

CALIFORNIA COASTAL COMMISSION

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W13a

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0555

Applicant: Nerja Investments, LLC

Location: 247 Seal Beach Blvd, Seal Beach, Orange County
(APN: 199-062-61)

Project Description: On a vacant lot, construction of a 2-story, 10,792 sq. ft., 4-unit apartment building, with each unit to include 3 bedrooms, 3.5 bathrooms, a 2-car garage, front patio, and 2nd floor balcony.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is construction of a 2-story, 4-unit apartment building each with 3 bedrooms, 3.5 bathrooms, a 2-car garage, front patio, and 2nd floor balcony on a vacant 10,541 sq. ft. lot at 247 Seal Beach Boulevard in Seal Beach, Orange County.

The lot 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. The subject lot and surrounding vacant 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 four units that would be oriented at an irregular angle. However, the size, mass, and scale of the proposed units would

be consistent with the pattern of development of the neighborhood. The project site is zoned Residential High Density-20 (RHD20), which permits single-family residences and multi-family residences to be developed.

While the proposed project is located on an inland lot, it is located in a highly vulnerable portion of a highly vulnerable region, approximately 350 ft. inland of the Pacific Ocean (specifically Anaheim Bay), and about one mile southeast of the San Gabriel River, where coastal hazards exist and could adversely impact the development. According to the CoSMoS sea level rise model, the project site is susceptible to flooding if 1.6 ft. of sea level rise occurs with a 100-year storm scenario, which may occur before the anticipated end of the structure's 75-year expected life. Therefore, to ensure that no shoreline protective device is proposed to protect the development pursuant to this permit, staff recommends the Commission impose **Special Condition 1**, requiring the applicant to agree that no future shoreline protective device may be relied on to protect the development authorized by this permit. In addition, this condition requires that if any part of the proposed development becomes threatened by coastal hazards in the future, the threatened development must be removed rather than protected in place. Staff also recommends the Commission impose **Special Condition 2**, requiring the applicant to assume the potential risk of injury and damage arising from coastal hazards that may threaten the development. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated. Thus, staff also recommends that the Commission impose **Special Condition 3**, which requires an amendment to Coastal Development Permit (CDP) No. 5-21-0555, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions, unless the Executive Director determines that no amendment or new coastal development permit is legally required.

Because the proposed development is located in an area with high potential for the presence of cultural resources, **Special Condition 4** requires the applicant to submit a Cultural Resource Treatment and Monitoring Plan. During and post-construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, staff recommends the Commission impose **Special Condition 5** which provides standards for the safe storage of construction materials and the safe disposal of construction debris. Staff also recommends the Commission impose **Special Condition 6**, which requires that all vegetated landscaped areas only consist of native plants or non-native drought tolerant plants that are non-invasive. To ensure that any prospective future owner(s) of the properties are made aware of the applicability of the conditions of this permit, staff recommends the Commission impose **Special Condition 7** which requires the property owner to record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

As conditioned, the proposed project conforms with Chapter 3 of the Coastal Act, which is the standard of review because the City of Seal Beach does not have a certified Local Coastal Program. The motion to approve the CDP application is on **Page 4**.

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EXHIBITS

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

[Exhibit 2 – Site Plans](#)

[Exhibit 3 – CoSMoS Sea Level Rise Projections](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-21-0555 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 Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 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 applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. No Future Shoreline Protective Device.

- A. By acceptance of this permit, the permittee agrees, on behalf of themselves and any successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-21-0555 including, but not limited to, the residential structures and foundations in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other natural hazards in the future. By acceptance of this permit, the permittee hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235, any similar provision of a certified LCP, or any applicable law.
- B. By acceptance of this permit, the permittee further agrees, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:
 - i. The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of bluff or shoreline protective devices;
 - ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
 - iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
 - iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP No. 5-21-0555 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

- 2. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards including but not limited to waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the permittees and the

property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. **Future Development.** This permit is only for the development described in CDP No. 5-21-0555. Any future improvements to the residence and foundation and any other future improvements including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations Section 13252, shall require an amendment to CDP No. 5-21-0555 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government, unless the Executive Director determines that no amendment or new coastal development permit is legally required.

