would also block public views to the ocean, as opposed to project alternatives that could open up some blue water views underneath the residence.

In sum, a question is raised as to whether a garage is necessary in the first place. As cited above, IP Chapter 9.31 does not mandate the inclusion of a garage; rather, if one is proposed, it must be anchored on pilings and, if enclosed, breakaway panel walls must be used. IP Section 9.35.080(e) also establishes that the required parking for a detached single-family residence with up to 4 bedrooms is 2 covered stalls, and one covered space for every two bedrooms over 4 bedrooms. “Covered stalls” can be considered a carport. IP Section 9.35.080(e) does not specifically require an enclosed garage. Commission staff conferred with City staff, and City staff stated that a garage would typically be viewed as a conventional amenity for a home, and the City does interpret the LCP as allowing the garage as an option, and a variance would not be needed. Thus, an alternative to a garage that is also LCP consistent is a carport.[12] Mr.

[12] The LCP defines a garage as “an enclosed building or structure, or part thereof, used or intended to be used for the parking and storage of motor vehicles,” whereas a carport is defined as “a roofed structure providing space for the parking or storage of motor vehicles and enclosed on less than four sides.” Therefore, the main difference between the two alternatives is whether the parking area is enclosed on all four sides.

Smith is not aware of any specific FEMA standards disallowing open carports beneath elevated structures in VE Zones (nor have the applicants pointed to any of these standards) and such a design appears consistent with construction practices in other flood-prone areas of the U.S. and California.[13]

For the reasons outlined, the Commission therefore imposes **Special Condition 1(F)**, which requires that the breakaway panel walls and garage door(s) be removed from the final revised plans. Instead, the applicants must submit final revised plans showing a two-stall covered carport beneath the finished floor of the elevated caisson-supported residence with unobstructed vertical clearance and which would allow unobstructed flow below the finished first floor elevation of the residence. The carport shall not be converted to a garage or other enclosed space, and breakaway panel walls shall not be constructed any time. Typically, hazardous household materials such as paints, solvents, and cleaners/detergents are typically stored in non-inhabited areas of the residence (such as in a garage, mechanical room, or basement), and since the carport would be subject to flooding in the future, this condition also prohibits the storage of such unsecured and hazardous materials within the open carport to avoid their release into the marine environment.

The applicants are amenable to this condition, but the applicants' architect and engineer clarified the need for two shear walls on either side of the garage, perpendicular to the shore, to further support the structure above. They contend that if these two structural walls of the garage are removed, then additional vertical support would be needed for the habitable floors above to meet building code requirements for seismic loads, which would likely be accomplished via increasing the caisson size, and which, in turn, could preclude parking of vehicles in the carport without major re-engineering of the project. Mr. Smith concurs with this assessment. **Special Condition 1(F)** thus allows for the construction of these two shear walls. The condition also allows for caisson supports for the carport slab, if it is to be surfaced, such that structural stability of the carport or structure above would not be compromised.

Mr. Smith further remarks that when parking becomes unsafe in the future, for example from frequent wave flooding or sand deposition, it could be possible for the District to coordinate consolidation of parking in the community to ensure safe storage of vehicles and minimization of pollution that could come from their exposure to marine waters. **Special Condition 1(K)** also allows for a reduced front yard setback if approved by the City, which may place the carport and parked cars further landward of the current proposed location, and which may thus prolong the timeframe before which alternative parking arrangements would need to be explored.

[13] On the Eastern Seaboard and Gulf Coast of the United States, homes in hurricane-prone areas are often constructed on stilts or pilings without any enclosed at-grade spaces such as garages. In California, several flood-prone homes in Stinson Beach (e.g., 21 and 28 Calle Del Onda) have adopted an open carport design.

Utilities

The certified LCP requires the proposed development to ensure that utility equipment and connections are resistant to flood damage. Specifically, IP Section 9.31.060(a)(2)(C) states that "[a]ll new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding," and Subsection (b) requires that all new water supply and sanitary sewage systems (including onsite waste disposal systems) be designed to eliminate or minimize infiltration of floodwater, potential discharges, and impairment or contamination during flooding.

Within the Capistrano Bay community, all utilities (e.g., water, sewer, electrical, gas, cable, etc.) are provided by either public or private utility companies. Unlike other coastal areas in the State, such as Malibu, no onsite wastewater treatment systems or septic tanks are needed, as the sewer laterals connect to the South Coast Water District's wider system. The applicants submitted a Utilities and Storage Plan prepared by SHAHIM Engineering Group dated July 20, 2022 and supplemented on November 18, 2023. The Plan shows that most of the mechanical and utility connections and extensions would be located above ground and conveyed to the elevated habitable floor area via the enclosed garage. For instance, the applicants are proposing to install the electrical panel within a concrete masonry unit (CMU) wall, which is one of the side (structural) walls of the garage. As discussed above, **Special Condition 1(F)** removes the enclosed garage from the proposal and instead replaces it with an open carport with two shear walls only, which could have implications for the applicants' proposed Utilities Plan.

Special Condition 1(G) requires all mechanical and utility connections and extensions serving the project to be installed underground, or otherwise securely mounted on the residential structure. Since the project, as conditioned, would have an open carport, utility conduits would need to be mounted on or through the caissons and shear walls, as well as on the underside of the first habitable floor (i.e., top of the carport). The applicants are required to demonstrate how the utility infrastructure will be conveyed to the elevated habitable floor area, since it is not exactly clear how the utility connections would be installed in the absence of the enclosed garage and provide revised plans. Additionally, the condition requires the applicants to demonstrate and enumerate various floodproofing measures to ensure the functionality of the utilities in the face of flooding and wave attack.

Special Condition 16 is imposed to ensure that the applicants participate in the maintenance of all adjacent public areas and public utility improvements to ensure they remain in good condition through the life of the development, including in the face of SLR. Currently, the Capistrano Bay Community Services District is the main entity responsible for undertaking maintenance activities in the Beach Road community, but should circumstances change in the future, the applicants will still be responsible for participation in the upkeep of public areas and utilities in an appropriate manner.

Elevated Deck

IP Section 9.31.060(f)(8) requires ocean-facing decks to be constructed and adequately anchored on caissons or piles installed below the scour elevation, to withstand the forces of breaking waves and uplift forces, and to allow wave runup to go over and under without obstruction. Such decks must also be consistent with other LCP policies.

The applicants are proposing a wooden deck on the seaward-facing side of the residence at an elevation of +18.2 NAVD88, which is approximately five feet lower than the finished floor elevation of the residence. The deck is proposed to occupy the entire area between the structure and patio stringlines, which extends in width between 21 and 23 ft; to support such a massive deck, the applicants are proposing six (6) 30-in.-diameter, 26-ft.-deep caissons.

On the other hand, in past actions in coastal bluff and canyon areas, the Commission has consistently found that caissons supporting accessory development is inconsistent with Coastal Act Section 30253 and corollary LCP policies, since deepened foundations can change the natural landforms, become exposed with erosion, and act as a shoreline protective device with adverse impacts on shoreline processes. Instead, deepened foundations should only be used for principal structures to the minimum extent possible. The dynamics are somewhat different on low-lying, flood-prone beachfront lots, but the Commission has also found that deepened foundations for accessory development would have adverse impacts on coastal resources and should be eliminated wherever possible.[14] This is because caissons are often difficult and costly to remove (as examined in depth above), they allow for accessory development to be located closer to the shoreline than if they were at an otherwise lower elevation, and they also alter natural landforms beyond the minimum necessary. Mr. Smith also found that the proposed deck will certainly be subject to significant stresses and likely need to be significantly repaired or replaced well before the life of the actual residence, and there could potentially be a concern that the deck could lead to temporary scour of the sands beneath it during and immediately after storm conditions. There are other concerns related to public access that are discussed in Section IV.D (Public Access and Recreation) of this staff report.

The Commission evaluated alternatives to the elevated deck on caissons, including (1) an at-grade patio and (2) an elevated deck on caissons with a greater setback. Both alternatives would require less reliance on caissons specific to the deck; the at-grade patio would not require caissons at all, and if the deck were elevated but within the footprint of the residence (recessed such that it is set-back landward of the structure stringline), then the deck could simply use the caissons for the principal residence. However, an at-grade patio would not be safe in this dynamic beach environment and would require constant repair or protection. An elevated deck set back landward of the structure stringline would remove 21-23 ft. of living space from the first habitable floor of the residence, which would substantially decrease living space on an already constrained site.

[14] 5-14-1756-A2 (Ghandour); A-4-STB-14-0016 (Carr); A-4-OXN-18-0053 (JREJ Mandalay Properties LLC); A-4-VNT-18-0070 (Kaplan).

The applicants' consulting engineer suggested the alternative of a deck cantilevered from the principal residential structure. Under this design, the cantilevered deck could be easily removed at such time as it is threatened by coastal waves, erosion, or other hazard, so it will minimize hazard risks as well as avoid impacts to public access. Because it would not be supported by the caisson foundation system for the house, removal of the deck will not require significant alteration of the residence, which is an additional advantage. Thus, the Commission imposes **Special Condition 1(B)**, which would redesign the seaward-facing deck such that it is cantilevered and does not rely on vertical support members for elevation. The condition requires that the cantilevered deck assure structural integrity under hazardous conditions while not requiring new caissons for the deck or an increase in the size or embedment depth of the caissons supporting the principal residential structure. Since the cantilevered deck would not be supported by caissons, it is unlikely that it could feasibly extend some twenty odd feet up to the patio stringline, and so the condition limits the seaward extent of the deck to eight feet beyond the structure stringline, the same as the upper-story balcony encroachment, such that it helps create an "appropriate boundary" between private and public uses on the beach, as outlined in IP Section 9.27.030(a)(4)(G)(1) (more on this issue in Section IV.D (Public Access and Recreation) of this staff report).

As such, the Commission finds that only as conditioned to revise the proposed deck, will the project not result in hazard risks or adverse effects to coastal processes.

Caisson Foundation System

As mentioned, caissons are necessary to provide vertical support for the elevated residence. The proposed foundation system is the minimum necessary to meet building and safety needs. Nonetheless, the development would need to be removed in the future if necessary to avoid encroachment upon Public Trust land and/or future endangerment of the structure. Per **Special Condition 1(J)**, the applicants will need to demonstrate that the caisson-and-grade beam foundation is designed to facilitate removal and/or relocation of the structure and its foundation in the future.

Prior to removal of the structure, the subsurface portions of the caisson foundation may become exposed due to scour, wave attack, flooding, and erosion. If the pilings become exposed during the life of the structure, then there must be appropriate mitigation for the impacts to shoreline processes and visual resources resulting from their exposure. **Special Condition 1(E)** requires the applicants to submit a Caisson Treatment and Exposure Plan prior to issuance of the permit to identify potential measures that would eliminate or minimize the adverse effects of subsurface exposure of the piles on coastal resources.

Coastal Act and LCP Consistency

Mr. Smith recommends that, at a minimum, the applicants acknowledge and assume the risk of developing in a hazardous coastal environment and that future owners and occupants be notified of this risk. The Commission finds that the following conditions should be imposed to ensure recognition of, as well as (where possible) adaption to, the

various regional community-wide risks to which the site will be subject over its projected lifespan.

Conformance with Requirements

In addition to the Special Conditions described above that are required to address the project's impacts, the Commission finds that numerous conditions imposed by the City to address the development's structural stability and integrity are required to ensure the project's consistency with the City's LCP policies regarding coastal hazards. Thus, **Special Condition 2** requires the applicants to submit evidence of compliance with the City's conditions, except as specifically modified by the Commission's approval. This Special Condition provides that any deviations or conflicts shall be reviewed by the Executive Director to determine whether an amendment to this CDP is required.

Additionally, the proposed development may inadvertently encroach into coastal waters, both in the long-term as sea levels rise and as the MHTL migrates inland underneath the residence, but also potentially during the construction stage through the use of mechanized equipment on the beach (potentially below the MHTL). **Special Condition 3** is thus required to ensure that the applicants comply with all permit requirements and mitigation measures of the California State Lands Commission, U.S. Army Corps of Engineers, Regional Water Quality Control Board, U.S. Fish and Wildlife Service, and California Department of Fish and Game to avoid discharges of dredged or fill materials into open coastal waters and to ensure that the project does not encroach onto Public Trust land. Any change in the approved project which may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

Finally, to ensure that all recommendations of the applicants' coastal engineering consultant have been incorporated into the proposed development, **Special Condition 4** requires the applicants to agree to comply with the recommendations contained in the submitted coastal engineering and geology, geotechnical, and/or soils reports (**Appendix A**) and that final plans approved by the consultant shall be in substantial conformance with the final plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultant shall require an amendment to this permit, or a new CDP.

Shoreline Monitoring

Monitoring of the beach along Beach Road is critical for both understanding the migration of the MHTL but also for tracking erosion that could result in greater hazards than considered by this proposal or other future development. The applicants did not submit a formal MHTL survey as part of this de novo application. Thus, the Commission imposes **Special Condition 5** requiring a current MHTL survey prior to issuance of the permit and periodic MHTL surveys every five years thereafter for the life of the structure in order to provide evidence of whether the development is located on, and remains on,

private property. The District already undertakes annual MHTL surveys for the whole community (**Exhibit 9**). Thus, this Special Condition allows the District to undertake the surveys. However, the applicants or future landowners would still be responsible for consulting with State Lands Commission staff, for submitting the MHTL surveys (which may use data gathered by the District) to the Commission's Executive Director for review, and for ensuring that the MHTL surveys are conducted per specific survey standards, including the collection of winter season data. Should the District no longer provide this service, the MHTL surveys will be conducted at the applicants' expense.

Assumption of Risk

The subject site, even after completion of the proposed project, will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act and LCP recognize that development, even as designed and constructed to incorporate the recommendations of the applicants' consulting engineer, may still involve risk from coastal hazards. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

In this case, the Commission finds that the development will likely be subject to hazards such as storm waves, surges, coastal flooding, fluvial flooding, groundwater inundation, erosion, tsunamis, many of which may be exacerbated by SLR. Although the project is conditioned to minimize such risks, because the risk of harm cannot be entirely eliminated, the Commission requires the applicants to waive any claim of liability against the Commission and the City 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 8**, will ensure that the applicants are aware of and acknowledge the nature of the hazards that exist on the site, and that may adversely affect the stability or safety of the development it protects, and will effectuate the necessary assumptions of those risks by the applicants and future successors in interest. It will also ensure that the applicants are aware of the potentially ambulatory nature of their seaward property boundary, and that this boundary may move with SLR.

This condition further ensures that future property owners will be made aware of the risks and limitations placed on the development by this permit, so that any future owners can properly assess risks before purchasing property. In general, disclosing risks to current and future property owners helps ensure that property owners will plan with these hazards in mind and will help set reasonable expectations for future development potential and investments. Similarly, requiring property owners to assume the risks of developing in hazardous locations will help avoid the need to spend public funds on disaster recovery for private development and will ensure future owners are aware of limits on the use of shoreline armoring that harms coastal resources. These conditions help carry out LCP policies related to minimizing risks to life and property in areas of high flood hazard, as well as the mandate to ensure that new development is located in areas able to accommodate it, including over time as conditions change.

