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Client/Matter NumberCapoShores:CCC--010-600(80.81)

Attorneys at Law

Via Email (ssarb@coastal.ca.gov) & U.S. Mail

June 2, 2010

Sharlyn Sarb, Director
California Coastal Commission
South Coast District Office
200 Oceangate, Suite 1000
Long Beach, CA 90602-4302

ATTN:Karl Schwing (kschwing@coastal.ca.gov)

Re: Applications Number: 5-09-179; 5-09-180
“Owner”: Frederick E. Hitchcock
Project Location: 1880 N. El Camino Real, # 80 & 81, San Clemente
(Orange County)
Project Description: Replacement of pre-HUD mobilehome with a
Manufactured Home
Firm’s Client: Capistrano Shores, Inc., Land Owner
Subject: Land Owner’s Position on & Objection to Deed
Restriction; Objections to Other Aspects of
Applications

Dear Ms. Sarb:

This Firm represents Capistrano Shores, Inc., the “**Owner**” of the property commonly known as Capistrano Shores Mobilehome Park located at 1880 N. El Camino Real, San Clemente, Orange County, California (the “**Park**”). A copy of the Grant Deed transferring title from the prior land owner and prior leasehold owner on January 25, 2008 was previously provided but is attached hereto as **Exhibit “A”** for ease of reference. The following is to confirm the position of the Owner with regard to the proposed Condition 7, *Generic Deed Restriction* and to confirm general objections of the Owner.

The purpose, as explained by you, for the demand that the conditions of approval of the permit be recorded was to insure notice to future purchasers of the manufactured homes located on spaces 80 and/or 81 at the Park. A manufactured home is personal property. The title search

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that would be done on the personal property would not include a title search of the real property on which the personal property is located. Therefore, a deed restriction would not provide notice to future buyers of the manufactured homes located on spaces 80 and/or 81, or any other future buyers of the manufactured homes located on other spaces within the Park.

The Park is *not* a subdivided property whereby each space within the Park is owned by an individual/separate entity. The Park is owned by Capistrano Shores, Inc. (Note, this is not a Stock Cooperative as defined under the Subdivision Map Act. Further, the ownership structure was specifically discussed prior to the purchase of the Park by the Owner at length in a meeting which you attended in October 2007. A copy of the letter confirming the results of the meeting from David Neish is attached hereto as **Exhibit "B"**) Therefore, when an encumbrance, such as a deed restriction, is placed on the Park then the entire Park (property) is encumbered. This raises two issues, among others:

1. Does an owner of a manufactured home located in the Park have the authority to executed and record a deed restriction against the Park? As acknowledged by the language in Condition No. 7, the answer is no. Therefore, Condition No. 7 requests the owner of a manufactured home to comply with a condition which said owner of the manufactured home has no authority or ability to comply.
2. What is the procedure for authorizing the Owner to make a recordation of an encumbrance against the Park? (a) Very simply summarized, the procedure is to present the request to the investors in the Park. The investors are also the owners of the manufactured homes located in the Park. (b) Once the notice and time procedure required under the California Corporations Code are met, then a super-majority (75%) approval of the investors is required to go to the next step. (c) The next step is to obtain the consent of the lenders involved with the project. (d) The final step is for the Board of Directors to review and take action regarding the proposed encumbrance. This is an expensive and lengthy process which is unlikely of success due to the multiple parties who must agree to the recordation of the deed restriction.

If the Owner wanted to refinance or take other similar actions, then the requested deed restriction would appear on the Owner's Title, but not on the titles to the manufactured homes. The deed restriction would then become an encumbrance recorded prior to any refinancing or similar actions which result would either cost the Owner additional fees to obtain the loan or be rejected unless the deed restriction were cleared.

Therefore, the Board of Directors of the Owner will not bring this matter to the investor/members or to the lenders.

The two (2) applications before the Coastal Commission are applications to replace two (2) - 40 year old mobilehomes with manufactured homes on spaces rented from the Owner. This should be a simple matter. Manufactured homes are being rolled into mobilehome parks up and

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down the coast every day without incident or Coastal Commission involvement. These, along with many other reasons as shared with you at our meeting, form the basis for the Owner's objections to the Conditions of Approval for these two (2) applications. The Owner does not waive any rights, legal, equitable or administrative, to such objections, as applied to these Applications, future applications, or Park applications, including without limitation, the jurisdictions to review applications to replace existing old mobilehomes, characterizing such replacement as "new development" or "development", to remove such replaced homes from being "grandfathered into a Park that existed *prior* to the enactment of the Coastal Act, the burdensome, unnecessary, and onerous permit process used to review these two (2) Applications..