4. **Cultural Resources Treatment and Monitoring Plan.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a Cultural Resources and Treatment Monitoring Plan prepared by a qualified professional, which shall incorporate the following measures and procedures:
 1. The monitoring plan shall ensure that any prehistoric archaeological or paleontological or Native American 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 appropriate Native American tribal government(s). To this end, the cultural resources monitoring plan shall require that archaeological and Native American monitors be present during all grading operations and subsurface construction activity that has the potential to impact cultural resources. If the site is a shared prehistoric territory, one Native American monitor from each affected tribe shall be present during all ground disturbance.
 2. 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/cultural or paleontological resources. Prior to grading operations, a copy of all archeological documents and reports shall be provided to the Native American monitors.
 3. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s)

with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent(s) (MLD) when State Law mandates identification of an MLD, shall monitor all project grading and subsurface construction activity (such as trenching for utilities) that has the potential to impact cultural resources, as required in the approved cultural resources monitoring plan required above.

4. The permittee shall provide sufficient archaeological and 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.
 5. If any archaeological or 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. Treatment of the discovery shall be determined by the appropriate monitor or the MLD. 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 permittee shall report all discovered resources as soon as possible, by phone and/or by email to the Executive Director. The permittee shall provide the significance testing results and analysis to the Executive Director, if applicable.
- 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 permittee 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.
- 5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:
- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
 - B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
 - C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;

- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- N. During construction of the project, no runoff, site drainage or dewatering shall be directed from the site into any street, alley or storm drain, unless specifically authorized by the California Regional Water Quality Control Board.

6. Landscaping-Drought Tolerant, Non-Invasive Plants.

- A. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall

be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).

- B. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

- 7. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval, documentation demonstrating that the landowner has executed and recorded against the parcel governed by this permit 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; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction recorded against title to the property shall include a legal description of that entire parcel. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Location & Description

The proposed project is construction of a 2-story, 4-unit apartment building, each unit with 3 bedrooms, 3.5 bathrooms, 2-car garage, front patio, and 2nd floor balcony on a vacant 10,541 sq. ft. lot ([Exhibit 2](#)). The total livable area is 10,792 sq. ft. and the proposed building height is 25 ft. The City of Seal Beach, which does not have a certified Local Coastal Program, designates the project site as Residential High Density (RHD20) in its zoning code with a maximum development of 25 dwelling units/acre, or one unit per 2,178 sq. ft. Thus, per the uncertified zoning code, the site could support four residential units. The project site is located on the seaward side of Pacific Coast Highway in a residential neighborhood in the Old Town area of Seal Beach.

The existing 10,541 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 government 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 would also be oriented at an irregular angle of approximately 45 degrees. The predominant character of the surrounding area is one or two-story residential structures and orientated perpendicularly to the street ([Exhibit 2](#)). However, the size, mass, and scale of the proposed units would be consistent with the pattern of development of the neighborhood. The project site is not located between the first public road and the sea. There are no public coastal views within the vicinity of the project site, so the project will not adversely impact coastal views.

B. Hazards

Section 30251 of the Coastal Act states, in pertinent part:

...Permitted development shall be cited and designed...to minimize the alteration of natural land forms.

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

New development shall do all of the following:

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

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

The property is 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 in the City 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 350 ft. inland of the Pacific Ocean (specifically Anaheim Bay) and about one mile southeast of the San Gabriel River, and potential hazards issues that must be addressed include the potential for flooding and storm hazards. These hazards may be exacerbated by the sea level rise that is expected to occur over the coming decades.

Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or

1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years. Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, there is unequivocal evidence that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

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

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

On the California coast, the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore in many locations, which will result in increased flooding, erosion, and storm impacts to coastal areas. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to

increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

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

According to CoSMoS projections of flooding, with 1.6 ft of SLR alone, the subject lot would not be flooded; however, with 1.6 ft of SLR and a 100-year storm scenario, the project site is vulnerable to flooding. In addition, according to CoSMoS, the project site is susceptible to flooding with 3.3 ft of sea level rise and a no storm scenario, which may occur before the anticipated end of the structure’s 75-year expected life ([Exhibit 3](#)). Furthermore, 3.3 ft of SLR is projected to inundate the entirety of the subject lot, as well as an 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 does not appear 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. In those scenarios, CoSMoS shows 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.

