

CALIFORNIA COASTAL COMMISSION

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W13a

ADDENDUM

September 6, 2022

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W13a, APPLICATION NO. 5-21-0555 (Nerja Investments, LLC) FOR THE COMMISSION MEETING OF WEDNESDAY, SEPTEMBER 7, 2022.**

This addendum is designed to provide a response to the submitted correspondence and a minor correction to the staff report dated August 18, 2022.

I. RESPONSE TO CORRESPONDENCE

Since the publication of the staff report, the Commission has received two public comments. The comments are included within the Public Correspondence for this item. Commission staff recommends that the Commission incorporate the responses below into the findings included in the August 18, 2022 staff report. The comments and staff's responses are summarized below:

a) Comment from the Gabrieleno Band of Mission Indians – Kizh Nation

The Gabrieleno Band of Mission Indians – Kizh Nation submitted a comment with concerns regarding Special Condition 4 for the above referenced CDP application. The comment raised that each tribe consulting on a project located in an area of geographic and ancestral importance must provide its own mitigation measures to protect the tribal cultural resources, and provided a list of proposed tribal cultural resource mitigation measures that are specific to the Kizh Nation. The Commission notes that Special Condition 4 already states, under subsection A.1., that "...The methods of protection of Tribal Cultural Resources shall be developed in consultation with the appropriate Native American tribal government(s)". The Commission further notes that, because multiple tribal entities have geographic and ancestral ties to the project area, it is inappropriate to incorporate the Tribe's proposed mitigation measures due to their requirements that the Kizh Nation approve all Native American monitors and have exclusive say over procedures for treatment of discovered tribal cultural resources. In any case, as Special Condition 4

outlines, the Kizh Nation's proposed mitigation measures would be considered along with other potentially affected tribes.

b) Comment from Carla Hanzlik

The comment raised that the proposed 4-unit apartment structure is inconsistent with the community character of the neighborhood and the design of the structure limits ventilation. The Commission finds that the appearance of the structure from the fronting street (Seal Beach Blvd) or the alley does not materially differ from that of the neighboring structures ([Exhibit 2](#), pages 5-6). Further, the Commission finds the irregularly shaped lot due to the site's history as a former right of way, and the consequentially irregularly oriented units, will not adversely impact coastal resources in the neighborhood or prejudice the City of Seal Beach's ability to prepare a Local Coastal Program. Lastly, the Commission finds that ventilation of the proposed structure is not a coastal resource concern.

II. CHANGES TO STAFF REPORT

The following changes and corrections are made to the staff report dated August 18, 2022. Language to be added is identified in underline.

a) At the end of the staff report, add Appendix B, as follows:

APPENDIX B – Cultural Resources Significance Testing Procedures

A. An applicant seeking to recommence construction following discovery of 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), the consulting Tribes(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 30 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 testing measures 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 both the Kumeyaay Cultural Monitor's recommendation and the project archaeologist's recommendation as to whether the deposits are significant. The project archaeologist's recommendation shall be made in consultation with the Native American monitors, the consulting Tribe(s), 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.

- i. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director and the Kumeyaay Cultural Monitor/MLD a supplementary Archaeological Plan in accordance with subsection B of this condition and all other relevant subsections.
- ii. 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. All unearthed archaeological resources or tribal cultural resources will be collected and temporarily stored in a secure location onsite (or as otherwise agreed upon by the archaeological monitor and the traditionally and culturally affiliated Tribe(s)) for later reburial onsite.

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 Archaeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the consulting Tribe(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection C below. The Supplementary Archaeological 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 made up of qualified archaeologists convened in accordance with current professional practice. Representatives of traditionally and culturally affiliated Tribes included on an updated NAHC list shall also be given an opportunity to review and submit written comments on the required plans. 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 and Native American representatives or explain why the recommendations were rejected. Furthermore, upon completion of the 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.