Further, some of the conditions are unnecessary in that the Applicant does not possess the right or obligation to do that which he is being requested to do. For example, the Applicant is being asked to waive his right to repair the seawall. The Applicant is waiving such right because the Owner, only, has the right and the obligation to repair the sea wall. The Owner does not endorse nor concur with any specific condition with which the Applicant may consent.

For all of the reasons stated above, the Owner will not execute nor record a deed restriction against the Park as requested by Staff as a condition of approval for the replacement of two (2) manufactured homes located on two (2) rental spaces (80 & 81) in the Park. The Applicant has provided an alternative to this condition, which the Owner is hopeful, will satisfy the "Notice" issue raised by the Staff.

If you have any questions regarding this correspondence, please contact me.

Sincerely,

THE LOFTIN FIRM LLP



By: L. Sue Loftin, Esq.

cc: Jon Petke, Planning Associates (Via Email)
David Neish (Via Email)
Jim Burroughs, Esq., Attorney for Applicant (Via Email)
Fritz Hitchcock, Applicant (Via Email)
Board of Owner (Via Email)

Exhibit List:

Exhibit "A" Grant Deed
Exhibit "B" Letter from David Neish

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

Date and time of communication: June 2, 2010, 2:00 p.m.
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

Location of communication: Phone Call
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Person(s) initiating communication: Dave Neish

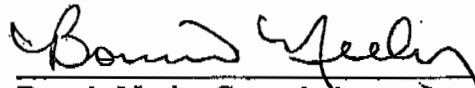
Person(s) receiving communication: Commissioner Bonnie Neely

Name or description of project: June Agenda Items W21a and 21b. Application No. 5-09-179 & 5-09-180 - Hitchcock Jr., San Clemente, Orange County.

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Mr. Neish indicated they concur with the staff recommendation. They are working on language regarding deep restriction and they hope to have a modified condition for the Commission to consider next week.

Date: June 2, 2010



Bonnie Neely, Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Name or description of project, LCP, etc.: GDP-5-09-179+186 (Hitchcock)

Date and time of receipt of communication: June 4, 2016 11:15 AM

Location of communication: San Jolla, CA

Type of communication (letter, facsimile, etc.): Conference Call

Person(s) initiating communication: David Neish

Person(s) receiving communication: Pat Kruer

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Representative explained that applicant was in total agreement with Staff with the exception of Special Condition #7. The application is for the replacement of (2) mobile homes on (2) parcels which is owned by Capistrano Shores, Inc. The applicant does not have the ability to provide a Deed Restriction because he (Hitchcock) does not own the land. The applicant's attorneys and ccc Staff are working on revised language for the Condition 7 that the applicant thought might be agreed to by the hearing date.

6/7/16
Date

Pat Kruer
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
 200 Oceangate, Suite 1000
 Long Beach, CA 90802-4302
 (562) 590-5071



Filed: November 12, 2009
 49th Day: December 31, 2009
 180th Day: May 11, 2010
 270th Day: August 7, 2010
 Staff: Liliana Roman-LB
 Staff Report: May 26, 2010
 Hearing Date: June 9-11, 2010
 Commission Action:

Item W21a**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-09-179

APPLICANT: Frederick E. Hitchcock

AGENT: The Planning Associates, Attn: Jonathan Petke

PROJECT LOCATION: Unit Space #80 of Capistrano Shores Mobile Home Park, 1880 N El Camino Real, San Clemente (Orange County)

PROJECT DESCRIPTION: Installation of a new 1,256 sq. ft., double-wide, 18.5' tall mobile home on an above-ground concrete block pier foundation, hardscape improvements including paver patio, 11' tall patio cover, 30" tall masonry seat wall parallel to and inland of the western Unit Space property line, drainage improvements and landscaping on an oceanfront mobile home space.

LOCAL APPROVALS RECEIVED City of San Clemente Planning Division Approval-in-Concept dated September 17, 2009

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan (LUP), Coastal Hazard & Wave Runup Study, Spaces 80 & 81 1880 N. El Camino Real, San Clemente, CA prepared by GeoSoils, Inc. dated November 10, 2009.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed development with **seven (7) special conditions**, which require 1) compliance with construction-related best management practices (BMPs), 2) conformance with proposed drainage plans, 3) landscaping requirements, 4) future response to erosion/no future shoreline protection device, 5) conformance with permitting requirements for future development, 6) assumption of risk, waiver of liability and indemnity and 7) generic deed restriction. The primary issues associated with this development are coastal hazards such as flooding and wave uprush and provision of adequate notice of CDP special conditions to future mobile home owners.