Given the project site's location within a potentially hazardous area, the applicant prepared a coastal hazards study (Sea Level Rise Hazard Discussion for 247 Seal Beach Boulevard, Seal Beach, Orange County, California prepared by Geosoils, Inc. dated July 23, 2019) to analyze potential risks to the project site resulting from coastal flooding and other hazards. The applicant's study states that the proposed structures would be "safe from flooding the entire 75-year theoretical design life", using less severe SLR scenarios. It also states that the lowest finished floor elevation of 11.3 ft. NAVD88 is at minimum 3 ft. above the natural lot grade and 5 ft. above the highest adjacent street flow lines, and with 6 ft. of SLR in 75 years from today, the natural groundwater will still be well below that elevation at the site.

While the applicant's study has attempted to explain that the proposed residence would be safe from coastal flooding risks, it relied on the City's existing flood control system (levees) and discussed the possibility of increasing the height of the levees as an adaptation measure in the future. However, as shown through CoSMoS, the project site would still be susceptible to flooding if 1.6 ft. of sea level rise (with a 100-year storm scenario) occurs even with these levees in place, because flooding may come from the bay which is not bound by levees, and may seep up through the stormdrain system. So while the project is located inland of the first line of residences and the nearby San Gabriel River, Anaheim Bay and Seal Beach National Wildlife Sanctuary and is not expected to be subject to wave action, flooding may still occur during the lifetime of the development and affect the residences and surrounding streets and utilities.

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

In this case, in terms of sea level rise adaptation measures, the applicant has proposed to elevate the first finished floor approximately 3 feet above the existing natural lot grade of 8.3 ft. NAVD88 to 11.3 ft. NAVD88. All of the walls and/or structure from 11.3 ft. NAVD88 and below will be solid concrete. An additional 1.5 feet above 11.3 ft. NAVD88, all wood framing will be waterproofed with impermeable bituthene sheeting, therefore, all of the structures will be waterproofed to approximately 12.8 ft. NAVD88 (almost 13 ft. NAVD88). Generally, for new development in this area of Seal Beach, a minimum of 12 ft. NAVD88 is preferred for the first finished floor to accommodate for 6.6 ft. of sea level rise plus a king tide. Thus, the applicant's proposal to waterproof 1.5 ft. above the first finished floor (waterproof to 12.8 ft. NAVD88) is generally consistent with the preferred waterproofing measures for development in this area of Seal Beach, although water could reach an elevation greater than the foundation and greater than the lower waterproofed walls.

The applicant's proposed elevated foundation and waterproofing may not keep the project safe from flooding during its anticipated lifespan. Section 30253 prohibits new development that would require construction of a protective device that would substantially alter natural landforms along bluffs or cliffs. Here, the applicant has not proposed to construct a shoreline protection device and no shoreline protection would be authorized by this permit; however, the applicant or a successor-in-interest could request a shoreline protection device at some point in the future. Although the project site is not a beachfront site, with expected sea level rise and flooding, the area between the project site and ocean waters is expected to narrow with time. Likewise, flooding from the San Gabriel River, Anaheim Bay and Seal Beach National Wildlife Sanctuary harbor is expected to approach the project site in the future, which in turn raises the question of a possible request for future shoreline protection at the site.

In addition, as sea levels rise, and beaches and bluffs migrate inland, maintaining residential development adjacent to the shoreline will in many cases cause the narrowing and eventual loss of beaches, dunes and other shoreline habitats as well as the loss of offshore recreational areas. This narrowing, often referred to as "coastal squeeze," can occur when shoreline protection or other fixed development prevents the landward migration of the beach that would have otherwise occurred, and it can also occur when the beach migrates up to and underneath elevated structures. Failure to address impacts related to coastal squeeze has the potential to result in significant conflicts with the Coastal Act, which was enacted for the purpose of protecting California's coastal resources. It also presents challenges for upholding the Public Trust Doctrine. Furthermore, coastal squeeze presents a significant environmental justice issue if residents adjacent to the shoreline continue to enjoy shoreline access, while the general public is blocked from accessing the shore.¹

By substituting hard materials (e.g., rock, concrete) in place of more erodible natural substrates (e.g., sand, soils, terrace deposits, sedimentary rocks), shoreline protection devices can also change wave reflection patterns, cause scour or winnowing of beach sediments along the shoreline, and increase erosion rates at unarmored locations up- and down-coast of the structure ("end effects"). In certain locations, shoreline protection devices may also interrupt or interfere with longshore and cross-shore sediment transport, resulting in deposition of sand in one location at the expense of other locations further "down drift" along the coast. Broader effects of shoreline protection devices include changes to the recreational and beach use experience, impacts to beach and other coastal ecosystems, and impairment of the aesthetic and visual character of the coast.

Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could "create [or] contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the

¹ California Coastal Commission, Residential Adaptation Policy Guidance, March 2018.

construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” Section 30235 of the Coastal Act recognizes that existing development may be protected by shoreline protective devices subject to certain conditions. This limitation is particularly important when considering new development, such as in this case, because if it is known that a new development may need shoreline protection in the future, it would be unlikely that such development could be found to be consistent with Section 30253 of the Coastal Act, which requires new development to minimize risks to life and property and assure stability and structural integrity. Additionally, Section 30251 requires that permitted development be sited and designed to minimize the alteration of natural landforms. Therefore, the Commission’s action on this project must consider potential future effects of wave uprush, flooding, and storm events (with sea-level rise considerations). The Commission must also consider impacts of coastal squeeze on public access and recreation. In particular, as sea level rises, coastal squeeze will eventually result in the loss of not only vulnerable intertidal and low-lying habitats, but also recreational beach areas and surfing resources, if hardened shorelines are constructed and allowed to remain in the future as a way to protect existing development. Therefore, it must be clear that, as new development, the entire development approved by this permit is not entitled to a shoreline protection device now or in the future. **Special Condition 1** is imposed to require the applicant to acknowledge that the applicant has no right to a shoreline protective device for the project and that no future shoreline protective device will be allowed on site to protect the proposed development.

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

However, as discussed, the best available science indicates that sea level rise is occurring and coastal hazards may threaten the project site to some extent before the end of its economic life, although there are uncertainties inherent in predicting exactly how and when the impacts discussed above will occur. Therefore, **Special Condition 1** also requires that if any part of the proposed development becomes threatened by coastal hazards in the future, the permittees must remove this permitted development if (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device that is inconsistent with the coastal resource protection policies of the Coastal Act or certified LCP. This condition recognizes that predictions of the future cannot be made with certainty, thereby allowing for development that is currently safe and expected to be safe for the life of the development, but ensuring that the future risks of property

damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of new development, and not the public.

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

Furthermore, any potential changes to the proposed project may result in adverse impacts to coastal resources. In further consideration of the hazardous project location, **Special Condition 3** requires an amendment to Coastal Development Permit (CDP) No. 5-21-0555, or an additional CDP, for any future development on the site that would otherwise be exempt from permit conditions, unless the Executive Director determines that no amendment or new coastal development permit is legally required. Any repair and maintenance work that would normally be exempt from a coastal development permit would still be exempt.

The proposed development, as conditioned, is consistent with Sections 30251 and 30253 of the Coastal Act, which require that risks to life and property be minimized, that stability and structural integrity are assured, and that proposed new development neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. Approval of the project, as conditioned, also is consistent with the Commission's obligation to manage and protect public trust resources.

C. Archeological and Tribal Cultural Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Due to the site's history as a former rail right of way, significant ground disturbance associated with previous development is unlikely to have occurred onsite. Geologically, Quaternary old shallow marine deposits of Pleistocene age, quaternary Paralic estuarine deposits, and Quaternary beach deposits underlie the site. Quaternary surface deposits have a high likelihood of producing significant fossil specimens.

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. While the walk-through field survey did not identify any significant archeological deposits on site and Cultural Resources Assessment, prepared by the Archeological Resource Management Corporation, dated October 2019, found that no prehistoric archaeological resources had been recorded within a half-mile radius of the property, the Assessment also confirmed that “because of the former presence of the Pacific Electric Railway, there is potential for finding historic resources on the property” and recommended [archeological?] monitoring during the project’s proposed grading activities. The Cultural Resources Assessment also notes that the largest Native American tribe close to the project site was the Gabrieleno/Tongva settlement of Puvunga.

