

**CALIFORNIA COASTAL COMMISSION**

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# W27a&b

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## STAFF REPORT: REGULAR CALENDAR

**Application Nos:** 5-18-0907 & 5-18-0908

**Applicant:** Nerja Investments, LLC

**Agent:** Joanne Kootsikas

**Location:** 219 & 221 17<sup>th</sup> St., Seal Beach, Orange County  
(APN: 199-064-55)

**Project Description:** Subdivide a 6,962 sq. ft. lot into two lots, construct a 3,604 sq. ft. 2-story single-family residence with 2-car garage on the first lot, and construct a 2,970 sq. ft. 2-story single-family residence with 2-car garage on the second lot.

**Staff Recommendation:** Denial

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### SUMMARY OF STAFF RECOMMENDATION:

This is a combined staff report for Coastal Development Permit (CDP) Applications No. 5-18-0907 and 5-18-0908. These two applications will share a combined report and hearing because both applications rely on the Commission's approval of a lot subdivision. A separate vote must be taken for each application. The applicant proposes to subdivide a 6,962 sq. ft. lot into two lots and construct a single family home and two-car garage on each resulting lot in Seal Beach. CDP Application No. 5-18-0907 proposes the construction of a new 3,604 sq. ft. single family residence and garage on a new 3,455 sq. ft. lot located at 219 17<sup>th</sup> Street. CDP Application No. 5-18-0908 proposes the construction of a new, 2,790 sq. ft. single family residence and garage on a new 3,508 sq. ft. lot located at 221 17<sup>th</sup> Street ([Exhibit 2](#)).

The existing 6,962 sq. ft. lot is currently undeveloped, and was formerly part of a rail right-of-way that extends from Electric Avenue Median Park, diagonally through a residential neighborhood, to the Naval Weapons Station in Seal Beach ([Exhibit 1](#)). The subject lot and surrounding undeveloped lots comprising the former right-of-way are irregular in shape and orientation with respect to the

surrounding pattern of development, and the proposed development includes two single family residences that would also be oriented at an irregular angle.

The development, as proposed, is inconsistent with Section 30253 of the Coastal Act, which requires new development minimize risks to life and property in areas of high geologic, flood, and fire hazard, and assure stability and structural integrity, respectively. The Naples-Seal Beach-Sunset Beach region is expected to experience extensive coastal flooding with as little as 3.3 ft. of sea-level rise (SLR) or as little as 1.6 ft. of SLR during a 100-year storm event ([Exhibit 4](#)). These thresholds of SLR are projected to occur during the anticipated duration of the development. The property is also located within one of the most vulnerable parts of Seal Beach, extending from the San Gabriel River, roughly south of Pacific Coast Highway and north of Electric Avenue, to the Anaheim Bay. This portion of Seal Beach is projected to have the highest vulnerability to multiple coastal hazards due to hydraulic connections to inland inundation and flooding from both the San Gabriel River and Anaheim Bay, wave impacts, and storm flooding. Thus, the subject property is located in a highly vulnerable portion of a highly vulnerable region, approximately 530 feet inland from the western edge of Anaheim Bay, and less than one mile southeast of the San Gabriel River.

The Interpretive Guidelines for Addressing SLR in LCPs and CDPs adopted by the Commission in 2015 state that to comply with Section 30253 of the Coastal Act, “projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development.” The proposed subdivision and construction of two single family residences is not designed or engineered for the changing water levels and associated impacts that are anticipated over the life of the development.

Approval of a subdivision at this site has the potential to set a precedent for subdivisions and development on the remaining undeveloped lots, would have cumulative impacts on coastal resources, and would prejudice the ability of Seal Beach to develop a Local Coastal Program (LCP) that is consistent with Chapter 3 Coastal Act policies.