Future Development

According to the applicants' consulting engineer, construction of the proposed residence upon pilings will mitigate any flooding, erosion or wave hazards that could threaten the residential structure. However, the foundation system would be subject to wave attack under extreme oceanographic conditions, as exacerbated by SLR. There is a history of erosion, flooding, and damage in the Beach Road community which has prompted applications for the repair and construction of protective devices.[15] Furthermore, the shoreline is a dynamic environment and, although the proposed residence has been designed and conditioned to ensure structural stability relative to wave action and forecasted SLR to the extent feasible, it is not possible to completely preclude the possibility that conditions onsite could change and that the residence could be subject to even greater wave action and tidal events in the future than anticipated. Because it is not possible to absolutely ensure that the structure is constructed in a manner adequate to ensure structural stability relative to increased future wave action, SLR, and tidal events, the project site may subject to hazards that could conceivably prompt the applicants or future landowners to seek shoreline protective devices or measures, which would be inconsistent with the City of Dana Point's LCP policies. As such, **Special Condition 6** ensures that no future shoreline protective devices would at any time be constructed onsite to protect the proposed residence, and the applicants agree to waive any such rights that may exist under applicable law.

In further consideration of the hazardous project location, **Special Condition 17** requires an amendment to this CDP No. A-5-DPT-22-0037, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions. This would ensure that no additions or improvements are made to the property without due consideration of potential hazards.

Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 18**, which requires that the property owners record a deed restriction against the property, referencing all the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

Conclusion

In summary, the project, as proposed, will be subject to increasing coastal hazards, including, but not limited to, wave attack, flooding, and erosion, and it is not adequately sited or designed to minimize such risks or assure stability and structural integrity. The

[15] A-5-DPT-01-336 (Bell).

Commission further finds that, even if adequately designed to withstand coastal hazards in the near- and long-term future, as sea levels rise, the development could become isolated on the beach without adequate connection to road access and utilities, unless there is a larger regional community resiliency plan for the Beach Road community. Therefore, the Commission finds that conditions of approval are necessary, including removal of the development when the structure becomes endangered or the Public Trust migrates inland and underneath the residence, in order to consider the development consistent with the shoreline development and hazards policies of the certified City of Dana Point LCP. The conditions of approval will also ensure that the project adequately identifies, assesses, and, to the extent feasible, avoids and mitigates the adverse effects of SLR.

D. Public Access and Recreation

As noted above, because the subject application is for development between the sea and the first public road paralleling the sea, the public access and recreation policies of the Coastal Act (Sections 30210-30224) form part of the standard of review for the proposed development. Relevant Coastal Act policies include:

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.

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

> (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby[…]

Section 30214 of the Coastal Act states, in relevant part:

> (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
>
> (1) Topographic and geologic site characteristics.

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

(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.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

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.

Section 30222 of the Coastal Act states:

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

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The most relevant portions of the City of Dana Point LCP for purposes of public access are LUP Policies 2.15 (COSE), 3.11 (LUE), and 3.12 (LUE), and IP Sections 9.09.040(a)(4) and 9.27.030(a). Due to the length of Section 9.27.030(a), these LCP provisions are provided in **Appendix C**, below.

A fundamental goal of the Coastal Act is to "maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone" (Coastal Act Section 30001.5(c)). To achieve this goal, both the Coastal Act and the City's certified LCP set forth specific policies governing the provision and protection of public access and recreational opportunities. The public access policies of the Coastal Act (Sections 30210-30214), which are referenced in the LCP, prioritize public access to the sea and prohibit development from interfering with the public's right to access the coast in cases where such rights were "acquired through use or legislative authorization." (Coastal Act Section 30211). Section 30212(a) provides that adequate public access to the sea be provided in new development projects except where it would be inconsistent with public safety, military security, or protection of sensitive resources. Section 30214 additionally requires that the Chapter 3 public access policies of the Coastal Act be implemented in a manner that accounts for unique topographic site characteristics, the capacity of the site to sustain use, and the need for management of access areas to also protect property-owners' privacy.

In addition, the Dana Point LCP contains several policies to ensure the protection and provision of public access in new development along the shoreline, while balancing public safety needs, private property rights, and the protection of natural resources, where applicable (LUP Policies 2.15 (COSE), 3.11 (LUE), and 3.12 (LUE), and IP Section 9.27.030(a)). IP Section 9.09.040(a)(4) requires offers to dedicate easements for public pedestrian access laterally along the beach at Capistrano Beach as a condition of any new development along Beach Road, consistent with IP Section 9.27.030(a). There are also other LCP policies that limit the use of shoreline protective devices (cited in Section IV.C "Shoreline Development, Coastal Hazards, and Sea Level Rise" of this staff report, above) because such protective devices affect public access.

Finally, the public has rights to the tidelands that currently lie seaward of the proposed development, but which may come to be located closer to, or even under, the proposed development at some point in the future. The Commission must ensure that new development does not impair Public Trust resources by, for example, impeding current or future public access thereto. Coastal Act regulations define Public Trust Lands as "all lands subject" to the common law Public Trust and associated with Trust purposes, including recreation.[16] The Public Trust Doctrine has traditionally protected in-water uses such as fishing and navigation under common law, but for several decades, it has been interpreted more broadly to protect other resources, including the environment (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260) The Public Trust also includes the right to swim, boat, hunt, bathe, access, and engage in other forms of water recreation, as well as to use the bottom for anchoring or standing. The State Lands Commission, which administers leases on Public Trust Lands, analyzes the entire area of Public Trust impacts, including impacts on upland recreation.[17] Thus, use of dry land adjacent to

[16] Cal. Code of Regs., title 14, § 13577(f).

[17] See e.g., Section 3.2.4, Public Trust Impact Analysis, Broad Beach Restoration Project Revised Analysis of Impacts to Public Trust Resources and Values, July 2014, including discussion of long-term

Public Trust Lands may not interfere with recreation and other Public Trust uses of the adjacent Public Trust lands. In cases where it is clear that the public's right of access to the sea is "acquired through use or legislative authorization," Coastal Act Section 30211 provides strong protection of such access from interference from development.

The open coastal waters, tidelands, and beach along Beach Road and in the immediate vicinity are frequented by visitors of both local and regional origin, and that public access must be protected and maximized. Moreover, throughout California's history, low-income communities, communities of color, and other historically marginalized populations have faced disproportionate burdens in accessing the California coastline due to geographic, economic, social, and cultural barriers. Section 30604(h) of the Coastal Act states: "when acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state." The Commission adopted the Environmental Justice Policy in March 2019, committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency's decision-making process and ensuring coastal protection benefits are accessible to everyone, especially communities that have been historically marginalized, harmed by, or excluded from the coast as a result of coastal development.

The subject site is located within an almost fully developed residential area that was subdivided in the 1920s with no vertical public beach access currently available due to Beach Road being a private road. The closest vertical access points available are Capistrano Beach County Park and Poche Beach, each located about ¾-mile upcoast and downcoast of the project site, respectively. Lateral public access to the sandy beach in front of the project site is available by walking along the shoreline from either of these beach entry points. The City indicated in its local CDP findings that these two entryways provide adequate public access to the subject beach. However, it is important to note that generally along Beach Road, only the wet sand areas of the beach (those seaward of the MHTL) are available for the public to use to reach the Public Trust lands seaward of the subject site. This is because in California's coastal areas, the landward location and extent of the State's sovereign fee ownership of these public trust lands are generally defined by reference to the ordinary high water mark (Civil Code, §670), as measured by the MHTL (*Borax Consol. v. City of Los Angeles* (1935) 296 U.S. 10); these boundaries remain ambulatory, except where there has been fill or artificial accretion (and is typically adjudicated through a boundary line agreement).

Generally, in the absence of a recorded public access easement or claim of prescriptive rights to access, areas landward of the MHTL in the Beach Road community are considered private, including much of the upland dry sandy beach area. State Lands Commission staff confirmed that the tidelands along the Beach Road area are still managed and held by the State and that the seaward property line for the private

impacts on recreational use at pp. 3.2-23 to 26. Available at http://www.slc.ca.gov/Info/Reports/Broad_Beach/3.2_Recreation.pdf.

residential lots is the ambulatory MHTL.[18] In this case, as discussed in Section IV.A (Project Location and Description), there *is* a lateral public access easement across the seaward portion of the subject property over the dry sandy beach extending from the LCP-defined patio stringline to the ambulatory MHTL. A list and map depicting all 26 existing lateral public access easements and 19 deed restrictions along the beach in the Beach Road community are included in **Exhibit 8**.

LCP Requirements

Given the mandate in the Coastal Act to maximize public access to and along the shoreline, as well as the fact that there are several beach areas in Dana Point that are de jure or de facto private,[19] the City's certified LCP has several provisions to ensure potential future opportunities to obtain and improve public access to the hard-to-reach beaches in Dana Point. Specifically, IP Section 9.09.040(a)(4) requires offers to dedicate easements for lateral public pedestrian access along the beach at Capistrano Beach as a condition of any new development along Beach Road, consistent with the IP Section 9.27.030(a) requirements of public access.[20] This IP Section defines lateral public access as passive or active recreational use of the shoreline (e.g., walking, swimming, jogging, sunbathing, fishing, surfing, picnicking), and requires that the reviewing agency require the dedication of a public easement as a condition of approval for new development located between the nearest public roadway and the sea unless the development has no adverse effect on public access (per Subsection (3)(A)) or qualifies for an exception (under Subsection (3)(B)).

There are two U.S. Supreme Court cases that establish the standard for when a regulatory agency can impose an exaction as a condition of approval of a land use entitlement (ref. *Nollan v. California Coastal Commission* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374). The LCP was updated in 1999, after those two decisions, and that update was designed to satisfy that standard. It does so primarily through the addition of Subsection (3)(A), which limits the regulatory agency's ability to impose exactions to cases where the essential nexus criterion is satisfied, and Subsection (5)(A), which requires findings explaining how the exaction is related to the effects of the project "in both nature and extent." Additionally, Subsection (3)(A) requires

[18] The subdivision map for Beach Road (Tract 889) confirms that the seaward property line for the residential lots is one and the same as the ambulatory MHTL.

[19] De jure refers to beaches that are owned in private fee title all the way down to the public tidelands, and where the public does not have legal rights to access such tidelands through lateral or vertical traversal over the dry beach. De facto refers to beaches that may allow public use, but the public encounters great difficulty in accessing them from the uplands. Note that under the California Constitution, the public has the right to access and use all beaches and tidelands that are seaward of the MHTL.

[20] For the remainder of Section IV.D (Public Access and Recreation) of this staff report, references to the IP will be Section 9.27.030(a), unless otherwise specified.

the City to analyze specific criteria before determining that no requirement to provide public access is necessary.

Per Subsection (3)(A), the City cannot impose any new easement requirements if the proposed development will not adversely affect (either individually or cumulatively) the ability of the public to reach and use the public tidelands, or if the access dedication would not alleviate the access burdens identified, or in other words, there is no nexus. Additionally, Subsection (3)(B)(2) provides exceptions to the requirement for a new public access easement if: "a) [p]ublic access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources; or b) [a]dequate access exists nearby." Regardless of whether the facts of a particular case ultimately require the imposition of a condition requiring an access easement, Subsection (5)(A) requires extensive findings, analysis, and conclusions addressing public access in connection with any action on an application for development between the sea and the first public road parallel to the sea. If a public access easement is to be required, then an additional analysis must be conducted to ensure that there is a sufficient site-specific rationale to demonstrate the need for and utility of such an easement in mitigating the adverse impacts that the proposed development would have on public access and use. Such an analysis is also crucial in avoiding a potential unconstitutional "taking" of private property without payment of just compensation.

In its local approval of the appealed project, the City exempted the project from the easement dedication requirements of IP Sections 9.09.040 and 9.27.030 by finding that there is adequate access nearby. However, the City did not make any of the findings required by Subsection (5). Rather, the City made rudimentary findings that the proposed development will not adversely affect (either individually or cumulatively) the ability of the public to reach and use the public tidelands, and that any existing site-specific or regional access burdens will not be alleviated through the dedication of a new accessway at the site. In the Planning Commission Agenda Report dated July 27, 2022, there is a very brief analysis of City Council Resolution 01-07-10-03, which states that no new dedication of public access along the beach may be required for new development between Capistrano Beach County Park and Poche Beach (**Exhibit 3**). The Resolution stated that "it would be very difficult to arrive at legally defensible findings which would support a requirement that persons seeking a coastal development permit dedicate a public access easement across their private beach." The findings in the proposed Resolution are essentially that (i) "there is no development legally permitted on the individual lots or within the borders of Tract 889 which could have a significant adverse impact on public access to the tidelands…" and (ii) existing vertical access points to Poche Beach and Doheny Beach Park provide adequate vertical access to the public tidelands and no future vertical access is planned or will be required through Tract 889. The Resolution ultimately concluded that based upon these findings, "the public has the ability through reasonable means to access the public tidelands adjacent to Tract 889…"

The 2001 Resolution does not supersede the certified LCP in any way, and IP Section 9.27.030(a) ("Public Access Ordinance") remains the standard of review for this CDP application. In addition to the mandates in the LCP that the City or Commission make

specific public access findings in connection with a CDP application for beachfront development, if the permitting authority determines that the project will have adverse public access impacts, it must make an individualized determination as to the nature and extent of these impacts and whether a dedication or easement would provide appropriate mitigation for such impacts.

New projects in the Beach Road community may encroach on public tidelands in the future as sea levels rise, which could deprive the public of rights enjoyed under the Public Trust. In order to evaluate these potential impacts, Subsection (5) of IP section 9.27.030(a) requires extensive findings, as laid out in (5)(A), (5)(B), and (5)(C) of such potential impacts on public access. To establish whether the development will or will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources, or that the access dedication requirement will or will not alleviate the access burdens identified, Subsection (3)(A) requires an analysis predicated on Subsections (5)(A)(1-4), and Subsection (5)(A) says the associated findings must include:

1. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to Section 9.27.030(a)(5)(B). The type of affected public access and recreation opportunities shall be clearly described.
2. An analysis based on applicable factors identified in Section 9.27.030(a)(5)(B) and 9.27.030(a)(5)(C) of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act.
3. A description of the legitimate governmental interest furthered by any access condition required.
4. An explanation of how imposition of a public access dedication requirement alleviates the access burdens identified and is reasonably related to those burdens in both nature and extent.

Subsections (5)(A)(1) and (2) also require the use of applicable factors in Subsection (5)(B) which requires the analysis of several project-specific factors (as indicated immediately above) in assessing the burdens of a proposed project and the necessity for requiring public access. The applicable project-specific findings in (5)(B) generally consist of the following:

1. Project effects on demand for access and recreation.
2. Shoreline processes (for the consideration of accessways on sites subject to wave action, such as beachfront accessways).
3. Physical obstructions.
4. Other adverse impacts on access and recreation.