The applicant proposes to install a new mobile home in Unit Space #80 in the Capistrano Shores Mobile Home Park located between the first public road and the sea and seaward of the OCTA railroad tracks in San Clemente. The mobile home park is a legal non-conforming use on a stretch

of beach developed with 90 mobile homes parallel to the shoreline on a lot designated OS2 Privately Owned Open Space (intended for open space – no formal easement) in the City of San Clemente Land Use Plan (LUP). A rock revetment protects the 90 mobile home units at this site from direct wave attack. The applicant has submitted a Coastal Hazard & Wave Runup Study that deems the existing bulkhead/rock revetment adequate to protect the proposed mobile home. The Commission staff's coastal engineer concurs that no improvements to the bulkhead/rock revetment in front of Unit Space #80 is necessary at this time. Therefore, Commission staff recommends approval of the installation of a new mobile home in Unit Space #80 with applicant acknowledgement and agreement that Unit Space #80 may be subject to hazards from flooding, wave uprush, sea level rise, and erosion and a requirement that the applicant waive any rights to new shoreline protection.

The item was originally scheduled on the February 2010 Commission agenda but was postponed at the request of the applicant to address concerns with staff regarding special conditions relating to future shoreline protection, assumption of risk & waiver of liability and generic deed restriction.

The applicant would own the proposed new mobile home, but does not hold fee title to the land at Unit Space #80. Capistrano Shores, Inc. is a non-profit mutual benefit corporation in which the applicant holds a 1/90 "membership" interest which allows the use of the Unit Space #80 for mobile home purposes. As such, the recommended deed restriction is not meant to apply to the entire parcel of land within which Unit Space #80 exists, but would apply specifically to Unit Space #80, with the intention to provide future owners of the proposed new mobile home on Unit Space #80 notice of the special conditions of this CDP for the installation of the new mobile home. The deed restriction must be recorded by Capistrano Shores, Inc. which holds the fee title to the entire mobile home park, including Unit Space #80. The staff recommended deed restriction indicates that, pursuant to this permit, the California Coastal Commission has authorized development on Unit Space #80, subject to terms and conditions that restrict the use and enjoyment of Unit Space #80 only; the conditions imposed would not apply to the mobile home park as a whole or to other units within the mobile home park.

It is not an unusual situation where the applicant is not the fee title owner but is required to obtain recordation of a deed restriction as a CDP condition. However, the applicant has indicated that Capistrano Shores Inc. is unwilling to record the deed restriction as recommended by staff. The applicant has therefore provided a potential alternative approach to provide future owners notice of the CDP requirements in lieu of a generic deed restriction through a "Termination, Extension or Reauthorization" special condition (Exhibit 7). As the applicant proposed alternative is a significant departure from typical Commission procedure, staff has included the alternative for review by the Commission.

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Access Points Map
4. Project Plans
5. Site Photographs
6. March 2, 2010 Letter from Capistrano Shores
7. Applicant Proposed Special Condition Alternative to Generic Deed Restriction

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-09-179 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not 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. 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 permittee 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS:

1. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The applicant shall comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- B. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- C. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- D. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.
- E. Concrete trucks and tools used for construction of the approved development shall be rinsed off-site;
- F. Staging and storage of construction machinery and storage of debris shall not take place on any sandy beach areas or areas containing any native vegetation.

2. Drainage Plan

The applicant shall conform to the site drainage details depicted in the hardscape plan received in the Commission's office on 09/17/09 depicting proposed concrete pavers sloped to drain to the back (street side) of the mobile home unit space and an overflow area drain both directed to an underground dry well for on-site percolation of runoff from all site impervious areas. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Landscaping – Native, Drought Tolerant, Non-Invasive Plants

All areas affected by construction activities not occupied by structural development shall be re-vegetated for erosion control purposes.

Vegetated landscaped areas shall consist of non-invasive and drought-tolerant plants. 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://www.owue.water.ca.gov/docs/wucols00.pdf>).

4. Future Response to Erosion/No Future Shoreline Protective Device

A. No repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device is authorized by this coastal development permit.

B. By acceptance of this Permit, the applicant waives, on behalf of himself and all successors and assigns of Unit Space #80, any rights to new shoreline protection that may exist under Public Resources Code Section 30235 to protect the proposed new mobile home on Unit Space #80.

C. By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns to Unit Space #80, that the applicant and all successors and assigns shall remove the development authorized by this permit, including the residence, foundations, patio covers, if any government agency has issued a permanent order that the structure not be occupied due to the threat of or actual damage or destruction to the premises resulting from waves, erosion, storm conditions, sea level rise, or other natural hazards in the future. In the event that portions of the development fall to the beach before they are removed, the applicant or successor shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

5. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-09-179. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-09-179. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-09-179 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that Unit Space #80 may be subject to hazards from flooding and wave uprush, tsunami, sea level rise, and erosion; (ii) to assume the risks to the applicant 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 coastal hazards.