No prehistoric archaeological resources have been recorded within a half-mile radius of the property. In accordance with the Commission’s Tribal Consultation procedures, the Native American Heritage Commission (NAHC) was contacted on March 12, 2019 to conduct a search of the Sacred Lands File. The results of this search were positive, indicating that the site is on or in the vicinity of lands considered sacred by native people. However, none of the affected tribes have expressed any concerns with the proposed development project or with the site in connection to the designated Sacred Land in the region. Were a development project approved for this site, staff would recommend a condition of approval requiring that cultural resource monitoring take place during ground disturbance. However, because the proposed development is inconsistent with several Sections of Chapter 3 of the Coastal Act, it must be denied.

The proposed subdivision is not consistent with Section 30253 of the Coastal Act because it does not *minimize* risks to life and property; rather, the proposal for the subdivision would encourage residential growth in an area that is extremely vulnerable to sea level rise impacts thereby increasing the risk to life and property. The two proposed houses would likely be impacted by flooding over the life of the development, and therefore could not necessarily assure structural stability in a hazardous area. Subdivisions can effectively increase the density and intensity of use of a site in a manner that is different than if the same density were built on a single, un-subdivided lot. For

example, if two houses were built on a single, multi-family zoned lot, the lot could be downzoned to only allow one single-family residence, and the second house would become existing non-conforming, and potentially removed if the site were to be redeveloped. Finally, approval of the proposed project would prejudice the ability of Seal Beach to develop an LCP that is consistent with Chapter 3 Coastal Act policies. The City received an LCP Grant from the Commission in 2016 and is currently working toward the completion of a sea level rise vulnerability assessment and Local Coastal Program update, and approval of the proposed project could be inconsistent with the policies drafted in the near future informed by the vulnerability assessment.

In denying the subject application, the Commission would only deny the subject project as proposed by the applicant. Denial of the subject application would not mean that the Commission is denying any and all development on the property. The applicant may propose other development on the site, which the Commission would review for consistency with the Chapter 3 policies of the Coastal Act.

Accordingly, staff recommends that the Commission **deny** the CDP application for the proposed project.

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Exhibit 6 – Coastal Hazards Analysis prepared by Nerja Investments

## **I. MOTIONS AND RESOLUTIONS**

### **Motion 1:**

*I move that the Commission **approve** Coastal Development Permit Application No. 5-18-0907 for the development proposed by the applicant.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Resolution 1:**

*The Commission hereby denies a coastal development permit for the proposed development on the ground that the development as conditioned will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. In addition, denial of the application is an action to which the California Environmental Quality Act does not apply.*

### **Motion 2:**

*I move that the Commission **approve** Coastal Development Permit Application No. 5-18-0908 proposed by the applicant.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Resolution 2:**

*The Commission hereby denies a coastal development permit for the proposed development on the ground that the development as conditioned will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. In addition, denial of the application is an action to which the California Environmental Quality Act does not apply.*

## II. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION & DESCRIPTION

The applicant proposes to subdivide a 6,962 sq. ft. lot into two lots and construct a single family home and two-car garage on each resulting lot in Seal Beach. CDP Application No. 5-18-0907 proposes the construction of a new 3,604 sq. ft. single family residence and garage on a new 3,455 sq. ft. lot located at 219 17<sup>th</sup> Street. CDP Application No. 5-18-0908 proposes the construction of a new, 2,790 sq. ft. single family residence and garage on a new 3,508 sq. ft. lot located at 221 17<sup>th</sup> Street ([Exhibit 2](#)).

The existing 6,962 sq. ft. lot is currently undeveloped, and has not been previously developed because the lot was formerly part of a rail right-of-way granted to the Pacific Electric Railway Company by the United States of America in 1946. The former rail right-of-way extends approximately 900 feet from Electric Avenue Median Park, diagonally through a residential neighborhood, to the Naval Weapons Station in Seal Beach ([Exhibit 1](#)). The subject lot and surrounding undeveloped lots comprising the former right-of-way are irregular in shape and orientation with respect to the surrounding pattern of development and the proposed development includes two single family residences that would also be oriented at an irregular angle of approximately 45 degrees.