Standards for Public Access Dedication

The Commission applies the required analysis in the certified Public Access Ordinance in its review of the subject permit application. The analysis is quite fact-intensive and laborious, and for simplicity's sake, the Commission summarizes the Ordinance's threshold criteria (as outlined on page 56 of this staff report) as follows:

1. Per Subsection (3)(A), no condition requiring dedication of "coastal access shall be imposed if the analysis required by Sections 9.27.030(a)(5)(A)1. through 9.27.030(a)(5)(A)4. establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified."

   OR

2. Per Subsection (3)(B), an exception to the requirement to dedicate public access is granted where public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources; or, adequate access exists nearby.

Analysis of Public Access Dedication

The City's action considered both Subsections (3)(A) and (3)(B) in its analysis and concluded that under both criteria, the project does not require public access dedications or easements. The City found though the analysis per Subsection (3)(A) that there was no public access impact as a result of the project. In addition, the City evaluated whether or not the project qualified for an exception per Subsection 3(B) and found that the there is adequate public access nearby.

Through the analysis below, the Commission finds that there is not adequate access nearby and therefore the project does not qualify for an exception per Subsection (3)(B). However, analysis of the factors in Subsection (3)(A) concludes that the project does not have individual or cumulative adverse impacts on public access, and therefore, no additional provisions for public access can be required.

1. Exceptions to Public Access Dedication

Subsection (3)(B) states that the public access dedication requirement applies to "all new development" listed in (3)(A) unless specifically excluded from the Ordinance. Subsection (3)(A) specifically enumerates "new development between the nearest public roadway and the sea" as subject to the analysis.[21] For this reason, the first test

[21] In addition, none of the exceptions in Subsection (2)(A) are applicable to this case, which are the following: (1) structures destroyed by natural disaster and reconstructed such that the floor area, height, or bulk do not increase by more than 10 percent over the destroyed structures and are sited in the same location on the subject property; (2) demolition and reconstruction of a single-family residence, provided that the reconstructed residence does not exceed the floor area, height, or bulk of the former structure by more than 10 percent and that it is sited in the same location on the subject property; (3) improvements to

for the application of the exceptions in this Section is not met, as this type of development is included in the Ordinance.

The remaining factors under subsection (B) require the Commission to evaluate whether (a) providing for public access at this location would be inconsistent with the public safety, military security needs, or protection of fragile coastal resources; or (b) adequate access exists nearby. Subsection (5)(B) only requires the Commission to make written findings of fact, analysis, and conclusions as to these factors per Subsection (5)(D) *if* one of these exceptions (to the requirement for a public access condition) applies. Because the City relied on exception (b) in its local action on the project, the Commission thus evaluates whether adequate access exists nearby by the ability of the public, through other reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land.

In its "Substantial Issue" determination on the appeal, the Commission found that the City did not fully evaluate whether there is truly adequate access nearby.[22] Subsection (3)(B)(2) does not define "adequate access nearby," but Subsection (5)(D) says that any determination that an exception in (3)(B) applies must be supported by facts, analysis, and conclusions that address three criteria. The third criterion is the "ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land." Thus, it appears that the intent of the "adequate access nearby" language in (3)(B) can be captured by assessing the ability of the public to reach the area through reasonable alternative means. In this case, there is no vertical access to this site from Coast Highway, the first public road from the sea, and therefore, the question is whether the lateral entry points to and along the shoreline from Capistrano Beach County Park and Poche Beach, both located more than three-quarters of a mile from the project site, satisfy the threshold of being "nearby" and providing a reasonable means of reaching the tidelands seaward of the subject site (**Exhibit 1**).

Under most current conditions, the public should be able to legally and feasibly reach the tidelands seaward of the site by crossing through tidelands and a patchwork of lateral public access easements on the beach to the east or west (as shown in **Exhibit 8**). But there are two reasons why this may not be the case. First, Commission enforcement staff has found over 90 cases of unpermitted shoreline armoring (e.g., seawalls, revetments, riprap, sandbags, berms) that impede the public's ability to freely traverse on the public areas of the beach. Second, oftentimes during high tides, the entry points at Capistrano and Poche Beaches make pedestrian access to and along

any structure which do not change the intensity of its use, does not impede access, does not result in a seaward encroachment by the structure, and does not increase the floor area, height, or bulk by more than 10 percent; (4) repair or maintenance activity which, pursuant to Coastal Act Section 30610, requires no permit, unless the activity would have an adverse impact on lateral public access along the beach; and (5) reconstruction or repair of any seawall, provided that the reconstructed or repaired seawall is not seaward of the location of the former structure and does not differ in design or construction.

[22] A-5-DPT-22-0037, Substantial Issue.

this stretch of beach difficult if not impossible. As early as 2001, the City Council Agenda Report in support of uncertified Resolution No. 01-07-10-03 stated: "In the Capistrano Bay District, the private property residential lots extend from Beach Road to the mean high tideline. Therefore, by definition, there will be times when the public cannot traverse ('laterally') from Capistrano Beach Park to Poche Beach without wading through water during the highest tides."

Commission staff corroborated this assertion through a series of site visits to the site at various tidal conditions. During high tide, staff had difficulty entering/exiting this stretch of beach, and during many such occasions was forced to scramble on rocks in order to remain dry. More recently, an MHTL survey of the area, performed by land surveyor Ralph W. Guida, IV and dated June 17, 2021, shows these entry points as increasingly inundated under higher tidal conditions (**Exhibit 9**). Likewise, the parking lot and public access facilities at Capistrano Beach County Park have been under imminent threat due to recent high tide and storm events, and they remain prone to closures until such time that longer-term adaptation planning takes place.[23] Thus, these entry points may therefore become "pinch points" instead, as they no longer would be able to provide safe public access to the beach onsite when the MHTL shifts landward, as the beach erodes and sea levels rise.

The evidence points to lack of opportunity to adequately and safely access the tidelands seaward of the site due to a variety of factors, and this is only expected to worsen in the future. Subsection (5)(D)(3) requires the Commission to assess whether adequate access could be accomplished through other reasonable means to reach the same area of public tidelands as would be made accessible by an accessway on the subject land, and the Commission finds that in this particular case, that may not be true, as the only other method to reach the tidelands seaward of the site would be via watercraft (e.g., kayak, boat, surfboard), which may not be a reasonable alternative to pedestrian access, given the more complicated effort and costs associated with purchase of watercraft, which would likely preclude many members of the public from accessing this beach.

Finally, the existing public access easement that is already recorded onsite cannot be understood to provide adequate access nearby. The existing easement onsite can only be reached by traveling a long distance laterally, in many cases below the MHTL, and thus, the easement on the site, in and of itself, does not provide adequate access to the tidelands seaward of the site. But, even if the existing public access easement somehow provided adequate public access to the shore under current conditions, the lateral public access easement is likely to be "squeezed" (become narrower and get closer to the residence) as the beach erodes and sea levels rise over time, leading to the gradual loss of the public's ability to use and recreate on the beach or to access the tidelands seaward of the site. Moreover, as public tidelands migrate under the structure raised on caissons, there will be an area of public trust land that the public could not readily access, and the existing easement onsite would not necessarily address this

[23] 5-19-0345-A2 (Orange County Parks & California Department of Parks and Recreation).

issue. Therefore, public access to the public tidelands seaward of the site may not be adequate or sufficient, both in the present moment and in the future, and the Commission finds that, in this case, granting an exception to the public access dedication requirements on this basis is not appropriate.

2. Adverse Impacts of the Development on Public Access

The Commission finds per Subsection (3)(B), there is no exception to the access dedication requirement for this project. Per Subsection (3)(A), the Commission shall establish whether the development would adversely affect, either individually or cumulatively,[24] the ability of the public to reach and use public tidelands and coastal resources, and that the access dedication requirement would alleviate the access burdens identified.

Pursuant to (3)(A), no condition requiring an offer to dedicate an easement is required if the analysis required by (5)(A)(1-4) establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified. Thus, the factors in (5)(A)(1) through (4), cited on page 56 of this staff report, are assessed. Those factors encompass a variety of considerations including the projected future demand for public use of the site, the characteristics of the project site and potential adverse impacts to public access arising from the development's physical and/or psychological interference, and for beachfront sites, the interaction of the proposed development with shoreline processes (which may impact the ability of the public to access and use public tidelands and/or shoreline recreation areas). Subsections (5)(B)(1) through (4) further expand on the aforementioned factors, as discussed below.

a. Impacts on Demand for Public Access and Recreation

First, the Commission must assess the potential adverse impacts of the development on demand for public access and recreation. Per Section (5)(B)(1), the Commission must make the following project-specific findings in determining whether a public access dedication should be required:

1. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development.
2. Analysis of the project's effects upon existing public access and recreation opportunities.
3. Analysis of the project's cumulative effects upon the use and capacity of the identified public access and recreation opportunities, including public tidelands

[24] As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning (IP Section 9.27.030(a)(5)(B)).

and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout.

4. Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public.
5. Analysis of the contribution of the project's cumulative effects to any such projected increase.
6. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas.
7. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.

The project site is located within the vicinity of several important open public access and coastal recreation areas and facilities in the region (**Exhibit 1**). Upcoast of the site, the City of Dana Point is home to the Dana Point Preserve (Dana Point Headlands), Dana Point Harbor, Doheny State Beach, and Capistrano Beach County Park. Downcoast of the site, the City of San Clemente hosts Poche Beach and the Marblehead bluff trails. And, inland and north of the site, Pines Park offers spectacular views atop the Capistrano Beach bluffs. Doheny State Beach is particularly popular; in 2020, it is estimated that the State Parks facility saw 970,323 annual visitors, 91,910 of which camped overnight.[25] The beaches and visitor-serving facilities of Dana Point are extensively used by visitors of both local and regional origin, and the City's planning studies indicate that attendance of recreational sites will continue to significantly increase over the coming years. To accompany and meet the expected increase in demand for public access and recreation on the coast, the City is permitting and anticipating additional overnight and recreational facilities; the latest estimates show that approximately 300 additional hotel rooms and 52 hostel beds are planned or under review by the City, in addition to the 1,864 currently existing hotel rooms and 120 campsites within the City of Dana Point, the vast majority of which can be found within its coastal zone.[26]

Nevertheless, public access and recreational opportunities are expected to become increasingly constrained as sea levels rise and several important coastal attractions and facilities become eroded, damaged, or flooded. As mentioned, Capistrano Beach County Park, another important visitor facility nearby, has been suffering from extensive damage and erosion due to high tide and storm events.[27] Further away from the site, in areas such as Salt Creek Beach Park and several San Clemente beaches, beaches

[25] California State Parks data, Statistical Report for Fiscal Year 2019-20.

[26] A-5-DPT-22-0038 (City of Dana Point).

[27] 5-19-0345-A2 (Orange County Parks & California Department of Parks and Recreation).

have greatly eroded over the past several years due to increasing storm and wave intensity, disrupted sand inputs, and adverse impacts from shoreline armoring.

The proposed project and subject site initially appears unremarkable—the project consists of construction of a new single-family residence on an infill lot within an existing private community between the first public road and the sea, therefore the development would not adversely affect public beach parking, would not significantly affect traffic along public coastal throughfares (since Beach Road, the main access road to the site, is private and gated), and would not induce additional demand for public access (because it is a private use and not visitor-serving). Nevertheless, this project is the first of five anticipated new development proposals on Beach Road,[28] and the City has indicated that there may be additional applications for new development in the near future. Moreover, a lateral public access easement has been recorded, and in 2002 accepted by the County, for public passive recreation on the entire width of the beach seaward of the LCP-defined patio stringline of this site, where the landward-most ten feet are reserved for pass and repass only when other areas of the beach are unavailable (**Exhibit 7**). It is important that the proposed development protect and not interfere with the public's rights to access and recreate on this beach, lest it otherwise set adverse precedent for other nearby development or negatively affect public access and recreation in adjacent local and regional facilities.

The Commission finds that the applicants' project, as proposed, has the potential for both individual and cumulative adverse impacts on demand for public access and recreation which must be addressed. First, the applicants are proposing, and the City approved, a 3-ft. stair encroachment into an existing lateral public access easement on the beach at this site, which is inconsistent with the terms of the easement and sets negative precedent for other development on Beach Road and elsewhere on the California coast. The Commission is also concerned that several project elements that are at-grade or on the seaward side of the residence could have either physical and/or psychological impacts on the public's ability to access and enjoy the beach at this location, now and in the future. Finally, there is concern that the house itself could occupy Public Trust land in the future as sea levels rise and the MHTL migrates landward, and this issue must be resolved in order to ensure continued public use of and recreation on public tidelands. These concerns are discussed in greater detail as follows. **Special Condition 1** requires final revised plans to address these design elements and brings the project into conformity with the public access and recreation policies of the LCP and Coastal Act. As such, with revised plans, the conditioned project does not have an impact on the existing public access easement and does not impact public access or recreational opportunities.

[28] See A-5-DPT-23-0004 (Seidensticker), A-5-DPT-23-0011 (Vatani), See A-5-DPT-23-0049 (Mohiuddin), and A-5-DPT-24-0005 (Watson).

b. Physical Obstruction

Next, the Commission assesses the potential for "any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline (Subsection (5)(B)(4)), as well as an "[a]nalysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation" (Subsection (5)(B)(5)(b)).

In this case, the proposed project, involving the construction of a new residence on a beachfront lot with a caisson-supported garage and deck, would occupy sandy beach. Given the narrow width of Capistrano Beach, particularly coupled with projected sea level rise, it is likely that the proposed development will be subject to wave action that would affect the beach profile, and thereby impact the public's ability to gain access to the beach. Specifically, the proposed at-grade enclosed garage could exacerbate physical obstruction to public access. While the breakaway panels of the garage would have pretty low resistive loads compared to the force of a typical breaking wave, they could still have sufficient hydrostatic resistance to more moderate/calmer waves. As explained in the section of this report about the adverse effects of shoreline armoring, repeated wave action could exacerbate erosion at the toe of the breakaway panel wall over time, even if to a lesser degree than a conventional shoreline protective device, and this could affect the beach profile and therefore public access. The breakaway panels could also frequently break away in the future and result in significant marine debris that could end up strewn on the beach or in the sea, thereby affecting the public's access and enjoyment of the shore. For these reasons, the Commission imposes **Special Condition 1(F)** requiring that the applicants submit final revised plans with an open carport concept, instead of an enclosed garage, with an ability to construct two shear walls perpendicular to the shore.