7. Generic 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(s) have executed and recorded against the parcel(s) governed by this permit (i.e. the parcel(s) of land within which Unit Space #80 is located) 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 Unit Space #80, subject to terms and conditions that restrict the use and enjoyment of Unit Space #80; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of Unit Space #80. The deed restriction shall include a legal description of the entire parcel of land within which Unit Space #80 is located and a metes and bounds description of Unit Space #80 governed by this permit. 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 Unit Space #80 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:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

Project Location

The proposed project is located between the first public road and the sea and seaward of the OCTA railroad tracks at Unit Space #80 in the Capistrano Shores Mobile Home Park at 1880 N. El Camino Real in the City of San Clemente, Orange County (i.e. subject property) (Exhibits 1 & 2). The mobile home park is an existing non-conforming use on a stretch of beach developed with 90 mobile homes parallel to the shoreline on a lot designated OS2 Privately Owned Open Space (intended for open space – no formal easement) in the City of San Clemente Land Use Plan (LUP).

On the seaward side of Unit Space #80, the proposed mobile home would be fronted by a narrow 6-foot wide perched beach inland of an older timber bulkhead that exists roughly along the seaward limits of Unit Space #80. A quarry stone rock revetment exists seaward of the bulkhead and between the proposed development and the Pacific Ocean. The pre-Coastal Act, rock revetment protects the 90 mobile home units along the entire length of the Capistrano Shores Mobile Home Park (including Unit Space #80) from direct wave attack. The applicant provided a Coastal Hazard and Wave Runup Study prepared by GeoSoils Inc. of the site and the proposed development.

Vertical public access to this beach is not available at the site or anywhere else along the length of the Capistrano Shores Mobile Home Park. Vertical public access is available approximately half a mile south at the North Beach access point and to the north at the Poche Beach access (Exhibit #3). In addition, lateral access along the beach in front of the mobile home park and bulkhead/rock revetment is only accessible during low tide; during high tide the waves crash up against the rock revetment. Pursuant to the grant deed property description of the parcels owned by Capistrano Shores, Inc. comprising Capistrano Shores Mobile Home Park, property ownership of the common

area seaward of the Unit Space property lines extends from the bulkhead to the mean high tide line.

Detailed Project Description

The applicant proposes to install a new 1,256 sq. ft., 18.5' tall mobile home with an above-ground concrete block pier foundation, drainage improvements and minimal drought tolerant, non-invasive landscaping along the street front, a paver patio along the side yards and oceanfront portion of the Unit Space, a 11' tall patio cover, and a 30" tall masonry seat wall fronted by a narrow 6-10 foot wide perched beach inland of a timber bulkhead/rock revetment that exists along the seaward limits of Unit Space #80. Each unit in the mobile home park provides two parking spaces per unit. Demolition/removal of the mobile home previously at this site was approved by the Commission at its January 2008 meeting under CDP 5-07-360-W.

All proposed new development is landward of the rock revetment. Specifically, inland from the bulkhead/rock revetment will be an approximately 10-foot wide perched beach on the southwest side of the mobile home and 6-foot wide perched beach on the southeast side of the mobile home, then a proposed 30" tall masonry garden/seat wall parallel to the bulkhead/rock revetment with the mobile home another 5-feet from the masonry seat wall on the southwest half of the mobile home and 10-feet from the masonry seat wall on the southeast side of mobile home (see Exhibit 4, page 1 of 4). Seaward of the bulkhead is an approximately 30-foot wide beach area owned in common by the entire mobile home park up to the ordinary high tide line (per the legal property description). According to the cross-section of the rock revetment provided in the Coastal Hazard and Wave Runup Study prepared by GeoSoils (Exhibit 4, page 4 of 4), the rock revetment begins immediately adjacent to the wood bulkhead and extends approximately 25-feet out seaward but still inland of the ordinary high tide line. A large portion of the rock revetment remains buried depending varying sand level elevations throughout the year.

The proposed siting of the new mobile home and hardscape improvements meet the LUP structural and deck stringline policy for new infill construction on a beachfront and all other City standards as it extends to farther seaward than the existing units on either side. The applicant is not proposing any work to the existing bulkhead/rock revetment.