The property is also located within one of the most vulnerable parts of Seal Beach, extending from the San Gabriel River, roughly south of Pacific Coast Highway and north of Electric Avenue, to the Anaheim Bay. This portion of Seal Beach is projected to have the highest vulnerability to multiple coastal hazards due to hydraulic connections to inland inundation and flooding from both the San Gabriel River and Anaheim Bay, wave impacts, and storm flooding. Thus, the subject property is located in a highly vulnerable portion of a highly vulnerable region, approximately 530 feet inland from the western edge of Anaheim Bay, and less than one mile southeast of the San Gabriel River.

The project site is a large, irregularly shaped lot in a developed, residential neighborhood in the Old Town area of Seal Beach. The predominant character of the surrounding area is one or two-story residential structures with parking accessed from rear alleyways. The street fronting the proposed development (17<sup>th</sup> Street) is predominantly made up of single family residences, orientated perpendicularly to the street with an average 12 ft. front yard setback. The subject single family residences are proposed to be oriented approximately 45 degrees off of the street, and would be the only houses on the street with such an orientation. Project plans show that the two proposed houses development would be set back 15ft-6 in. and 16 ft. (at their closet corner to the street). The subject parcel is designated as Residential High Density in the City's General Plan; however, the City's General Plan is not the standard of review for CDPs. The City of Seal Beach also does not have a certified Land Use Plan that would be used as guidance prior to the certification of a Local Coastal Program. The standard of review for these applications is the Chapter 3 policies of the Coastal Act.

Due to its history as a former rail right-of-way, significant ground disturbance associated with previous development is unlikely to have occurred onsite. Consistent with similar projects in the area, a cultural resources records search and field study was conducted on behalf of the applicant to identify any known or likely cultural resources that may result from proposed ground disturbance. The Cultural Resources Assessment, prepared by the Archeological Resource Management

Corporation ([Exhibit 5](#)), confirmed that “because of the former presence of the Pacific Electric Railway, there is potential for finding historic resources on the property,” however, no prehistoric archaeological resources had been recorded within a half-mile radius of the property. Geologically, Quaternary old shallow marine deposits of Pleistocene age, quaternary Paralic estuarine deposits, and Quaternary beach deposits underlie the site. The report notes that Quaternary surface deposits have a high likelihood of producing significant fossil specimens. The Cultural Resources Assessment recommends monitoring during rough grading for the project.

The California coastal zone has been home to native populations for thousands of years. The Cultural Resources Assessment notes that the largest Native American tribe close to the project site was the Gabrielino/Tongva settlement of Puvunga. In accordance with the Commission’s Tribal Consultation procedures, the Native American Heritage Commission (NAHC) was contacted on March 12, 2019 to conduct a search of the Sacred Lands File. 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. Staff initiated consultation via letter on March 19, 2019, along with a copy of the proposed plans, narrative description of the proposed project, and maps depicting the described site, and did not receive any requests for further consultation by any of the contacted entities.

The proposed project received approval in concept from the City of Seal Beach on September 11, 2018. The Subdivision Technical Review Committee of the City of Seal Beach adopted Resolution Number 02-16, approving a Tentative Parcel Map (TPM 2016-128) ([Exhibit 3](#)) with conditions on May 22, 2018. Condition No. 4 of TPM 2016-128 requires the final parcel map to be submitted to and approved by the Coastal Commission prior to being filed with the Orange County Recorder. Denial of the submitted parcel map will void the local approvals for the project.