Moreover, as the beach continues to narrow in the future due to sea level rise, when the shoreline moves inland, the at-grade portions of the structure, such as the garage, could impede the landward migration of the MHTL, which would affect the public's access to public trust lands. **I**n the event that the Public Trust lands boundary migrates landward such that any portion of the approved development encroaches onto Public Trust land based on a MHTL survey, **Special Condition 7** requires the applicants to submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to relocate and/or remove the development encroaching on Public Trust land. As such, the conditioned project does not have an impact on the existing public access easement and does not impact public access or recreational opportunities.

c. Adverse Effects of Shoreline Armoring

Per Subsection (5)(B)(2), the Commission must make the following project-specific findings relating to shoreline processes in determining whether a public access dedication should be required:

1. Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site.
2. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development.
3. Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity.
4. Analysis of the effect of any identified changes of the project - alone or in combination with other anticipated changes - will have upon the ability of the public to use public tidelands and shoreline recreation areas.

The policies that limit the use of shoreline protective devices (cited in Section IV.C "Shoreline Development, Coastal Hazards, and Sea Level Rise" of this staff report, above) also address public access because such protective devices adversely affect public access, and they must be considered in conjunction with the factors outlined above.

New development on beachfront parcels should be designed in a manner that will not require the construction or use of shoreline protective devices. Construction of a shoreline protective device to protect the proposed development would arrest the landward migration of the shoreline, and the corresponding migration of the publicly accessible intertidal zone. This would make access to and along the sea difficult, if not impossible. A federal court has also found that shoreline armoring can constitute trespass on public tidelands if the armoring blocks the migration of the tidelands and prevents the tidelands trustee from gaining property that should rightfully be theirs. (*United States v. Milner* (9th Cir. 583 F.3d 1174, 1189-1190 (2009)).

As previously discussed in detail above in Section IV.C (Shoreline Development, Coastal Hazards, and Sea Level Rise), shoreline armoring or protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the MHTL (which, along Capistrano Beach fronting Beach Road, is the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective device on public access is most evident on a beach where wave runup and the MHTL are frequently observed in an extreme landward position during storm events and the winter season; the beach in this location is particularly sensitive to the adverse impacts to shoreline processes resulting from shoreline protective devices.

As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Shoreline armoring devices such as rock revetments and seawalls serve to 'fix' a boundary on the beach and prevent any current or future migration of the shoreline and mean high tide line landward, thus eliminating or squeezing the passable distance between the high water mark and low water mark. This phenomenon is often referred to as passive erosion. As the horizontal distance between the high water and low water marks shrinks, the shoreline protective device effectively eliminates lateral access opportunities along the public ("wet") areas of the beach as the entire area below the fixed high tideline is inundated and becomes unavailable for many forms of public recreation.[29] Shoreline protective devices also often reflect and amplify incident wave energy, thus resulting in scour at the toe of the device, which could, depending on the nature of the wave attack and substrate underneath, form a trough in the front of the device. This phenomenon is known as active erosion, and such erosion could hasten the migration of the MHTL landward, until it is met by the shoreline protective device and becomes fixed. Finally, severe scouring effects could occur at either end of a shoreline protective device where such device is not contiguous with neighboring shoreline protective devices (if they exist). In sum, on an eroding shoreline, these erosional effects represent the loss of a beach as a direct result of the armor, including areas of the beach that are used for public recreation. Rising sea levels will only exacerbate the adverse impacts that existing shoreline armoring has on public access to the tidelands.

Shoreline protective devices, such as, but not limited to, seawalls, bulkheads, or riprap are neither proposed nor permitted for the subject site. The City has indicated that it is unaware of any existing shoreline protective devices onsite. Likewise, the Commission's and City's records do not show any CDP history for shoreline protective devices onsite. Thus, if there are any existing shoreline protective devices on the project site, they are unpermitted and constitute violations of the Coastal Act and the certified LCP.

As discussed further in IV.H (Unpermitted Development) of this staff report, the Commission and the applicants note that there are historic aerial photographs that show unpermitted rocks onsite; the applicants claim no personal knowledge of when those photographs were taken, who placed the rocks, and/or for how long they were there. Satellite imagery shows that in the winter of 2020-21, rocks were placed along the eastern property line abutting the neighboring property at 35527 Beach Road, and by October 2021, the rocks were placed in two distinct piles – one approximately 20 ft. landward of the LCP-defined patio stringline, and another one approximately 20 ft. seaward of the patio stringline in connection with a rock formation (illegally) placed to protect the neighboring property at 35521 Beach Road. Given that there were visible tire marks on the sand, it is probable that the site was used as a staging area to store boulders that were then hauled-out for the construction of makeshift revetments at

[29] Note that in certain areas of Beach Road, such as at the subject site, the "dry" sand landward of the MHTL is also public per existing lateral public access easements; outsized erosional impacts from shoreline protective devices on the dry beach areas are expected to occur much like in the wet sand areas.

neighboring properties.[30] The rocks that appear in those historic aerial photographs preceded the applicants' ownership of the site, which was acquired in December 2021. Similarly, the existing fence that runs along the northeasterly property line parallel to Beach Road preceded the applicants' ownership of the site, and permit history for the existing fence is unknown. The rocks onsite were promptly removed around the time that the applicants bought the property, but the street-facing fence remains.

The Commission's staff engineer evaluated whether the unpermitted shoreline armoring at the subject site significantly changed the baseline of review and concluded it did not. Since shoreline armoring can often contribute to erosion of the beach and to adversely impacting the ability of the public to traverse the beach, the Commission must address such adverse impacts if they occur, even long after the armoring is removed and even if it is not proposed or permitted to recur. The staff engineer's analysis concludes that the duration of the unpermitted shoreline armoring was relatively short (approximately 8-10 months), and that the placement of the rocks was generally inland enough such that waves were unlikely to hit and cause significant erosion. As such, it is unlikely that the unpermitted armoring onsite adversely affected shoreline processes. For this reason, the Commission finds that, in this case, it is not necessary to mitigate the effects of the prior unpermitted armoring via the introduction of new public access opportunities at the site.

Looking forward, the Commission must ensure that the site remains free of shoreline protective devices. Despite the applicants' assurances that the proposed residence would be designed and sited so as to minimize risks from very high tides, there is still concern that the applicants or future property owners would be interested in installing shoreline protection as a reactionary measure to beach erosion, flooding, and wave impact, which will be exacerbated by sea level rise and could significantly impact both the subject residence and the surrounding community if left unaddressed. In its current condition, Capistrano Beach can already sometimes be a narrow, sandy beach highly susceptible to coastal hazards. Some existing residences located along Beach Road are already struggling with these hazards,[31] and several new development proposals would like to retain shoreline armoring in one form or another.[32] In addition, the Commission's enforcement staff is tasked with identifying and resolving a huge scope of unpermitted shoreline armoring seaward of the homes along Beach Road, many of which have been installed in response to the beach's chronic erosion over the past few

[30] See A-5-DPT-23-0049 (Mohiuddin).

[31] Exemplified by Emergency Permit Nos. G-5-20-0053 (35099 Beach Road) and G-5-21-0037 (35127 Beach Road). The emergency work in both cases included installation of sand cubes to protect existing single-family residences from wave action and erosion to their foundations and illustrates the need for projects in this area to be designed for safety against shoreline hazards in the present day, not just with sea level rise anticipated in the near- or long-term future.

[32] See A-5-DPT-23-0004 (Seidensticker), A-5-DPT-23-0011 (Vatani), and A-5-DPT-24-0005 (Watson).

years resulting in extremely narrow beach widths. Consequently, shoreline armoring has cumulatively deteriorated public access on this stretch of beach.

The proposed project does not include new shoreline armoring, and therefore, the project would not contribute to the deterioration of public access. As conditioned to protect shoreline processes, natural landforms, the ambulatory nature of the shoreline, and continued public access to the shoreline, the Commission imposes **Special Condition 6**, which requires the applicants to waive the right to build a new shoreline protective device to protect new development authorized by this CDP. The condition would prohibit the new development from relying on shoreline protective devices that may be constructed on neighboring properties. **Special Conditions 6** and **7** not only ensure that no future shoreline protective device would be constructed onsite to protect the proposed development, but they also require the landowner(s) to remove the development if a government agency orders that portions or all of the structures may not be occupied as a result of unsafe conditions. Therefore, as conditioned, the project does not impact public access or recreational opportunities.

d. Other Adverse Impacts

Finally, the Commission assesses the proposed development's "physical proximity and relationship to the shoreline and any public recreation area" (Subsection (5)(B)(5)(a)), as well as the potential for "any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development" (Subsection (5)(B)(5)(c)).

In order to assess these factors, the Commission is compelled to look at the long-term effects of allowing the proposed residential development in close proximity to existing public recreation areas on the beach, such as the existing lateral public access easement onsite, and in consideration of Coastal Act Section 30214, protecting the privacy of the applicants, neighbors, and prospective property owners, too.

One of the more appropriate ways to analyze the interaction between private and public uses is at the interface of public and private land, which in this case, is at the rear of the property on the seaward side. IP Section 9.27.030(a)(4)(G)(1) relies on the structural and patio stringlines in IP Section 9.09.040(a)(1) as the "appropriate boundary" between private and public uses for development along Beach Road. IP Section 9.09.040(a)(1) provides the specific structure and patio stringline measurements for 35525 Beach Road. Moreover, IP Section 9.27.030(a)(4)(I) states that "[s]eparation between a public accessway and adjacent residential use may be provided when necessary to protect the landowner's privacy or security as well as the public's right to use of the accessway. Any such buffer shall be provided within the development area. Access should not be sited closer to any residential structure[…] than 10 feet. The buffer can be reduced when separation is achieved through landscaping, fences or grade separation." This latter section only applies to dedicated lateral accessways along the beach, or if applicable, where land seaward of a residential structure is imbued with the Public Trust (where the 10-ft. privacy buffer becomes a "shoreline setback").

In this case, there is an existing lateral public access easement. Even though the lateral public access easement predates the LCP policies cited above, it generally complies with their requirements. First, the landward boundary of the easement is the LCP-defined patio stringline, and the ten landward-most feet of the easement are a privacy buffer, which is for pass and repass only when other beach areas within the easement are not available for public recreation (e.g., when inundated) (**Exhibit 7**). Thus, the easement makes clear where private versus public uses are located.

The applicants are proposing a residence at the maximum footprint allowed per the LCP, and thus the primary structure would be constructed right up to the structure stringline, and an elevated deck would be placed in between the structure and patio stringlines, with no additional setbacks (**Exhibit 2**). The LCP allows for limited encroachments beyond the structure and patio stringline setback requirements, including: a second-story balcony extending 8 ft. beyond the structure stringline; stairs and landing encroaching 3 ft. seaward of the structure stringline to connect the first habitable floor with the elevated deck (for which the City must approve an administrative modification of standards), and; stairs extending 3 ft. beyond the patio stringline connecting the elevated seaward deck with the beach at the rear.

As mentioned before, the 3-ft. stairway encroachment beyond the patio stringline, in particular, directly and physically interferes with the existing public access easement recorded at the site, and must therefore be removed pursuant to **Special Condition 1(B)**.

A question is then raised as to whether the remaining elements on the seaward side of the proposed development would likely diminish the public's use of public tidelands. Again, to answer this question, the Commission must analyze the particulars of the specific site, must determine whether the proposal, including encroachments, would diminish such use and if there is sufficient reason to require removal of problematic project components, and should any one of those components remain and a public access dedication requirement be contemplated, the Commission must make the other findings required in the LCP that a lateral public access easement would alleviate resultant burdens on public access.

As mentioned in Sections IV.C (Shoreline Development, Coastal Hazards, and Sea Level Rise) and IV.E (Visual Resources) of this staff report, there are several concerns related to the elevated deck and encroachments—including the 2nd-floor balcony, landing, and stairs—many of which are related to coastal hazards and visual resources. The Commission is also concerned that there are adverse impacts to public access from retention of these encroachments, as explained below.

i. Elevated Deck

In the case of the seaward deck elevated on caissons, there is concern that since it is proposed to be constructed up to the patio stringline with no setbacks, there would be no area on the private side that would function as a privacy buffer; the only hint to the public regarding the location of the easement boundary would be the vertical difference

itself between the elevated deck and the beach grade. While expressly permitted in the LCP, this pattern of development could result in the appearance that the areas designated for public access are actually private. Without adequate buffers between private residential development and public spaces, conflicts could arise, potentially resulting in the psychological or physical obstructions and/or loss of public access in this area. Specifically, the provision of no setback between the private structure and the public area of the sandy beach would not allow adequate space on the applicants' property for normal maintenance activities, such as painting and other repair and maintenance, to occur without encroaching into the public area.[33] But, arguably more importantly, without adequate setbacks, the close proximity of the residence effectively privatizes the public beach to the rear of the residence because the public is uncomfortable being so close to the residential structure (especially an elevated deck where property owners look down at beachgoers) and will not use that portion of the beach.

Relatedly, Coastal Act Section 30214 recognizes the inherent conflicts between public use and private property that must be managed in a way that maximizes public access while also protecting private property. New development should not be allowed to be constructed in a manner that could foreclose the ability of the homeowner to maintain some privacy. As Section 30214 describes, public access may have to be curtailed due to safety issues in some instances if adjacent residential uses are too close and privacy could be compromised. If property owners continue to build structures with inadequate setbacks to the public space, homeowners will not have the ability to obtain privacy, and they may attempt to restrict or modify public access to the public beach to the rear of their homes. In the Commission's experience in past permit actions, property owners have often objected to having trails or public accessways in close proximity to their residences because of concerns over noise, privacy, and other effects of having the public walking close to their homes. While the existing applicants may express no concern over having public access just seaward of the elevated deck due to the 10-ft. privacy buffer intrinsic to the existing easement, the landward migration of the MHTL may relegate the public to use the privacy buffer for pass and repass more often in the future as sea levels rise, and future owners of the property and neighboring properties may be concerned about the long-term effects of allowing residential structures in close proximity to existing public areas.

There is an additional concern that the elevated deck could result in future adverse impacts to public access as the MHTL migrates further landward with sea level rise. While the elevated deck would be supported on caissons, and thus would not serve to fix the landward position of the MHTL (as compared to a conventional shoreline protective device) and would allow waves to go over and under, the elevated deck *could* create a backstop for public access. As mentioned before, the public would increasingly rely on the 10-ft. privacy buffer, which would become increasingly inconvenient and

[33] The easement has a 10-ft. privacy buffer that would allow for private maintenance activities under most current circumstances, but in the future, as sea levels rise and the public would be increasingly reliant on the 10-ft. privacy buffer for pass and repass, there could be conflicts between the private residential and public uses.

uncomfortable to use due to the immediate proximity of the elevated deck, and thereafter, it is anticipated that public trust lands would foreseeably fully migrate underneath the caisson-and-grade-beam foundation of the elevated deck within the 75-year development lifespan. At that point, the public would be forced to be underneath the elevated deck structure to access the public trust. However, the deck is proposed to be elevated at +18.2 ft. NAVD88, and sea level rise projections predict that the MHTL could be at approximately +9 ft. NAVD88 under the intermediate-high risk aversion scenario; this means that it is unlikely for the public to have sufficient vertical clearance to comfortably enter the cavity underneath the elevated deck. Even if vertical clearance were sufficient in the future, it would be awkward for the public to use this area with the deck looming overhead, and allowing the public to recreate on public tidelands underneath the elevated deck structure could raise issues of safety.[34] This is a situation best avoided for the sake of both the homeowners and members of the public.