The applicant would own the proposed new mobile home but does not hold fee title to the land at Unit Space #80 or to the bulkhead/rock revetment. The Capistrano Shores Mobile Home Park is owned by Capistrano Shores, Inc., a non-profit mutual benefit corporation in which the applicant holds a 1/90 "membership" interest which allows him the use of the Unit Space #80 for mobile home purposes. The applicant, as "member" of the corporation is only responsible for repair/maintenance of his own mobile home and to the landscape on his unit space. The corporation provides for all necessary repairs, maintenance and replacements to the rest of the mobile home park common areas including the bulkhead/rock revetment.

B. HAZARDS

Section 30253 of the Coastal Act states in relevant part:

New development shall:

(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.

Revetment/Bulkhead – Existing Conditions

The applicant provided a Coastal Hazard and Wave Runup Study prepared by GeoSoils, Inc., dated November 10, 2009. The Study states that the site shore protection primarily consists of a quarry stone revetment; a timber bulkhead abuts the stone revetment on its landward side, which is then back-filled with a 6-10 foot wide perched beach that runs the length of the mobile home park. The perched beach at Unit Space #80 would be 6-feet wide. The revetment is composed of meta-volcanic quarry stones that range in size from less than ½ ton to about 11 ton with an average size of about 5 tons. The datum used in the GeoSoils report is National Geodetic Vertical Datum 1929 (NGVD 29). The top of the revetment at the subject site varies from +13.7 feet NGVD29 to +15.7 feet NGVD29 with an average elevation of about +15 feet NGVD29. The visible slope of the revetment varies from 2/1 to 1.5/1 (h/v). A visual inspection of the existing revetment/bulkhead in front of Unit Space #80 conducted by GeoSoils, Inc. found the revetment in good condition and not in need of maintenance at this time.

Wave Run-Up/Overtopping Analysis

At the landward side of the perched beach are the individual mobile home site improvements. The width of the perched beach provides some set-back protection for the mobile home from wave splash overtopping of the revetment/bulkhead. The Wave Run-Up Study states that under extreme, worst case (>75 year recurrence) oceanographic conditions the revetment can be overtopped at a rate of about 0.5 ft.³/s-ft. This is less than one foot of water coming over the top of the revetment for each wave cycle (18 seconds) during a 30 minute window when the sea level is the highest. The impact of waves overtopping the revetment will be reduced by the approximately 6-10 feet wide perched beach between the existing bulkhead/rock revetment and the proposed new 30-inch tall patio masonry seat wall on the seaward side of Unit Space #80's parcel line. The proposed mobile home is setback another 10-12 feet from the masonry seat wall, providing an approximate 15-16 foot setback from the existing bulkhead. Additionally, the proposed raised foundation design would resist flowing wave runup waters in excess of 1 foot in height.

The analysis in the Study includes some consideration for a small amount of sea level rise. The amount of sea level considered in the analysis ranges from 4.3 inches to 28 inches over the next 100 years, and for the quantitative analysis, the Study uses a 2 foot sea level rise.¹ The sea level rise amount used in the provided analysis for the proposed project is a low estimate for the coming 100 year time period. However, as the proposed project is a mobile home, it may represent a reasonable upper limit for sea level rise for a 40 to 50 year time period and this time period may be appropriate for a mobile home development as the expected life of a mobile home structure is lower than that of a permanent detached single-family residence and can reasonably be estimated at approximately a 50 year time life. In addition, a mobile unit can be easily relocated in the event of a threat. For purposes of a mobile home replacement, the Commission's staff coastal engineer concurs that an upper limit for sea level rise for a 40 to 50 year time period is appropriate for the anticipated economic life of a mobile home development.

Erosion and Flooding Hazards

¹ This is less than the high estimates of sea level rise, ranging up to 55 inches, based upon analysis by Dr. Stefan Rahmsdorf, and used as the basis of analysis by the California Climate Action Team of climate impacts to the California coast.

Regarding erosion hazards on the subject site, the Coastal Hazard and Wave Runup Study states, "While the beach experiences short term erosion, there is no clear indication of a significant long term erosion trend. Because the shoreline is stabilized by the revetment and as long as the revetment is maintained, the proposed mobile homes [Unit #80 and Unit #81] are reasonably safe from the short term erosion hazards."

The Study finds that the proposed mobile home is reasonably safe from flooding. The analysis shows that the site has the potential to be flooded on occasion from waves breaking on the revetment, overtopping the bulkhead and reaching the mobile house units. Such flooding is a hazard that would be expected for a location this close to the ocean even with the existing shore protection provided by the bulkhead/revetment (deemed adequate by the Study) that is protecting the units from the main wave attack.

Furthermore, the entire mobile home park, including Unit Space #80, is located within the tsunami inundation zone according to the California Emergency Management Agency (CalEMA). **Special Condition #6** warns the applicant and subsequent owners (through a generic deed restriction per **Special Condition #7**) that this is a high hazard area and that by acceptance of coastal development permit #5-09-179 the applicant acknowledges the risks, such as flooding that are associated with location in the tsunami inundation zone, and that are associated with development sited so close to the ocean. The applicant should cooperate with the local CalEMA or emergency responders in case of a large earthquake or a tsunami warning.