## **B. DEVELOPMENT/HAZARDS**

Coastal Act Section 30106 states, in part (emphasis added):

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use...*

Coastal Act Section 30253 states, in part:

*New development shall do all of the following:*

- (a) Minimize risk to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any*

*way require the construction of protective devices that would substantially alter natural landforms along coastal bluffs and cliffs.*

The development, as proposed, consists of two components: the subdivision of one lot into two lots, and the construction of a single-family residence on each resulting lot. Subdivisions, including lot splits, are included in the Coastal Act's definition of "development" in Section 30106, and like all development in the coastal zone, require a CDP that can only be approved if the subdivision is found to be consistent with the Chapter 3 policies of the Coastal Act or, in an area with a certified LCP, with the policies of the LCP. Subdivisions can effectively increase the density and intensity of use of a site in a manner that is different than if the same density were built on a single, un-subdivided lot. For example, if two houses were built on a single, multi-family zoned lot, the lot could be downzoned to only allow one single-family residence, and the second house would become existing non-conforming, and potentially removed if the site were to be redeveloped. Two houses built on two separate multi-family zoned lots, would be still be legal structures if the land were downzoned to only allow one single-family residence. Subdivisions generally also multiply the number of sites for which the Commission and local governments may be compelled to approve development, even if inconsistent with the substantive resource protection policies, in order to avoid a regulatory taking, and can add cost and logistical complexity to community scale adaptation such as geological hazard abatement districts, buyouts, and conservation easements, making it more difficult to protect coastal resources.

### **Sea Level Rise**

On November 7, 2018, the Commission adopted a science update to its Sea Level Rise Policy Guidance. This guidance document serves as Interpretive Guidelines to help ensure that projects are designed and built in a way that minimizes risks to the development associated with SLR and avoids related impacts to coastal resources. These guidelines state, "to comply with Coastal Act Section 30253 or the equivalent LCP section, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development." The guidelines also include a step by step approach for addressing SLR in project design for CDPs.

The first step is to establish the projected SLR range for the proposed project. Using the methodology recommended by the 2018 update of the Ocean Protection Council (OPC) SLR Guidance, the projected SLR ranges for the proposed project are tailored to the nearest NOAA tide gauge, projected lifespan of the project, and risk aversion scenario. In the applicant's Coastal Hazards Analysis, the projected lifespan of the project is 75 years, which is consistent with the Commission guidance's recommended range of 75 – 100 years for residential development. Another principle of SLR risk analysis, the "risk aversion scenario," is used to account for variable risk tolerance of different types of development by establishing SLR probability thresholds for varying degrees of risk aversion. For example, a critical infrastructure asset, such as a hospital, should be analyzed with high risk aversion, and would use a more precautionary range of probabilities of amounts of SLR, while a parking lot or a bike path should be analyzed with lower risk aversion. In this case, the risk aversion scenario recommended by both the Commission and OPC Guidance for residential projects is Medium-High, as it represents a scenario that's relatively high within the range of possible future SLR scenarios and is therefore appropriately precautionary. The nearest NOAA tide gauge to Seal Beach is the "Los Angeles" gauge located in San Pedro. In general, the Commission recommends taking a precautionary approach by evaluating the higher



SLR projections, such as the medium-high risk aversion scenario, for most development. If constraints are identified with the higher SLR scenario, a lower SLR scenario and/or one or more intermediary scenarios may also be used to develop a broader understanding of the overall risk and timing that SLR poses a risk to the site or proposed development. In this case, intermediary scenarios are appropriate to help provide a better understanding of the timing of impacts during the lifespan of this development. Using these project-specific parameters, the appropriate SLR projections for this project are listed on **Table 1**.

**Table 1. Los Angeles Tide Gauge SLR Projections**

		Med.-High Risk Aversion	Approx. CoSMoS Scenario
Intermediary scenarios	High Emissions – 2040	1.2 ft.	1.6 ft.
	High Emissions – 2070	3.3 ft.	3.3 ft.
End of lifespan (2094) scenarios	High Emissions – 2090	5.3 ft.	5.7 ft.
	High Emissions – 2100	6.7 ft.	6.6 ft.

The next step is to determine how physical impacts from SLR may constrain the project site. Impacts from flooding and inundation, wave runup, and storm surge can be analyzed using the closest CoSMoS projections to the above scenarios ([Exhibit 4](#)) (It is important to note that the CoSMoS model does not include analysis of ground water, or SLR’s impact on water tables. As such, additional underground hydraulic connections may also exist in the area, meaning that CoSMoS projections should be considered to represent conservative effects for a given scenario).