Thus, the Commission imposes **Special Condition 1(B)**, which will require the elevated deck to be set back further landward, no more than eight feet seaward of the structure stringline, and cantilevered from the primary residential structure. This condition will resolve the issue of the public feeling deterred from using the 10-ft. privacy buffer of the easement when other beach areas are unavailable and would give the property owner ample space to conduct maintenance activities. The additional grade separation and setback could also help avoid or prolong the above hypothetical scenario where the public could potentially (unsafely) access and recreate underneath the deck. If and when the MHTL comes up to the elevated deck as sea levels rise and the beach erodes, **Special Condition 7** would require its removal along with the remaining portions of the residential structure that would encroach upon the Public Trust.

Prior to the full migration of the MHTL landward toward the elevated deck, and during times where the lateral public access easement could still be enjoyed and used for recreation, providing adequate separation between the private development and areas specifically designated for public access and recreation is critical, to avoid potential conflicts between private property owners and members of the public and given the tendency for public recreation areas to appear to be private property if not adequately managed. The elevated deck at its revised elevation and location does not show the public the true private-public boundary, which is the patio stringline. As such, the Commission imposes **Special Condition 1(B)** requiring a simple wooden rope-and-post barrier to delineate the landward boundary of the public access easement (i.e., the patio stringline) for the benefit of the homeowners and the public, which could be easily removed and would not be visually obtrusive or formidable, and **Special Condition 9** provides that no signs shall be posted on the property which either (a) explicitly or implicitly indicate that any portion of the beach located seaward of the patio stringline is

[34] The elevated deck is proposed to be supported by a lattice of 6 30”-diameter concrete caissons, which could exacerbate injury and/or accident during instances of wave runup, and as mentioned in Section IV.C (Shoreline Development, Coastal Hazards, and Sea Level Rise) of this staff report, the elevated deck could reflect wave action and create additional scour of the beach, so members of the public could become trapped in localized rip currents if underneath the deck/residence, without a clear exit route.

private or (b) contain messages that attempt to prohibit public use of the public beach as allowed by the existing lateral public access easement.

ii. Encroachments Beyond the Structure Stringline

Similarly, the encroachments of the upper-story balcony, landing, and stairs beyond the structural stringline could also be found inconsistent with the "appropriate boundary" for lateral access outlined in Section (4)(G)(1).

Under current conditions, the seaward-most extent of the proposed upper-level balcony would be 13 ft. from the landward-most extent of the easement boundary. As proposed, the landing and stairs would be located at a distance of 18 ft. The LCP requires only a 10-ft. privacy buffer between the residential structure and the recorded access easement, which the encroachment setbacks exceed. Therefore, the balcony, landing, and stairs would not pose a psychological issue in the immediate term, due to their sufficient distance from the public easement boundary, elevation, and accessory use.

Nevertheless, all of the encroachments seaward of the structure stringline could become psychological impediments to public access as the MHTL migrates landward with sea level rise. In a probable future scenario where the private beach area between the patio and structure stringlines is inundated and impressed with the Public Trust (assuming that the elevated deck is further set back and elevated, as conditioned), the public could potentially choose to access, use, and recreate on public tidelands closer to the residence; at that point, the encroachments would loom overhead and deter the public from using these tidelands that are rightfully theirs to use. Thus, to eliminate this possibility, and to achieve the "appropriate boundary" in (4)(G)(1), the Commission imposes **Special Condition 7**, which would remove all such encroachments along with the remaining portions of the residential structure that would encroach upon the Public Trust.

iii. Primary Residential Structure

At some point during the 75-year anticipated life of the new residence, it is anticipated that the MHTL will migrate so far landward such that it is fully underneath the principal residential structure (even further landward than the elevated deck and stringline encroachments). Since the primary residential structure would be elevated on caissons, then it raises similar concerns as the elevated deck on caissons. However, at that point, the structure will encroach on the Public Trust, the road is likely to be flooded and inaccessible, and a redesign of the primary residential structure would not improve public access opportunities in any substantive way. Therefore, **Special Conditions 7**, **8**, and **10**, in conjunction, clarify that the permit only authorizes the development for as long as it remains on private property and ensure that the residence does not physically impede public access to the shore now or in the future, and if it does, that it be promptly removed and maintain at least the minimum (10-ft.) shoreline setback from the MHTL at all times. However, there is a chance that removal is not immediate and there could be a period of time during which the structure would encroach on the Public Trust and create psychological obstruction for people accessing the coast; the Commission

establishes triggers in **Special Condition 7** to avoid delays that could result in adverse public access and Public Trust impacts, and **Special Condition 5** ensures robust MHTL surveying of the site to alert Commission staff as soon as the MHTL migrates underneath the residence. These conditions are necessary in order to allow the Public Trust tidelands to migrate inland over time and ensure that the home does not impede future public access to or along the shore, thus assuring continued public access and use of coastal areas, as required by the Coastal Act and LCP.

3. Alleviation of Access Burdens

As required by the LCP*,* the Commission carefully weighs the adverse impacts on public access that could result from the proposed development. The Commission finds that the proposed residence and accessory development, elevated on caissons, may not only physically interfere with public access (such as the 3-ft. beach stair encroachment into the existing lateral public access easement, or the at-grade portions of the residence like the garage that could inadvertently arrest or delay the inland progression of the MHTL over time), but also by precluding public access now and in the future, especially as the MHTL migrates underneath the caisson-and-grade-beam foundation. As such, the Commission imposes special conditions that would address these issues and ensure that the Public Trust freely migrates across the site. As conditioned, the project does not raise any other public access concerns that must be mitigated, and thus additional provision of public access (such as through a public access easement or dedication) is not needed in this case.

4. Additional Considerations of Legitimate Governmental Interest Under Law

As can be seen in the Commission's rigorous analysis above, which is required by the LCP, contemplating a public access easement or dedication requirement is a fact-intensive endeavor that must meet numerous factors laid out in the LCP.

The public also has rights in tidelands that currently lie seaward of the proposed development, but which may come to be located closer to, or even under, the proposed development at some point in the future. The Coastal Commission has a duty, under the Public Trust Doctrine and the Coastal Act, to ensure that new development does not impair Public Trust resources by, for example, impeding current or future public access. Through the same analysis above, the Commission must identify and mitigate adverse impacts to public access that may result from the proposed development. The Commission must also resolve issues of unpermitted development, in particular in cases where unpermitted shoreline protective devices have altered the beach profile and shoreline processes thus affecting sand supply and public recreation on the beach.

While in this particular case, the Commission finds that unpermitted development does not play a significant role and that there are adequate project alternatives and requirements that would maximize public access and recreation and address the project's adverse impacts thereto, there may be other cases in the future where the Commission finds that additional public access dedication may be required as mitigation for remaining unaddressed concerns.

Conclusion

The Commission finds that, in this case, a new public access easement or dedication need not be required, especially in light of the existing lateral public access easement already onsite. The Commission imposes other conditions and requirements to eliminate or minimize adverse impacts to public access and recreation to and along the coast in connection with the project. Thus, the Commission finds that the proposed project, as conditioned, is consistent with the public access and recreation policies of the certified LCP and the Coastal Act.

E. Visual Resources

The certified Dana Point LCP policies for preservation of scenic and visual qualities of coastal areas are in included in **Appendix C**, due to length.

IP Section 9.69.070(f) requires that new development be visually compatible with the character of surrounding areas, and where feasible, will restore and enhance visual quality in visually degraded areas. In past City and Commission actions pertaining to development along Beach Road, there was consideration of adequate siting and design to protect views of the coast from public vantage points (e.g., public roads, trails and public recreational areas) and to minimize adverse view impacts to and along the coast. The viewshed from the California Coastal Trail (CCT) and Coast Highway, which are located approximately 100 ft. inland of the site, provide expansive views of major scenic resources across Beach Road including ocean white water and blue water, ocean horizon, shoreline and coastline, and beach. Looking inland across the site from the public beach, there are spectacular views of the coastal bluffs.

Since the site is currently vacant (except for a low-lying fence along the street frontage), a project of any scope could significantly affect the public coastal view opportunities in the area. IP Section 9.05.170 states that in order to protect coastal scenic overlooks from public lands identified in the Conservation/Open Space Element (“COSE”), a detailed view impact study with recommendations on impact avoidance must be prepared and implemented for each project where proposed development might impact significant views. The applicants have submitted a View Impacts Study that shows the residence as proposed, as well as a project alternative with an open carport instead of an enclosed garage on the ground level (**Exhibit 5**).

The Commission finds that the mass, bulk, and scale of the proposed project matches the pattern of development of Beach Road homes and the character of the surrounding development. In addition, the height of the home of +50.5 ft. NAVD88 is consistent with the requirements of the LCP and would not adversely impact public views across the site, since many of the public vantage points are at the same low-lying elevation as the proposed residence. However, the proposed residence with an enclosed garage would obstruct public views to the ocean, as compared to an open carport. As such, the Commission imposes **Special Condition 1(F)**, which requires that the ground floor not be constructed with breakaway panel walls or converted to a garage or other enclosed space, and instead, a two-stall covered carport (with two solid “shear” walls

perpendicular to the ocean and two openings parallel to the ocean and street) be provided underneath the elevated residence with unobstructed views through the carport, protected by a view corridor as per **Special Condition 11**.

The Commission also finds it necessary to require view corridors within the side yard setbacks of residential development in this beachfront area. Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Coast Highway. Public views of the ocean and water from Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single-family residences, privacy walls, fencing, landscaping, and other residential or commercial related development between Coast Highway and the ocean. Per the LCP, the side yard setbacks for this property are to be no less than three feet, six inches (3'6") on each side of the approved structure, extending the width of the property. Moreover, IP Section 9.09.040(a)(2), footnote (G) states that outdoor appliances or permanent deck structures along the side property lines cannot exceed forty-two (42) inches above grade. The Commission finds that these side yard setbacks, in conjunction with the open carport underneath the residence, would provide adequate view corridors that could provide coastal views from public vantage points at various angles.

To ensure that these view corridors are maintained, the Commission imposes **Special Condition 11**, which details the restrictions and procedures that the applicants must comply with to maintain the view corridors. Permanent fixed structures (with the exception of the shear walls of the carport, caissons, and stairways) visually impermeable fences, and tall vegetation are not allowed within the view corridors. **Special Condition 11** also requires landscaping within the view corridors to be low-growing for the life of the development, not to exceed a maximum of 42-in. in height. The Commission imposes **Special Condition 18**, which requires the applicants to record a deed restriction against the property that provides the current and any future owners with notice of all of the conditions of this permit, including the requirement to maintain the view corridors through the side yards and underneath the residence.

Exposure of the proposed caisson foundation may occur over the 75-year life of the project, and resource impacts arising from pile exposure must be addressed. Such impacts would include impacts to public views, and thus at a minimum, any impacts to public views would need to be addressed. In the event that subsurface portions of the caissons are exposed in the future, **Special Condition 1(E)** requires the applicants to color, screen or cover the exposed caissons and any other exposed foundation features to match the surrounding environment for a natural mottled appearance in order to minimize impacts to public views.

Finally, the Commission imposes **Special Condition 1(C)** requiring visual screening of the roof structure (including decks, access structures, and stairways) on all sides of the structure consistent with IP Section 9.05.230(d), so as not to be visually obtrusive from public vantage points, and **Special Condition 1(I)** requires the applicants to submit a Lighting Plan that would minimize light pollution impacts generated by the project and

the shielding of direct exterior lighting away from the beach, coastal trails, and public rights-of-way. Together, these conditions would ensure that the residential structure would be compatible with the visual appearance of the immediate area.

Pursuant to sections 13250(b) and 13252(a)-(b) of the Commission's regulations, the Commission imposes **Special Condition 17** requiring a CDP amendment or new CDP for any future improvements or repair and maintenance to the development approved under the subject permit and/or any new development to adequately protect public visual resources.

Therefore, the Commission finds that as conditioned to minimize and treat any future exposure of the caissons, attenuate the structures' appearance to be visually compatible with the surrounding natural environment, and create and maintain view corridors across the site towards the ocean, the proposed project will not have a significant adverse impact on visual resources and is consistent with the relevant policies of the City's certified LCP.

F. Marine and Habitat Resources and Water Quality

The certified Dana Point LCP policies protecting marine resources, biological resources, and water quality in coastal areas are included in **Appendix C**, due to length.

Marine Debris

As discussed in Section IV.C (Shoreline Development, Coastal Hazards, and Sea Level Rise) of this staff report, the applicants are proposing several project elements that would be located below the FBFE, which would be particularly susceptible to flooding and coastal hazards. While the caisson-and-grade-beam foundation system would be anchored, secured, and designed to withstand strong wave forces to avoid flotation or collapse, the proposed at-grade garage and the seaward-facing deck would be vulnerable to extensive damage over the anticipated life of the development. When overtopped, the wooden slats on the surface of the proposed elevated deck could become dislocated and end up on the beach or in coastal waters. As identified previously, the at-grade garage in particular could potentially house hazardous chemicals such as household paints and cleaners, which could enter the marine environment during flooding events, and the garage is currently proposed to convey many of the mechanical and utility installations to the habitable areas of the residence such as through an electrical panel in the CMU wall, and water and gas line risers affixed to the garage walls, which could also be compromised when the garage is inundated. Finally, the breakaway panel walls are designed to break under low hydrostatic and hydrodynamic loads, and these could also become strewn on the beach or end up in nearshore coastal waters, creating marine debris.

To minimize the potential for marine debris to be generated from the proposed development, the Commission imposes several Special Conditions. First, **Special Condition 1(F)** requires that the garage be modified in the final revised plans such that it is a two-stall covered carport underneath the finished floor of the residence, without

the use of breakaway panels or garage doors. This condition also prohibits the storage of such unsecured and hazardous materials within the open carport to avoid their release into the marine environment. Since the enclosed garage would be revised to an open carport (with up to two shear walls perpendicular to the shore), it could require reconfiguration of the proposed Utility and Storage Plan for the residence. Thus, the Commission imposes another condition, **Special Condition 1(G)**, which requires that all mechanical and utility connections and extensions serving the project be installed underground, or otherwise securely mounted on the residential structure, and that they are floodproofed to ensure their functionality in the face of flooding and wave attack. Third, the Commission finds the currently proposed elevated deck supported on caissons to be difficult to remove and especially exposed to wave action and overtopping due to its seaward location; **Special Condition 1(B)** requires that the seaward-facing deck instead be cantilevered from the principal residential structure without additional reliance on vertical support and be further setback from the shoreline, which would ensure that the deck structure would be structurally stable and less vulnerable to damage from coastal hazards.