The applicant does not propose any changes or improvements to the existing bulkhead/revetment along the portion that protects Unit Space #80 under this coastal development permit application. Any repair or maintenance, enhancement, reinforcement or other activity to the existing bulkhead/revetment is the responsibility of Capistrano Shores Inc. which holds fee title to the land that Unit Space #80 occupies (and the other mobile home unit spaces) and all common areas in the mobile home park. The applicant is only responsible for repair/maintenance to the mobile home, landscape, ancillary structures (i.e, decks, patios, garden walls, shade structures) on Unit Space #80. Because the proposed development involves the placement of a new structure and ancillary structures on the beach, those new structures are not entitled to new shoreline protection under Section 30235 of the Coastal Act. Although the proposed mobile home is not anticipated to need additional shoreline protection during the expected life of the mobile home, it would be located on a beach and changed circumstances in the future regarding sea level rise, shoreline sand supply, erosion, seismic activity, and storm intensity could result in threat to the structure. Future expansion of the existing shoreline protection to address such threats could conflict with Coastal Act requirements regarding public access and recreation, shoreline sand supply, and protection of views to and along the shoreline. Therefore, **Special Condition #4** requires the applicant to waive on behalf of himself and all successors and assigns, any rights to new shoreline protection that may exist under Public Resources Code Section 30235 to protect the proposed placement of a new mobile home and ancillary structures in Unit Space #80.

If the existing shoreline protection becomes inadequate at a future date, the proposed development is a mobile unit that could be re-located and/or removed and replaced with a smaller and/or differently configured unit that provides an adequate setback from the shoreline to avoid hazards. If such relocation or replacement would not address the hazard, the mobile unit could be removed entirely. Therefore, **Special Condition #4** also establishes requirements related to response to future coastal hazards, including relocation and/or removal of structures that may be threatened in the future, and in the event that portions of the development fall to the beach before they are removed, requiring the applicant or successor remove all recoverable debris associated

with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

Because of the sensitive shoreline location of the proposed development, the Commission imposes **Special Condition #5** requiring a coastal development permit or permit amendment for any future improvements to the development.

To ensure that any prospective future owners/occupants of Unit Space #80 are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition #7** requiring that the property owner (known at this time to be Capistrano Shores, Inc. based on information provided to the Commission by the applicant) record a generic deed restriction referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of Unit Space #80. Thus, as conditioned, this permit ensures that any prospective future owners of the proposed new mobile home approved for installation on Unit Space #80 pursuant to this CDP, will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which Unit Space #80 is subject, and the Commission's immunity from liability. The deed restriction indicates that the California Coastal Commission has authorized development on Unit Space #80, subject to terms and conditions that restrict the use and enjoyment of Unit Space #80 only and does not restrict the remainder of the land that the mobile home park occupies. However, the applicant has indicated that Capistrano Shores, Inc., the fee title property owner refuses to record a generic deed restriction that would apply specifically to Unit Space #80. It is not clear what the reasons are for refusal to record the deed restriction; but, in any event, as owner of the property, Capistrano Shores, Inc. should be aware of the inherent risks of oceanfront development and acknowledge the restrictions on use of Unit Space #80 associated with obtaining a coastal development permit for a new mobile home on the site.

Pursuant to Section 30601.5, where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, the Commission shall not require the holder or owner of the superior interest in the property to join as co-applicant; however, all such holders of interest shall be notified of the permit application and invited to be co-applicant. The Capistrano Shores, Inc. has declined to be co-applicant in this particular case. Pursuant to Section 30601.5, in addition, prior to issuance of the coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

The generic deed restriction is the mechanism typically applied by the Commission to provide future owners notice of the Special Conditions of this permit. In lieu of the generic deed restriction, the applicant proposes to include his successor-in-interest (daughter) as co-applicant thereby providing notice of the CDP conditions at the time the CDP is issued. Furthermore, as proposed, the applicant agrees to remove all development authorized by this CDP prior to conveyance of either co-applicant's interest in Unit Space #80 to a third party unless the third party recipient notifies the Executive Director in writing that he/she agrees to the special conditions of the CDP or the development is authorized by a new CDP. While the proposed alternative mechanism provides some certainty regarding notice to the next successive property owner in this particular case, it would not provide evidence that future owners have been made aware of the conditions of approval of the coastal development permit in the same manner as a recorded deed restriction.