The site is not located on a beach or coastal bluff, so a coastal erosion analysis is not necessary on this site. Another helpful tool for analysis is the OPC’s probability tables that estimate the likelihood that SLR will meet or exceed a particular height by a given decade. Using the medium-high risk aversion threshold as a benchmark, one can estimate the timing of levels of SLR that exceed the risk aversion threshold.

### **Intermediary scenarios**

According to CoSMoS projections of flooding due to 1.6 ft. of SLR alone, the subject lot would not be flooded. However, at 3.3 ft. SLR is projected to inundate the entirety of the subject lot, as well as the inland hazard area roughly extending from the San Gabriel River, south of Pacific Coast Highway and north of Electric Avenue, to Anaheim Bay. This inland inundation appears to be attributable to hydraulic connections to the San Gabriel River, since the rock revetment on the north edge of Anaheim Bay is not projected to be overtopped in this scenario. Analysis of wave runup and storm surge was done with the same scenarios of SLR plus a projected 100-year storm. The wave impact analysis showed that the entire subject site and most of the inland hazard area would be flooded at 1.6 ft., with even wider regional flooding at 3.3 ft. It is important to note that even at this relatively low amount of SLR, key infrastructure (the road network, electrical station, the storm drains, etc.) are vulnerable, which means the services these residential areas rely upon may be at risk. Furthermore, the inland flooding starts to “island” the beach-fronting part of Old Town, which means that even though these parts of the City may not be directly flooded, access and services may still be impacted. The OPC probability tables indicate that 1.2 ft. of SLR exceeds the medium-high risk aversion threshold between 2040 and 2050 in a high emissions scenario; 3.3 ft. of SLR exceeds the threshold between 2060 and 2070. Since the project lifespan ends in 2094, these amounts of SLR (and consequent flooding) can be anticipated during the lifespan of the development.

### **End of lifespan scenarios**

The 75-year lifespan in the applicant's Coastal Hazard Analysis would put the end of life of the structure at 2094 (2019+75) or later. The best available science provides SLR projections for the beginning of each decade, so projected levels of SLR at both 2090 and 2100 were analyzed, which are 5.7 and 6.6 ft. of SLR, respectively. Flooding due to these amounts of SLR alone is projected to completely inundate the subject lot and the inland hazard area. In both of these scenarios, the subject site (and broader inland hazard area) are subject to flooding from multiple hydraulic connections including to the San Gabriel river, overtopping of the beach, overtopping of the rock revetment on the north edge of Anaheim Bay, inland flooding from the Seal beach National Wildlife refuge, and the Los Cerritos Wetlands. Analysis of wave runup and storm surge was also done for these scenarios of SLR plus a projected 100-year storm. The wave impact analysis showed the entire subject site and a much more significant inland area to be flooded at 5.7 ft. of SLR, with only marginally more at 6.6 ft. It is important to note that at 5.7 ft. of SLR, inland flooding is so severe that the beach fronting portion of Old Town may become an island and that whole sections of the sandy beach may disappear. The City's ability to provide services to the subject site may also be severely impaired. The OPC probability tables indicate that 5.3 ft. of SLR exceeds the medium-high risk aversion threshold between 2090 and 2100 in the low emissions scenario, and 6.7 ft. of SLR also exceeds the threshold between 2090 and 2100. Since the project lifespan ends in 2094, these amounts of SLR (and consequent flooding) can be anticipated during or toward the end of the lifespan of the development.