Even with the aforementioned design modifications, it is inevitable that some of materials will become dislodged from the carport and cantilevered seaward-facing deck. Some of those materials could be biodegradable and would not persist for long periods of time in the ocean environment. However, other materials, such as plastic and pressure-treated wood, are likely to persist in the marine environment for lengthy periods if they are not washed ashore and/or removed by personnel.

Plastic pollution, in particular, is a persistent and growing problem worldwide that significantly impacts the health of our oceans and coasts. Roughly eight million metric tons of plastics are estimated to enter the ocean each year, and the United States is one of the top 20 contributors to plastic pollution.[35] Plastic has been found in a wide range of marine environments including the seafloor, surface water, the water column, and on beaches and shorelines. California communities are estimated to spend more than $428 million annually to clean up and control plastic pollution. Plastic never truly degrades into its chemical components; instead, it physically breaks down into smaller and smaller pieces. Plastics under five millimeters in size are called microplastics and are found worldwide, even in places considered pristine. Plastics have been found in the digestive tracts of marine organisms ranging from zooplankton to whales, and in drinking water and food including shellfish, salt, beer, and honey.[36]

The use of preservative-treated wood in overwater and in-water structures also has the potential to adversely impact water quality and aquatic species. The pesticides in wood preservatives – commonly copper – can adversely impact aquatic species, especially fish and invertebrates, and may accumulate in the underlying sediment. Preservatives such as Alkaline Copper Quaternary (ACQ), Copper Azole (CA), and Copper

[35] Ocean Protection Council, Plastic Pollution https://www.opc.ca.gov/programs-summary/marine-pollution/plastics/

[36] Ibid.

Naphthenate (CuN) are typical choices for treating above-water components of structures in marine environments; however, these arsenic-free preservatives leach substantially more copper, and thus have a higher risk of aquatic toxicity, than do the metal-arsenate preservatives. Copper pollution can also often pose an issue due to leaching from copper-based antifouling paints commonly used to maintain structures in marine environments. Preservatives like Ammoniacal Copper Zinc Arsenate (ACZA) and Chromated Copper Arsenate (CCA) leach less copper and thus have the lowest aquatic toxicity, but are not as safe for contact with humans or marine mammals.

As such, the Commission requires that the use of plastics and preservative- or pressure-treated wood be avoided when constructing the seaward-facing deck. The Commission specifies in **Special Condition 1(B)** that the decking not include plastic-derived or pressure-treated materials to limit the possibility that such debris could wind up in the receiving waters of the Pacific Ocean. In the event that portions of the development fall to the beach before they are removed, **Special Condition 7(B)** requires the applicants or successor(s) in interest to remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a CDP, unless the Commission's Executive Director determines otherwise.

Habitat Resources and Wildlife

Neither the City nor the applicants' consulting biologist found the subject site to be a biologically sensitive area, a biotic area, or a marine life refuge area. The Commission's staff ecologist, Dr. Corey Clatterbuck, agrees with the findings in the Biological Resources Letter prepared by Dudek dated December 4, 2023, which states that "[t]he study area does not function as an ESHA due to the dominance of disturbed habitat that is not considered native, sensitive, or riparian, nor would it provide suitable habitat for Orange County Southern Subregion NCCP/HCP protected species such as coastal California gnatcatcher." There is the potential for raptor and bat species to use the palm trees onsite and in the surrounding area, but no nests, or brooding or foraging activities were observed during biological reconnaissance. Likewise, the site could potentially support grunion runs, green sea turtles, and sensitive fishes, but there were no observations or recent or historic occurrence records. In the intertidal zone, common beach wrack (kelp) may accumulate that could provide foraging resources for resident and migrating shorebirds.

Even while the proposed development is unlikely to degrade existing habitat values at the site, there is a concern that the project could potentially adversely impact marine wildlife and nesting birds in the future. **Special Condition 14** requires a raptor and bat survey and monitoring/avoidance plan prior to the commencement of construction in order to ensure that the proposed project will not impact nesting birds or roosting bats present on the site. After the residence is constructed, it is important that aspects of the structure do not have lasting impacts on wildlife and birds nearby. **Special Condition 1(D)** is imposed to use glass that is bird-safe in the design of the exterior of the residence, which is to be maintained through the life of the development, and because the project may generate light which may affect the beach environment during the

nighttime, **Special Condition 1(I)** requires the applicants to submit a lighting plan that would adequately protect nearby habitat from light generated by the project. Finally, **Special Condition 1(H)**, which requires the applicants to submit a Landscaping Plan that would incorporate the use of native, drought-tolerant vegetation and drainage improvements to ensure ecological compatibility with the nearby environment.

Special Condition 3 requires the applicants to obtain any necessary authorizations from the California Department of Fish and Wildlife and the U.S. Wildlife and Fish Service to ensure that the proposed development fully complies with all applicable requirements of the biological resource agencies.

Water Quality

The project site is a vacant beachfront parcel located between Pacific Coast Highway and the Pacific Ocean. Construction activities related to the proposed development have the potential to negatively impact the surrounding marine environment. Introduction of waste or construction debris into the marine environment could create deleterious impacts to coastal waters and stemming from activities such as stockpiling of materials or cleaning of construction equipment on or adjacent to the beach. In order to ensure that marine resources are maintained, the Commission finds it necessary to require the applicants to include construction best management practices in the project. **Special Condition 13** requires that the project applicants comply with specific construction standards and best management practices for development on or near sandy beach. **Special Condition 13** further requires that no construction materials, debris or waste shall be placed or stored where it may be subject to wave erosion and dispersion, that all debris resulting from construction activities shall be removed from the beach prior to the end of each workday; no machinery or mechanized equipment shall be allowed in the intertidal zone; and all excavated beach sand shall be redeposited on the beach.

The proposed development will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land on the project site. The reduction in permeable surface area therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak water discharge is increased, and the peak occurs much sooner after precipitation events. Additionally, disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion.

In addition, pollutants commonly found in runoff associated with new residential development include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter and organic matter; fertilizers, herbicides, and pesticides from household gardening; nutrients from wastewater discharge, and animal waste; and bacteria and pathogens from wastewater discharge and animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic

conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation which provides food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. Therefore, pursuant to the requirements of the Dana Point LCP, to ensure the proposed project will maintain the biological productivity and the quality of coastal waters, the Commission requires **Special Condition 12**. Erosion control and storm water pollution prevention measures implemented during construction will, during construction, maintain the biological productivity and the quality of coastal waters. The condition includes measures and BMPs to prevent localized erosion, sedimentation, and pollution of surface and ocean waters from construction and grading activities.

Conclusion

The Commission finds that, as conditioned, the proposed development will not significantly impact marine and biological resources and preserve water quality in the vicinity of the project area. Thus, the proposed development is consistent with the marine resource protection policies of the LCP.

G. Archaeological, Paleontological, and Tribal Cultural Resources

The certified Dana Point LCP policies require the treatment and mitigation of archaeological, paleontological, and tribal cultural resources.

LUP (COSE) Policy 8.1 states:

> Require reasonable mitigation measures where development may affect historical, archaeological or paleontological resources.

LUP (COSE) Policy 8.2 states:

> Retain and protect resources of significant historical, archaeological, or paleontological value for education, visitor-serving, and scientific purposes.

Resources in the Project Area

The area now known as Capistrano Beach/Valley has been home to native populations since time immemorial. The project site is located within the ancestral settlements of Pange and Putuidem, which are considered sacred to numerous Tribes with territorial,

ancestral, and/or cultural ties to the area, and ceremonial and cultural activities continue near this site to the present day.[37] Likewise, a Paleontological Assessment Memorandum prepared by Bargas Environmental Consulting, LLC dated December 20, 2023 identified that subterranean development in this area has the potential for adverse impacts to highly sensitive and significant paleontological resources. An archival records search of previous cultural resource investigations conducted within a mile buffer radius of the project area (including the Beach Road community) yielded 34 fossil localities, five of which were discovered in sediment types similar to those found at the project site. No actual archaeological, paleontological, or tribal cultural resources were observed during field surveys conducted to date, but excavation into the subsurface below the beach deposits and artificial layers of sediment onsite could potentially result in adverse impacts to archaeological, paleontological, and tribal cultural resources.

Tribal Consultation

In accordance with the Commission's Tribal Consultation procedures, Commission staff contacted the NAHC with a request to search the NAHC Sacred Lands Files. The results of this search were positive, and the NAHC provided Commission staff with a list of potential affected Tribes in the area for consultation on March 23, 2022. Commission staff subsequently produced a formal notification of the development and request for consultation on October 28, 2022. The Commission received one response from the Juaneño Band of Mission Indians Acjachemen Nation - Belardes. Commission staff consulted with Tribal representatives on March 24, 2023 and were made aware of the significance of the project landscape. During the consultation, the representative described the sensitivity of the site and discussed the project scope and potential avoidance or mitigation measures with Commission staff. The concerns raised include ensuring that there is Native American monitoring for all projects along Beach Road, with Native American and archaeological monitors present at each site, as well as a plan in place to stop work in case of inadvertent discovery of sensitive tribal cultural resources. It was reiterated that the potential impacts of the project not only include incidental discovery of tribal resources, but disturbance of a sacred area. Preserving the tribal cultural resources and maintaining the site as close to its natural condition as possible protects the Sacred Lands to the maximum extent feasible. To help understand the underlying stratigraphy underlying the site, the Tribal representative recommended that the applicants complete a supplementary geological study.

Resource Treatment and Mitigation

As mentioned, the applicants are proposing 350 cu. yds. of grading (cut of soils) and pile-driving to install the caisson foundation. While the applicants' proposal does involve ground-disturbing activities, these activities are necessary for the applicants to move forward with their project, and they propose to use the least invasive and environmentally-damaging methods available. In addition, the applicants assert that the mitigation measures recommended in the Paleontological Assessment Memorandum

[37] Neely, Ed. (2013). *Those Here First*. Doheny State Beach Foundation.

would sufficiently protect and/or treat any resources found in the most protective manner.

Pursuant to **Special Condition 15**, the applicants will be required to submit, for review and approval by the Executive Director, a final Archaeological, Paleontological, and Tribal Cultural Resource Treatment and Mitigation Plan developed in consultation with the appropriate Native American tribal governments that includes and ensures that the proposed project remains sensitive to the concerns of the affected Native American groups and requires that all representatives of Juaneño (Acjachemen)-affiliated Native American Tribes in the area be invited to be present at the site during all excavation activities to monitor the work. The provided guidelines in the Plan must be followed if archaeological, paleontological, and/or tribal cultural resources are discovered during the course of the project and/or investigation, and the applicants are required to apply for an amendment if resource deposits are found that the Native American tribal representatives determine must be avoided. Significance testing and data recovery are only permitted if done in consultation with the affected Native American Tribes, and they should be done in accordance with the "Cultural Resources Significance Testing Plan Procedures" (**Appendix B**).

The Commission understands the potential impacts of disturbance of the site to archaeological, paleontological, and tribal cultural resources. However, the Commission also understands that to construct the residence such that it is safe from hazards, it must be constructed on caissons, which would involve some ground disturbance. The proposed project is designed to be the least environmentally damaging alternative to carry out construction without further undermining or destroying the beach and existing landforms. As conditioned, the proposed project is consistent with LCP policies protecting tribal cultural resources, as reasonable mitigation measures are included to ensure that the development will not result in significant adverse impacts to potential archaeological and tribal cultural resources at the site, which constitutes Sacred Land. The Commission acknowledges that substantial tribal concerns remain with respect to this project, and tribal concerns go beyond archaeological resources, and include visual, biological, and other resources that the Commission is tasked with protecting pursuant to the certified LCP. Findings related to the proposed project's potential impacts on such resources are included in other sections of this staff report.

H. Unpermitted Development

Violations of the Coastal Act have occurred on the subject property, including, but not necessarily limited to, placement of shoreline protective devices on the site**.** The Commission and the applicants note that there are historic aerial photographs that show unpermitted rocks onsite; the applicants claim no personal knowledge of when those photographs were taken, who placed the rocks, and/or for how long they were there. As of December 2021, rocks onsite were promptly removed around the time that the applicants bought the property, but the street-facing fence remains.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the

Dana Point certified LCP and the Chapter 3 public access and recreation policies of the Coastal Act. While the Commission's staff engineer determined that the unpermitted development likely did not result in adverse public access impacts, and the applicants are not currently proposing new shoreline protective devices, there is a concern that the applicants or successors in interest could pursue shoreline armoring of the site in the future to protect the residence. The conditions of approval of this application, namely **Special Condition 6**, require the applicants to waive all rights that they may have to shoreline protection of the development authorized by this permit application, which will ensure that the unpermitted installation of shoreline protective devices does not happen again in the future. Upon issuance of the permit, the subsequent performance of the work authorized by the permit, in compliance with all of the terms and conditions of the permit, will result in resolution of the Coastal Act violations described herein on the site.

Nonetheless, the Commission's enforcement staff is tasked with identifying a huge scope of unpermitted development along the coast, including within vicinity of the subject site. As of this date, enforcement staff has found at least 90 cases of alleged unpermitted shoreline armoring (e.g., seawalls, revetments, riprap, sandbags, berms) at other properties similarly located on Beach Road, and not only do these take up beach space, including some that are currently located within recorded public access easements, thereby impeding the public's ability to freely traverse on the public areas of the beach, but also, these modify shoreline processes such that there is less sand supply for the public to recreate on. Consequently, shoreline armoring has cumulatively deteriorated public access on this stretch of beach. Many of the unpermitted shoreline protective devices have been installed in response to the beach's particularly severe erosion over the past few years, and these devices in-and-of-themselves can exacerbate erosion through modification of shoreline processes, resulting in even narrower beach widths.

It is therefore crucial that, first, new development withstand coastal hazards without reliance on shoreline protection as unpermitted shoreline protective devices nearby are investigated and corrected. It is also clear that community-wide hazards will occur in the near- to long-term future and should be addressed through a range of adaptation strategies. As explained extensively in this staff report, shoreline protection should not be used except as a last resort, and comprehensive strategies such as elevating Beach Road and fully floodproofing utilities, while expensive, would vastly increase the adaptive capacity of the community, preserve greater beach area, and minimize adverse effects to coastal resources. An adaptation plan should therefore be developed for the Beach Road community that identifies clear adaptation pathways and financing options to implement said adaptations. In the interim, as Capistrano Beach experiences extensive erosion, sustainable sediment management in the region will be critical to protecting both public and private resources. The Commission's enforcement and statewide planning staff are committed to continuing coordination with relevant stakeholders to ensure the successful development, implementation, and furtherance of resiliency planning efforts.

I. California Environmental Quality Act

The City of Dana Point is the lead agency, and the Commission is a responsible agency, for the purposes of the California Environmental Quality Act ("CEQA"). On June 27, 2022, the City of Dana Point, the lead agency for CEQA, determined that the proposed event is categorically exempt from CEQA, finding that the proposed construction of a new single-family residence within a developed area will not have adverse impacts to the environment.