The California coastal zone has been home to native populations for thousands of years. In accordance with the Commission’s Tribal Consultation procedures, staff notified all potentially affected tribal entities listed on the Native American Heritage Commission contact list via letter on June 13, 2022 and included a narrative description of the proposed project and maps depicting the described site. The following day, the Gabrieleno Band of Mission Indians – Kizh Nation requested consultation. On August 16, 2022, staff consulted with Chairman Andrew Salas and Matthew Teutimez, Tribal Biologist via phone call. Chairman Salas described the site as part of a significant tribal cultural landscape that also has very high potential to contain subsurface tribal cultural resources. Therefore, the Commission imposes **Special Condition 4**, which requires the applicant to submit a Cultural Resource Treatment and Monitoring Plan that must be reviewed and approved by the Executive Director prior to issuance of the permit. This plan will ensure that appropriate Native American monitors and archeological professionals are present during all ground-disturbing activities and that any resources found are treated in accordance with best practices, including best practices identified through consultation with the appropriate tribal government(s), including the Kizh Nation. As conditioned, the project can be found consistent with Section 30244 of the Coastal Act.

D. Public Access

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 30250 of the Coastal Act states:

(a) New residential...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources....

Section 30210 of the Coastal Act requires that public access to the coast be provided and Section 30250 requires that new residential development will be located where it will not have cumulative adverse impacts on coastal resources, including public access.

Four two-car attached garages will be provided on-site, one for each of the proposed units, for a total of eight covered parking spaces. The garages will be accessed through an alleyway parallel to Seal Beach Boulevard. This alleyway is used to access garages along Seal Beach Boulevard and 17th Street, but it does not provide public parking spaces. The project also does not propose any curb cuts along Seal Beach Boulevard, so no public parking spaces will be impacted. The proposed residence adheres to the City's setback requirements and does not encroach onto the public right-of-way along Seal Beach Boulevard.

While the proposed project does not currently result in any adverse impacts to public access, future development may result in such impacts. To ensure that the future development of the property can be evaluated for consistency with the public access policies of the Coastal Act, the Commission imposes **Special Condition 3**, which requires the applicant to obtain a permit amendment or a new permit for future improvements that would change the intensity of use of the site or the adjacent public right of way.

Therefore, as conditioned, the project is consistent with Sections 30210 and 30250 of the Coastal Act because, as conditioned, it will not have any new adverse impacts on public access to the coast or to nearby recreational facilities or displace any public vehicle parking spaces that are used for coastal access.

E. Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project has the potential to adversely impact the water quality of the nearby Pacific Ocean. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. The applicants have indicated that roof and surface runoff will be managed onsite through the use of downspouts and a drainage pipe to capture and filter runoff and direct flow to the public storm drains located along Seal Beach Boulevard and the rear alleyway. Thus, to protect water quality and biological productivity, the Commission imposes **Special Condition 5**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

While the proposed landscaping consists of non-invasive and drought tolerant plants, future landscaping may not consist of such plants. For water conservation, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). In order to make sure that any onsite landscaping minimizes the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition 6**, which imposes landscape controls that require that all vegetated landscaped areas consist of native or non-native, drought tolerant plants, which are non-invasive and to implement the proposed drainage plan so that water is captured and filtered on site.

Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. Deed Restriction

To ensure that any prospective future owner(s) of the property is made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 7**, which requires the applicant to record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner(s) will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. Local Coastal Program

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the

ability of the local government to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the 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 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.

The proposed development is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

H. California Environmental Quality Act

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

In this case, the City of Seal Beach is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Seal Beach Planning Department determined that the proposed development is categorically exempt on June 30, 2021. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the hazards, biological resources, water quality, public access and recreation and visual resources policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

5-21-0555 (Nerja Investments, LLC)

APPENDIX A – Substantive File Documents

Coastal Development Permit Application No. 5-21-0555 and associated file documents.

Sea Level Rise Hazard Discussion for 247 Seal Beach Boulevard, Seal Beach, Orange County, California prepared by Geosoils, Inc. dated July 23, 2019

Report of Cultural Resources Assessment for Proposed Development at 247 Seal Beach Boulevard, Seal Beach, Orange County, California, prepared by the Archeological Resource Management Corporation, October 2019