### **Impacts to Coastal Resources**

The Commission's adopted 2018 Sea Level Rise Policy Guidance provides strategies appropriate for addressing sea level rise, consistent with the Coastal Act. With regard to subdivisions, it provides: "Limit subdivisions in areas vulnerable to sea level rise: Prohibit any new land divisions, including subdivisions, lot splits, lot line adjustments, and/or certificates of compliance that create new beachfront or blufftop lots unless the lots can meet specific criteria that ensure that when the lots are developed, the development will not be exposed to hazards or pose any risks to protection of coastal resources." Such specific criteria could include: resultant parcels contain a buildable area in which development on new lots would comply with LCP policies protecting coastal resources, would remain located on private property despite the migration of the public trust boundary, not require the future construction or augmentation of a shoreline protective device, be adequately served by public services (e.g., water, sewer, and safe, legal, all-weather access as applicable) over the anticipated duration of the development, and otherwise be consistent with all LCP policies. While this approach anticipates impacts from SLR on beachfront and blufftop lots, the same logic applies to inland lots that will be impacted by SLR.

The proposed subdivision would not contain buildable area to comply with Chapter 3 policies protecting coastal resources since the entirety of both resulting parcels would be subject to coastal hazards. The significant regional flooding encompassing the subject property may also subject it to the public trust. The subdivision itself would not require its own shoreline protective device, but it could benefit from and contribute to the need for regional SLR adaptation measures that may include augmentation of existing shoreline protective devices. The new development would not be entitled to coastal protection, as stated in Section 30235 of the Coastal Act. It is unclear at this time what, if any, community-scale SLR adaptation might be implemented in Seal Beach in the future. However, even a community-scale SLR adaptation project such as levees or community-scale

seawalls may not ameliorate risk at this site under high and extreme scenarios, and will still be subject to potential ground water flooding. Lastly, regional flooding in this area is so significant that it could cut off whole portions of Seal Beach from the mainland, whereby the subject site would be unlikely to be adequately served by public services over the anticipated duration of the development. In sum, the proposed development is inconsistent with Section 30253 of the Coastal Act as it relates to subdivisions in hazardous areas.

The Coastal Act's Chapter 3 resource policies treat development in hazardous areas differently than other development. Section 30253 of the Coastal Act requires siting new development such that it minimizes risks to life and property in flood hazard areas, assures stability and structural integrity, and does not require the construction of protective devices that substantially alter natural landforms. Concurrently, the Coastal Act also requires concentrating development in existing developed areas able to accommodate it (as required by Section 30250<sup>1</sup>), which provides more opportunities for people to live near places they work and recreate, such as the beach, thus reducing vehicle miles traveled and preserving open spaces that might otherwise have to be developed, and thereby, reduces impacts to coastal resources. Taken together, these Coastal Act policies support maintaining housing density in safe areas to assure the stability and structural integrity of development. On a broader scale, maintaining density in locations at reduced risks from sea level rise will have the net effect of helping to maintain housing stock that is safe from hazards and relieve development pressure in unsafe areas in the long-term, thus carrying out Section 30253's hazards policies on a community-scale.

Conversely, limiting development in areas that are likely to be affected by coastal hazards facilitates the protection of coastal resources. As sea levels rise, beaches trapped between the rising seas and the first line of development could be threatened. Often, the first line of development impedes the ability of the beach to naturally migrate inland over time and reduces the sources of sand supply created by erosion that contribute to beach accretion. This process is commonly referred to as "coastal squeeze," and leads to the narrowing and eventual loss of beaches and other shoreline habitats. Without strategic planning, this may lead to economic losses due to reduced recreational visitors, and also to occasional flooding of public coastal facilities and related damages. The loss of beach area from coastal squeeze represents a loss of many coastal resources protected by the Coastal Act, including public access, recreational opportunities and associated economic benefits, habitats and marine resources, scenic and visual qualities of coastal communities. Coastal squeeze also presents challenges for carrying out the public trust doctrine, and presents a significant environmental justice issue if the public loses its ability to access the shore as public beach spaces diminish over time. Coastal squeeze would also decrease the likelihood of successful preservation of the coastal resources associated with the beach, as required by Sections 30210, 30220, 30240(b), 30251 of the Coastal Act.