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit (CDP) applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. 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 preceding coastal development permit findings in this staff report have discussed the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. The Commission incorporates these findings as if set forth here in full. As conditioned, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact, individual or cumulative, which the proposed event would have on the environment. Therefore, the Commission finds that the proposed development can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit Application No. A-5-DPT-22-0037 and associated file documents
- Wave Runup Analysis and Base Flood Elevation Determination, prepared by GeoSoils, Inc. dated February 28, 2020, and associated file documents
- Preliminary Geotechnical Investigation, prepared by GeoSoils, Inc. dated March 6, 2020; Addendum to Preliminary Geotechnical Investigation, prepared by GeoSoils, Inc. dated August 23, 2022; Update to Preliminary Geotechnical Investigation, prepared by GeoSoils, Inc. dated November 3, 2023
- City Council Resolution No. 01-07-10-03

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES

A. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.

   1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.

   2. If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.

   3. Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this appendix and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archaeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a

MLD, as well as others identified in the special condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.

2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

APPENDIX C – RELEVANT CERTIFIED LCP POLICIES

Certified IP Section 9.05.160 Cultural and Natural Resources states:

For those projects where the City's environmental review process indicates the potential for significant impacts to cultural and natural resources (such as archaeological, paleontological, or historical resources and biological resources), site-specific studies shall be performed to identify the significance of such resources, and identified mitigation measures designed to reduce those impacts will be incorporated into project design.

Certified IP Section 9.05.170 Coastal Views from Public Areas states:

To protect the coastal scenic overlooks from public lands identified in the General Plan Urban Design and Conservation/Open Space Elements, a detailed view impact study which includes recommendations to avoid impacts to coastal views from public lands shall be prepared and incorporated into projects where the proposed development impacts such views.

Certified IP Section 9.05.220 Lighting states:

Exterior lighting shall be energy-efficient and shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel, and shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity or brightness. All lighting fixtures shall be appropriate in scale, intensity, and height to the use it is serving. Security lighting shall be provided at all entrances/exits.

Certified IP Section 9.05.230 Roof Decks states, in relevant part:

Roof decks are permitted, subject to approval of a Minor Site Development Permit, in any zoning district provided that they meet the following development standards:

> (c) The roof deck shall be architecturally compatible with the existing exterior materials and colors of the existing structure, and appear as an integral part of the roof system.
>
> (d) The roof deck area shall be appropriately designed so as not to be visible from all sides of the structure or from the grade below. Appropriate screening shall be architecturally compatible with and integrated into the existing structure as determined by the Director of Community Development. The solid screening may include roofing, solid parapet walls, or other methods architecturally compatible with the design of the structure.
>
> (e) The deck shall be compatible with the color of the existing roof material or structure, yet it shall not be of a color that would reflect glare onto surrounding properties at a higher elevation.

(f) In residential districts, exterior stairways and other access features such as stairwells or elevators for access to roof decks shall not exceed the residential zoning district's height limit and shall be architecturally integrated into the design of the structure.

(g) All furniture and accessories located on a roof deck shall be secured as necessary to prevent wind damage or dislocation.

Certified IP Section 9.09.040 Special Development Standards states, in relevant part:

(a) Development in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Zoning Districts shall comply with the following standards:

(1) The following Table provides the requirements for structural stringlines, patio stringlines, and front yard setbacks for properties in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Districts…

Beach Road Address	Tract 889 Lot Number	Measurement from roadside property line to structure stringline along: west property line/east property line (a)	Measurement from roadside property line to patio stringline along: west property line/east property line (b)
35525	21	116/116	137/139

…

Footnotes for Section 9.09.040(a)(1):

(a) No enclosed portion of any structure shall extend seaward of a straight line drawn between the structure stringline measurements set forth in this section for the east and west property lines of the subject property.

(b) No patio or unenclosed portion of any structure shall extend seaward of a straight line drawn between the patio stringline measurements set forth in this section for the east and west property lines of the subject property. Where vertical displacement exists between the lowest level patio and sandy beach, a stairway may encroach seaward of the patio stringline no more than three

(3) feet. Where the patio stringline lies inland of an ocean protective device (OPD), an accessway from the lowest level patio to the OPD may be constructed as necessary to link the patio with a stairway to the beach…

(2) Maximum Projections into Required Yards. The following Table provides the requirements for allowable projections into required yards for properties in the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD 18) Districts.

SECTION 9.09.040 (a)(2)

MAXIMUM PROJECTION INTO REQUIRED YARDS

Item	Maximum Projection			Minimum Distance From Property Lines (B)	Maximum Projection Above District Height Limit	Other Limitations
	Front Yard Area	Seaward of Structure Stringline	Side Yard Area (A)			
(c) Balconies	5’0”	8’0”	NP	6’0”	NP	(E)(F)
(d) Barbecues and Other Appliances	N/A	To patio stringline	To PL	0’0”	N/A	(G)(H)
(h) Decks, Patios and Walks (between Front Yard Setback and Structure Stringline)	N/A	N/A	To PL	0’0”	N/A	Horizontal surface to a maximum height of 18” above FP-3 elevation for the site. (I)(L)(M)

(i) Decks, Patios and Walks (between Structure Stringline and Patio Stringline)	N/A	To patio stringline (Except as provided in Section 9.09.040(a)(1) Footnote (b))	To PL	0'0"	N/A	The surface must be the lower of: 1) 18" above FP-3 elevation for the site; or 2) 30" above the average pregraded/existing elevation at the structure stringline; or 3) 4 feet above Beach Road at the centerline of the site. (I)(L)(M)
(q) Stairways and Stairway Landings	2'6"	NP (Except as provided in Section 9.09.040(a)(1) Footnote (b))	NP	5'0"	NP	(E)

NP = Not Permitted N/A = Not Applicable PL = Property Line

Footnotes for Section 9.09.040(a)(2):

…

(B) In any instance where there is a conflict between the allowable maximum projection and the minimum distance from property line standard, the minimum distance from property line standard shall rule.

…

(E) The total horizontal length of all projections (marked by this footnote) on a given building elevation shall not exceed the maximum percentage of building elevation length as specified below: (Note: Building elevation length is measured at the first floor and not adjusted for multiple storied buildings.)

BUILDING ELEVATION:	Front:	Side:	Rear:
MAXIMUM PERCENTAGE OF BUILDING ELEVATION LENGTH:	60%	40%	80%

The above stated maximum percentages have been established as

a measure to control the overuse or abuse of the projection provisions in this Table. The maximum percentages will help prevent aesthetically inappropriate architectural facades or features that would pose a detriment to adjacent properties. At the discretion of the Director of Community Development, the total length of all projections on a given elevation may be reduced to below the indicated maximums in order to implement this intent.

…

(G) Outdoor appliances or permanent deck structures along side property lines or the rear stringline limit cannot exceed forty-two (42) inches above the lowest patio elevation permitted by Chapter 9.31 “Floodplain Overlay Districts.”

…

(4) Offers to dedicate easements for public pedestrian access laterally along the beach at Capistrano Beach will be required as a condition of any new development project, as defined in public access ordinance (Section 9.27.030(a)(2)(A) of this Zoning Code), requiring a coastal development permit along Beach Road, consistent with the requirements of the public access ordinance (Section 9.27.030(a) of this Zoning Code).

Certified IP Section 9.27.030 Development Standards states, in relevant part [emphasis added]:

(a) Coastal Access.

(1) The purpose of this section is to achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act; to implement the public access and recreation policies of Chapter 3 of the Coastal Act; and to implement the certified land use plan of the Local Coastal Program which is required by Section 30500(a) of the Coastal Act to include a specific public access component. In achieving these purposes, the provisions of this subsection shall be given the most liberal construction possible so that public access to the navigable waters shall always be provided and protected consistent with the goals, objectives and policies of the California Coastal Act and Article X, Section 4, of the California Constitution.

(2) Definitions…

(C) Character of Accessway Use…

2. Passive recreational use. As used in this section, "passive recreational use" refers to the right of the public to conduct

activities normally associated with beach use, such as walking, swimming, jogging, sunbathing, fishing, surfing, picnicking, but not including organized sports, campfires, or vehicular access other than for emergencies or maintenance.

3. Active recreational use. As used in this section, "active recreational use" refers to the right of the public to conduct the full range of beach-oriented activities, not including horseback riding and use of motorized vehicles unless specifically authorized…

(3) Applicability.

(A) Access Required. As a condition of approval and prior to issuance of a permit or other authorization for any class of new development as identified in Sections 9.27.030(a)(3)(A)1. through 9.27.030(a)(3)(A)4. below, except as provided in Section 9.27.030(a)(3)(B), an offer to dedicate an easement (or other legal mechanism pursuant to Section 9.27.030(a)(4)(J)2. for one or more of the types of access identified in Sections 9.27.030(a)(2)(D)1. through 9.27.030(a)(2)(D)5. shall be required and shall be supported by findings required by Sections 9.27.030 (a)(5)(A) through 9.27.030(a)(5)(C); provided that no such condition of approval for coastal access shall be imposed if the analysis required by Sections 9.27.030(a)(5)(A)1. through 9.27.030(a)(5)(A)4. establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified….

2. New development between the nearest public roadway and the sea.

3. New development on any site where there is substantial evidence of a public right of access to the sea acquired through use or a public right of access through legislative authorization…

(B) Exceptions. Section 9.27.030(a)(3)(A) above shall apply to all new development except in the following instances:

1. Projects excepted from the definition of "new development" in Section 9.27.020(a)(2).

2. Where findings required by Sections 9.27.030(a)(5)(A) and 9.27.030(a)(5)(B) establish any of the following:

a. Public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources; or

b. Adequate access exists nearby…

(4) Standards for Application of Access Conditions. The public access required pursuant to Section 9.27.030(a)(3)(A) shall conform to the standards and requirements set forth in Section 9.27.030(a)(4) herein.

(A) Lateral Public Access (Minimum Requirements).

1. A condition to require lateral access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 9.27.030(a)(3)(A) shall provide the public with the permanent right of lateral public access and passive recreational use along the shoreline (or public recreational area, bikeway, or blufftop area, as applicable); provided that in some cases controls on the time, place and manner of uses may be justified by site characteristics including sensitive habitat values or fragile topographic features, or by the need to protect the privacy of residential development located immediately adjacent to the accessway.

2. Active recreational use may be appropriate in many cases where the development is determined to be especially burdensome on public access. Examples include cases where the burdens of the proposed project would severely impact public recreational use of the shoreline, where the proposed development is not one of the priority uses specified in Public Resources Code Section 30222 and the policies of the certified land use plan, where active recreational uses reflect the historic public use of the site, where active recreational uses would be consistent with the use of the proposed project, and where such uses would not significantly interfere with the privacy of the landowner. In determining the appropriate character of public use, findings shall be made on the specific factors enumerated in Section 9.27.030(a)(5)(B). Lateral access shall be legally described as required in Section 9.27.030(a)(4)(G).

(B) Vertical Public Access (Minimum Requirements)…

3. Each vertical accessway shall extend from the road to the shoreline (or bluff edge) and shall be legally described as required in Section 9.27.030(a)(4)(G). The access easement

shall be a minimum of 10 feet wide. If a residential structure is proposed, the accessway should not be sited closer than 10 feet (or another distance if specified in the certified land use plan) to the structure….

(G) Legal Description of an Accessway (Recordation).

1. An access dedication required pursuant to Section 9.27.030(a)(3)(A) shall be described in the condition of approval of the permit in a manner that provides the public, the property owner, and the accepting agency with the maximum amount of certainty as to the location of the accessway. As part of the condition of approval, easements shall be described as follows:

a. for lateral access: along the entire width of the property from the mean high tide line to (as applicable): the toe of the bluff, the toe of the seawall, or other appropriate boundary such as structural and patio stringlines as described in Section 9.09.040(a)(1) of this Zoning Code (the Residential Beach Road 12 (RBR 12) and Residential Beach Road Duplex 18 (RBRD) Zoning Districts)…

2. Prior to the issuance of the coastal development permit, the landowner shall execute and record a document in a form and content acceptable to the Director of Community Development, consistent with provisions of Section 9.27.030(a)(6), irrevocably offering to dedicate to a public agency, non-profit organization, or private association approved by the Coastal Commission an easement for a specific type of access as described in Section 9.27.030(a)(2)(D) and a specific character of use as described in Section 9.27.030(a)(2)(E), as applicable to the particular condition.

3. The recorded document shall provide that the offer to dedicate shall not be used or construed to allow anyone, prior to acceptance of the dedication, to interfere with any rights of public access acquired through use which may exist on the property.

4. The recorded document shall include legal descriptions of both the applicants' entire parcel and the easement area and a map to scale. The offer shall be recorded free of prior liens and any other encumbrances which the Coastal Commission [or local agency authorized by the Commission] determines

may affect the interest being conveyed. The offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording…

(I) Privacy Buffers (Minimum Requirements). Separation between a public accessway and adjacent residential use may be provided when necessary to protect the landowner's privacy or security as well as the public's right to use of the accessway. Any such buffer shall be provided within the development area. Access should not be sited closer to any residential structure than the distance specified in the certified LUP amendment, or where there is no distance specified, no closer than 10 feet. The buffer can be reduced where separation is achieved through landscaping, fences or grade separation…

(5) Required Findings And Supporting Analysis For Public Access Dedications.

(A) Required Overall Findings. Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals, denials or conditional approvals of projects between the first public road and the sea (whether development or new development) and of all approvals or conditional approvals of projects (whether development or new development) where an access dedication is included in the project proposal or required as a condition of approval. Such findings shall address the applicable factors identified by Section 9.27.030(a)(5)(B) and 9.27.030(a)(5)(C) and shall reflect the specific level of detail specified, as applicable. Findings supporting all such decisions shall include:

1. A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to Section 9.27.030(a)(5)(B). The type of affected public access and recreation opportunities shall be clearly described.

2. An analysis based on applicable factors identified in Section 9.27.030(a)(5)(B) and 9.27.030(a)(5)(C) of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act.

3. A description of the legitimate governmental interest furthered by any access condition required.

4. An explanation of how imposition of a public access dedication requirement alleviates the access burdens identified and is reasonably related to those burdens in both nature and extent.

(B) Required Project-Specific Findings. In determining any requirement for public access, including the type of access and character of use, the City of Dana Point shall evaluate and document in written findings the factors identified in Sections 9.27.030(a)(5)(B)1. through 9.27.030(a)(5)(B)4. below, to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the City of Dana Point and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the dedication will alleviate or mitigate the adverse effects which have been identified and is reasonably related to those adverse effects in both nature and extent. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning. The following factors shall be analyzed:

1. Project Effects On Demand For Access And Recreation:

a. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development.

b. Analysis of the project's effects upon existing public access and recreation opportunities.

c. Analysis of the project's cumulative effects upon the use and capacity of the identified public access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout.

d. Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public.

e. Analysis of the contribution of the project's cumulative effects to any such projected increase.

f. Description of the physical characteristics of the site and its proximity to the sea, tideland viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas.

g. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.