Finally, as noted above, Capistrano Shores Inc. holds fee title to the land that Unit Space #80 occupies (and the other mobile home unit spaces) and all common areas in the mobile home park and is the entity assigned by the mobile home park to be responsible for any future

repairs/improvements to the existing bulkhead/revetment shoreline protective device. Since the scope of the development in this case is limited to Unit Space #80, the Commission has focused on assurance that its authorization for placement of a new mobile home on that space (and ancillary development) won't itself be used to support any future requests for repair, maintenance, or expansion of shoreline protection. In addition, representatives for Capistrano Shores, Inc. have been notified that repair, maintenance or enhancement of the existing shoreline protection, if deemed necessary, should occur as part of a comprehensive plan for the entire mobile home park. Any such repairs/enhancements should occur within the mobile home park's private property and not further encroach onto the public beach. No additional shoreline protective devices should be constructed for the purpose of protecting ancillary improvements (e.g., patios, decks, fences, landscaping, etc.) located between the mobile home and the ocean. For any type of future shoreline hazard response, alternatives to the shoreline protection must be considered that will eliminate impacts to scenic visual resources, recreation, and shoreline processes. Alternatives would include but are not limited to: relocation and/or removal of all or portions of the mobile home and ancillary improvements that are threatened, and/or other remedial measures capable of protecting the mobile home without shoreline stabilization devices. Alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting a mobile home that may be in danger from erosion and other coastal hazards. The Capistrano Shores Mobile Home Park Homeowner Association informed staff they are in the process of preparing a collective Wave Uprush and Coastal Hazards Study for the entire length of the bulkhead/revetment to look at these issues.

Only as conditioned does the Commission find the proposed development consistent with Section 30253 and 30235 of the Coastal Act.

C. SCENIC AND VISUAL QUALITIES

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

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...."

Development at this location must be sited and designed to be visually compatible with the character of the area. It is also necessary to ensure that new development be sited and designed to protect views along public vantage points. The proposed development is on a perched beach protected by a bulkhead/revetment adjacent to the public beach. The site is visible looking inland from the beach. Views of the mobile home park and white water ocean views can available from proposed public trails along the coastal bluffs inland of El Camino Real at the Marblehead Coastal site. The proposed mobile home meets the structural and deck stringlines and is therefore compatible with the character of the mobile home park. Additionally, as designed, the 18' 6" height of the proposed single-story mobile home is compatible with the height of the rest of the exclusively single-story mobile homes in the Capistrano Shores Mobile Home Park.

As proposed, the Commission finds the proposed development consistent with Section 30251 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 30212 of the Coastal Act 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:

(2) Adequate access exists nearby, or,

As shown in Exhibit 3, the proposed mobile home will be located between the first public road and the sea directly seaward of the OCTA railroad tracks.

Vertical public access is not available through the Capistrano Shores Mobile Home Park, therefore, no construction impacts to public access are anticipated. Lateral public access is available along the public beach seaward of the bulkhead/revetment during low tide. Vertical public access to the beach exists nearby at Poche Beach, approximately 600 yards north of the site. Public access from the southern end of the mobile home park is available at the North Beach public access point. Exhibit #3 provides a map of the primary public coastal access points in the City.

The proposed project is sufficiently set back to be consistent with the pattern of development of the surrounding mobile homes within the Capistrano Shores Mobile Home Park. Furthermore, the setback provides an area that may accommodate any necessary future bulkhead/revetment repairs/enhancement efforts within the mobile home unit's private property thereby protecting intertidal habitat and avoiding any possible future public access impacts that may arise due to rock revetment encroachment into public beach areas (both individually and cumulatively).

As proposed, the Commission finds the development consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

E. WATER QUALITY

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored...

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.

To protect water quality during construction, the applicant proposes and **Special Condition #1** requires the applicant to implement best management practices (BMPs) designed to avoid temporary impacts to the ocean by minimizing erosion and preventing soil and debris from entering coastal waters during construction. Furthermore, the applicant proposes drainage from the predominantly paved site to slope away from the ocean and toward the street where water runoff from the site will be directed to a dry well for onsite water infiltration and to a small strip of landscaped permeable area. No vegetation either native or ornamental is currently found on the vacant site. The applicant proposes and **Special Condition #3** requires the applicant utilize drought tolerant, non-invasive plant species.

As proposed and conditioned, the project will minimize possible adverse impacts on coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development, as conditioned, is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

G. CONSISTENCY WITH THE 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 that the activity may have on the environment.