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<sup>1</sup> Section 30250(a): Location; existing developed area. (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Here, the project involves subdivision of a lot into two lots and construction of single-family residences on each lot. The proposed development, if approved, would increase residential development in a hazardous location that would not minimize risks to life and property. If the Commission were to approve the proposed project, it would encourage additional new development in a hazardous area and prejudice the ability of the City of Seal Beach to prepare an LCP that is consistent with the Chapter 3 policies of the Coastal Act. The Commission, therefore, denies the project as proposed by the applicant.

### **C. PUBLIC ACCESS**

Coastal Act Section 30212 states, in part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Coastal Act Section 30252 states:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

The Coastal Commission generally reviews new development for consistency with on-site parking standards in order to minimize increased demand for public street parking, and thus protect public parking for members of the public who wish to access the coast. Consistent with past Commission actions in Seal Beach and residential Orange County, new residential developments should provide two off-street spaces per residential unit. The applicant has proposed two parking spaces for each of the two single family residences, which is consistent with the past Commission action. The parking spaces for each residence are proposed to be located in a 2-car garage at the rear of the building. All of the parking would be accessed through the rear alley, which does not provide public parking spaces. In addition, no curb cuts would be created for the project, so public parking along 17<sup>th</sup> Street would not be adversely impacted by the project.

Section 30212(a) of the Coastal Act requires that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects.

Public access from the nearest public roadway would not be impacted by the proposed development. The proposed parking is sufficient for the two proposed single family residences and would not impact public parking or access surrounding the project site and there is adequate existing public access to the coast nearby. Therefore, the proposed project is consistent with Section 30252 and Section 30212(a) of the Coastal Act. However, it is inconsistent with other sections of Chapter 3, specifically Section 30253, and therefore must be denied.

#### **D. LOCAL COASTAL PROGRAM (LCP)**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. On July 28, 1983, the Commission denied the proposed City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of Title 14 of the California Code of Regulations, the Commission’s certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time. However, the City received an LCP Grant from the Commission in 2016 and is working toward the completion of a sea level rise vulnerability assessment and Local Coastal Program update.

Siting new development in an area that is highly vulnerable to coastal hazards could set a precedent for future development in this area and other areas of the City that are hazardous or unlikely to be resilient from future sea level rise impacts. Although SLR adaptation is a larger issue that should be addressed by the City through its Local Coastal Program, a proposal that increases risk to property in the manner currently proposed could prejudice the City’s ability to prepare a LCP that is consistent with Chapter 3 of the Coastal Act.

#### **E. CONCLUSION**

The applications before the Commission are for the subdivision of one existing lot into two lots, and construction of one single-family home on each resulting lot. The proposed development is not consistent with Section 30253 of the Coastal Act because it would expand residential development in an area vulnerable to sea level rise and, hence, would not minimize risks to life and property in a hazardous area. Approval of the project would set a precedent that would encourage residential development in this hazardous location, which could prejudice the ability of the City to prepare a LCP that is consistent with Chapter 3 of the Coastal Act. The Commission, therefore, denies the applications. In denying the subject applications, the Commission is only reviewing the development currently proposed by the applicant. Denial of these applications would not mean that the Commission is denying any and all development on the property. The applicant is free to propose other development on the site, which the Commission would review for consistency with Chapter 3 policies of the Coastal Act.

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of

Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. However, CEQA does not apply to private projects that public agencies deny or disapprove. Pub. Res. Code § 21080(b)(5). *See also* Cal. Code Regs., tit. 14, § 15061(b)(4). Accordingly, because the Commission is denying the proposed project, it is not required to adopt findings regarding mitigation measures or alternatives.

In addition, the City of Seal Beach, as the lead agency for this proposed project for CEQA purposes, determined the project to be categorically exempt from CEQA requirements, under Class 15 of the categorical exemptions developed pursuant to CEQA section 21084, as a “minor land division.” *See* Cal. Code Regs., tit. 14, § 15315.

### **Appendix A - Substantive File Documents**

- Sea Level Rise Policy Guidance, Original Guidance – August 12, 2015
- Sea Level Rise Science Update – November 7, 2018
- State of California Sea-Level Rise Guidance – 2018 Update