2. Shoreline Processes (for accessways on sites subject to wave action, such as beachfront and coastal blufftop accessways):

a. Description of the existing shoreline conditions, including beach profile, accessibility and usability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site.

b. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development.

c. Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and usability of the beach; and any other factors which characterize or affect beaches in the vicinity.

d. Analysis of the effect of any identified changes of the project-alone or in combination with other anticipated changes - will have upon the ability of the public to use public tidelands and shoreline recreation areas.

e. The rate of blufftop erosion due to wave action as the base of the bluff….

3. Physical Obstructions: Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline.

4. Other Adverse Impacts On Access And Recreation.

a. Description of the development's physical proximity and relationship to the shoreline and any public recreation area.

b. Analysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation.

c. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development…

Certified IP Section 9.31.040 Prohibited Uses and Structures states, in relevant part:

The following uses and structures are specifically prohibited in the Floodplain Overlay Districts:…

(d) FP-3 District only:…

(3) Seawalls, revetments, and shoreline ocean protective devices or construction that alters natural shoreline processes, unless required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and only when positioned, designed and constructed to eliminate adverse impacts on local shoreline sand supply as provided for in Section 9.27.030(f) of this Zoning Code. Seawalls, revetments, and other shoreline protective devices or construction that alters natural shoreline processes shall only be permitted as a last resort protective device for coastal areas. Shoreline protective devices need not be subject to the elevation requirements of the FP-3 district.

Certified IP Section 9.31.050 Administration states, in relevant part:

(a) Site Development Permit Required. A Site Development Permit according to Chapter 9.71 of this Code shall be obtained before construction or development begins within any area of special flood hazards, areas of flood-related erosion hazards, or areas of mudslide (i.e., mudflow) hazards established in or pursuant to Section 9.31.020. Application for a Site Development Permit shall be made on forms furnished by the Director of Community Development and may include, but not be limited to:

(1) Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing and proposed structures; structure occupancy, topography, landscape and hardscape, drainage and utility facilities, and the storage of materials;

(2) A certificate from a registered civil engineer stating that the information in the application is correct;

(3) Proposed elevation in relation to mean sea level of the lowest floor including the basement of all structures; in Zone AO, AE, or VE, V, and V1 through V30, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures;

(4) Proposed elevation in relation to mean sea level to which any structure will be floodproofed;

(5) All appropriate certifications listed in Section 9.31.050 of this Chapter;

(6) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and

(7) A statement that the standards in Section 9.31.060 have been satisfied.

(b) Director of Community Development. The Director of Community Development is hereby appointed to administer and implement this Chapter by granting or denying Site Development Permits in accordance with this Code. Appeals are covered in Section 9.31.070(a). The duties and responsibilities of the Director of Community Development shall include, but not be limited to:

(1) Permit Review. Review all development permits to determine that:

(A) The permit requirements of this Chapter have been satisfied;

(B) All other required State and Federal permits have been obtained;

(C) The site is reasonably safe from flooding;

(D) The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this Chapter, “adversely affects” means that the cumulative effect of the proposed development when combined with all other existing and anticipated development which will not increase the water surface elevation of the base flood more than one (1) foot at any point.

(E) For the FP-3 District, the development satisfies the design criteria of the Coastal Floodplain Development Study.

(2) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 9.31.020, the Director of Community Development shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, in order to administer this Chapter. Any such information shall first be submitted to the City Council for adoption…

(4) Maintain Certifications. Obtain and maintain for public inspection and make available as needed:

(A) The certification required in Section 9.31.060(a)(3)(A) (floor elevations);

(B) The certification required in Section 9.31.060(a)(3)(B) (elevations in areas of shallow flooding);

(C) The certification required in Section 9.31.060(a)(3)(C)3 (elevation or floodproofing of non-residential structures);

(D) The certification required in Section 9.31.060(a)(3)(D) or 9.31.060 (a)(3)(D)2 (wet floodproofing standard);

(E) The certified elevation required in Section 9.31.060(c)(2) (subdivision standards);

(F) The certification required in Section 9.31.060 (e)(1) (floodway encroachments); and

(G) The information required in Section 9.31.060(f)(6) (coastal high hazard construction standards).

(5) Interpretations. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards, areas of flood-related erosion hazards, or areas of mudslide (i.e., mudflow) hazards, for example, where there appears to be a conflict between a mapped boundary and actual field conditions. Any person contesting such interpretation may appeal as provided in Section 9.31.070.

(6) Remedy Violations. Take action to remedy violations of this Chapter as specified in Section 9.31.020 (c) herein.

(7) Act on Site Development Permits. Approve, conditionally approve, or deny Site Development Permits…

Certified IP Section 9.31.060 Provisions for Flood Hazard Reduction states, in relevant part:

(a) Standards of Construction. In all areas of special flood hazards, the following standards are required:

(1) Anchoring.

(A) All new constructions and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy…

(2) Constructions Materials and Methods.

(A) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(B) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(C) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(D) Within Zones A, AH, AO, AE, or VE, adequate drainage paths around structures on slopes shall be installed to guide flood waters around and wary from proposed structures.

(3) Elevation and Floodproofing.

(A) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. Nonresidential structures may meet the standards in Section 9.31.060(a)(3)(C). Upon the completion of the structure of the elevation of the lowest floor, including basement, such structure shall be certified by a registered professional engineer or surveyor and verified by the City Building Inspector to be properly elevated. Such certification shall be provided to the Director of Community Development…

(D) New construction and substantial improvements of any structure with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

1. Either a minimum of two openings having a total net area of not less than one (1) square inch for every square foot enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screen louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; or

2. Be certified to comply with a local floodproofing standard approved by the Federal Insurance Administration…

(b) Standards for Utilities.

(1) All new and replacement water supply and sanitary sewage systems shall be designed to eliminate or minimize infiltration of flood water into the system and discharge from systems into flood waters.

(2) On-site waste disposal systems shall be located to avoid impairment or contamination during flooding…

(f) Coastal High Hazard Areas. Within coastal high hazard areas established in Section 9.31.020(b), the following standards shall apply:

(1) All new construction and substantial improvements shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor excluding the pilings or columns is elevated to or above the base flood elevation.

(2) All new construction shall be located on the landward side of the reach of mean high tide.

(3) All new construction and substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such temporarily enclosed space shall not be used for human habitation.

(4) Fill shall not be used for structural support of structures or decks.

(5) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.

(6) The Director of Community Development shall obtain and maintain the following records:

(A) Certification by a registered engineer or architect that the proposed structure complies with Section 9.31.060(f)(1).

(B) The elevation (relation to mean sea level) of the bottom of the lowest structural member of the lower floor (excluding pilings or columns) of all new and substantially improved structures and whether such structures contain a basement.

(7) Satisfy the design criteria of the Coastal Floodplain Development Study and provide the required wave calculations prepared by a qualified registered Civil Engineer experienced in coastal engineering.

(8) Decks shall be constructed to meet the following criteria:

(A) Wood and raised concrete decks shall be constructed and adequately anchored on caissons or piles installed below the scour elevation and shall be designed by a structural Civil Engineer to withstand the forces of breaking waves and uplift forces to the satisfaction of the Building Official.

(B) Concrete decks constructed on existing ground do not require caissons or pile systems.

(C) All decks shall be designed to allow wave run-up to go over and under the deck without obstructions.

(9) Accessories, such as awnings, patio covers, or trellises, shall be adequately anchored and constructed on caisson or pile footing installed below the scour elevation.

(10) Spas shall be constructed to allow wave run-up under the spa without obstructions. Swimming pools and spas located below the base flood elevation are prohibited.

(11) The standards for seawalls, revetments, and other shoreline protective devices or construction that alters natural shoreline processes are contained in Section 9.31.040(d)(3) and in Section 9.27.030(f)

(12) Garages may be constructed at the existing beach elevation and below the base flood elevation if they are anchored on pilings or columns and designed with breakaway panel walls. Subterranean garages are prohibited…

(h) Flood-Related Erosion-Prone Areas.

(1) The Director of Community Development shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the City.

(2) Such permits shall be reviewed to determine whether the proposed site alterations and improvements will be reasonable safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.

(3) If a proposed construction or development is found to be in the path of flood-related erosion or would increase the erosion hazard, such construction or development shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard…

Certified IP Section 9.35.080 Minimum Number of Required Parking Stalls states, in

relevant part:

(e) Minimum Number of Required Stalls by Use. The minimum amount of parking provided for each use in a project shall be in accordance with the following ratios…

Residential Uses	
Use	**Required Number of Stalls**
(12) Single-family, detached:	
up to 4 bedrooms	2 covered stalls
over 4 bedrooms and more	2 covered stalls + 1 covered for every two bedrooms over 4 bedrooms

…

Certified IP Section 9.69.070 Basis for Action on Coastal Development Permit Applications states, in relevant part [<u>emphasis</u> added]:

(a) Approvals of Coastal Development Permits. In order for a Coastal Development Permit to be approved, all the following findings must be made, in writing, in addition to the findings required to approve other applications being considered concurrently:

<u>(1) That the proposed development is in conformity with the certified Local Coastal Program as defined in Chapter 9.75 of this Zoning Code. (Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096).</u>

<u>(2) That the proposed development, if located between the nearest public roadway and the sea or shoreline of any body of water, is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act. (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096).</u>

<u>(3) That the proposed development conforms with Public Resources Code Section 21000 and following and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. (Coastal Act/30333; 14 Cal. Code of Regulations/13096).</u>

(b) Denials of Coastal Development Permits. In order for a Coastal Development Permit to be denied, all the following findings must be made, in writing, in addition to the findings required to deny other applications being considered concurrently:

(1) That the proposed development is not in conformity with the certified Local Coastal Program as defined in Chapter 9.75 of this Zoning Code.

(Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096).

(2) That the proposed development, if located between the nearest public roadway and the sea or shoreline of any body of water, is not in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act. (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096).

(c) Additional findings for public access are found in Section 9.27.030(a) of the Zoning Code.

(d) That the proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources.

(e) That the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards.

(f) That the proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas.

(g) That the proposed development will conform with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or any other applicable adopted plans and programs.

Certified IP Section 9.75.020 "C" Definitions and Illustrations states, in relevant part:

Carport — a roofed structure providing space for the parking or storage of motor vehicles and enclosed on less than four sides…

Covered Parking — a parking stall(s) within a carport or completely under the overhanging portion of a building…

Certified IP Section 9.75.020 "G" Definitions and Illustrations states, in relevant part:

Garage — an enclosed building or structure, or part thereof, used or intended to be used for the parking and storage of motor vehicles…

Certified LUP (COSE) Policies, in relevant part:

Policy 1.7: Maintain and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing the adverse effects of waste water discharges, controlling runoff, preventing the depletion of ground water

supplies, preventing substantial interference with surface water flow, maintaining vegetation buffer areas protecting riparian habitats, minimizing alteration of natural streams, and street sweeping, shall be encouraged. (Coastal Act/30231)

Policy 1.8: Coordinate with the appropriate Regional Water Quality Control Board, the County of Orange and other agencies and organizations in the implementation of the National Pollution Discharge Elimination System Permits (NPDES) regulations to minimize adverse impacts on the quality of coastal waters.

Policy 2.1: Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas and potentially hazardous areas. (Coastal Act/30235, 30236, 30240, 30253)

Policy 2.2: Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. (Coastal Act/30250)

Policy 2.3: Control erosion during and following construction through proper grading techniques, vegetation replanting, and the installation of proper drainage, and erosion control improvements. (Coastal Act/30243)

Policy 2.4: Require the practice of proper soil management techniques to reduce erosion, sedimentation, and other soil-related problems. (Coastal Act/30243)

Policy 2.5: Lessen beach erosion by minimizing any natural changes or man-caused activities which would reduce the replenishment of sand to the beaches. (Coastal Act/30235)

Policy 2.6: Encourage public acquisition of significant land resources for open space when funds or opportunities are available. (Coastal Act/30240)

Policy 2.8: Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Open space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential. (Coastal Act/30233, 30253)

Policy 2.9: Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural landforms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with landforms. (Coastal Act/30240, 30250, 30251, 30253)

Policy 2.15: Assure that public safety is provided for in all new seaward construction or seaward additions to existing beachfront single family structures

in a manner that does not interfere, to the maximum extent feasible, with public access along the beach. (Coastal Act/30210-212, 30214, 30253)

Policy 2.16: Identify flood hazard areas and provide appropriate land use regulations, such as but not limited to the requirement that new development shall have the lowest floor, including basement, elevated to or above the base flood elevation, for areas subject to flooding in order to minimize risks to life and property. (Coastal Act/30235, 30253)

Policy 2.20: The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes and the restoration of optimum populations of marine organisms shall be ensured by, among other means, minimizing adverse effects of waste water discharges. Any specific plans and/or planned development district policies and specific development proposals, site plans and subdivision maps shall control runoff, prevent depletion of ground water supplies and substantial interference with surface water flow, encourage waste water reclamation, maintain natural vegetation buffer areas that protect riparian habitats, and minimize alteration of natural streams. (Coastal Act/30231).

Policy 3.2: Require development proposals in areas expected to contain important plant and animal communities and environmentally sensitive habitat areas, such as but not limited to marine refuge areas, riparian areas, wildlife movement corridors, wetlands, and significant tree stands, to include biological assessments and identify affected habitats. (Coastal Act/30230, 30240)

Policy 3.3: Encourage retention of natural vegetation and require revegetation of graded areas.

Policy 5.1: Design safe and efficient vehicular access to streets to ensure efficient vehicular ingress and egress. (Coastal Act/30252)

Policy 6.8: Preserve public access to the coastal areas through easement dedications thereby providing marine-oriented recreational uses so that transportation corridors may augment the City's open space system. (Coastal Act/30210, 30211, 30212)

Policy 7.3: Preserve public and private open space lands for active and passive recreational opportunities. (Coastal Act/30213)

Certified LUP (LUE) Policies, in relevant part:

Policy 1.3: Assure that land use intensities are consistent with capacities of existing and planned public service facilities. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development. (Coastal Act/30250, 30254)

Policy 2.1: Consider the impacts on surrounding land uses and infrastructure when reviewing proposals for new development. (Coastal Act/30250)

Policy 3.1: Require new development to contribute its share of the cost of providing necessary public services and facilities through equitable development fees and exactions. (Coastal Act/30250)

Policy 3.11: 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/30211)

Policy 3.12: Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212)

Policy 4.2: Consider the constraints of natural and man-made hazards in determining the location, type and intensities of new development. (Coastal Act/30240, 30253)

Policy 4.4: Preserve, maintain, enhance, and where feasible restore marine resource areas and coastal waters. Special protection shall be given to areas and species of special biological or economic significance. Sustain and where feasible restore general water quality and biological productivity as necessary to maintain optimum populations of marine organisms and for the protection of human health. (Coastal Act/30230)

Policy 4.10: Regulate the construction of non-recreational uses on coastal stretches with high predicted storm wave run-up to minimize risk of life and property damage. (Coastal Act/30253)