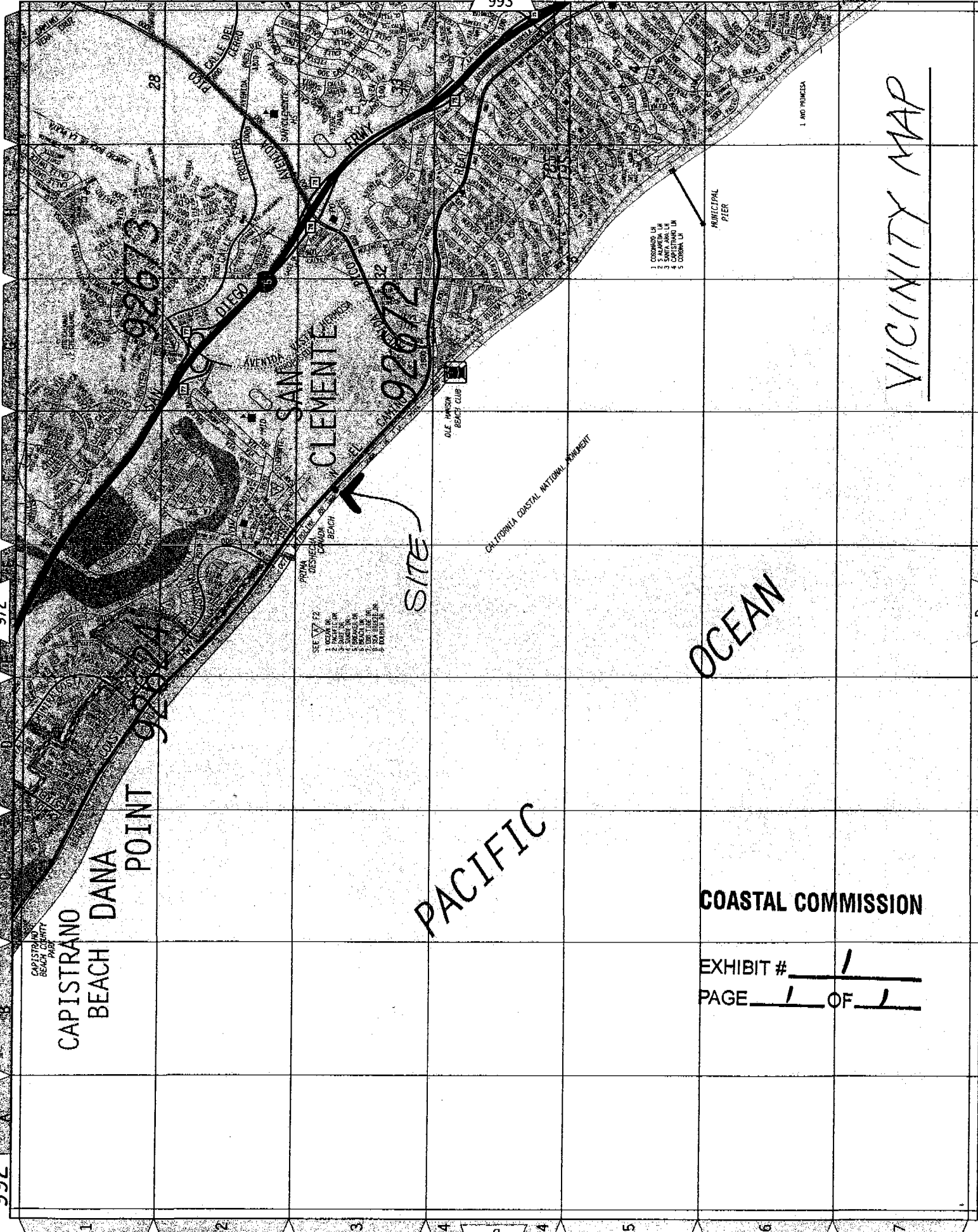
The City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City, the project is categorically exempt pursuant to CEQA Guidelines section 15302 as a Class 2 Item (replacement of an existing structure). In order to ensure compliance with Coastal Act requirements, the Commission adopts additional mitigation measures including: special conditions related to compliance with construction-related best management practices (BMPs), drainage, landscaping, shoreline protection, future development, assumption of risk, waiver of

liability and indemnity. As conditioned, the proposed project is consistent with the public access, water quality, biological and visual resource protection policies of the Coastal Act and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act and CEQA.

SEE 972 MAP

992

1 2 3 4 4 5 6 7
SEE 993 MAP



VICINITY MAP

OCEAN

PACIFIC

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR DEPT. PURPOSES ONLY. THE ASSessor'S DEPT. GUARANTEES ONLY ITS ACCURACY FOR THE PURPOSES AND FOR OTHER USES. NOT TO BE REPRODUCED. © COPYRIGHT ORANGE COUNTY ASSESSOR 2007

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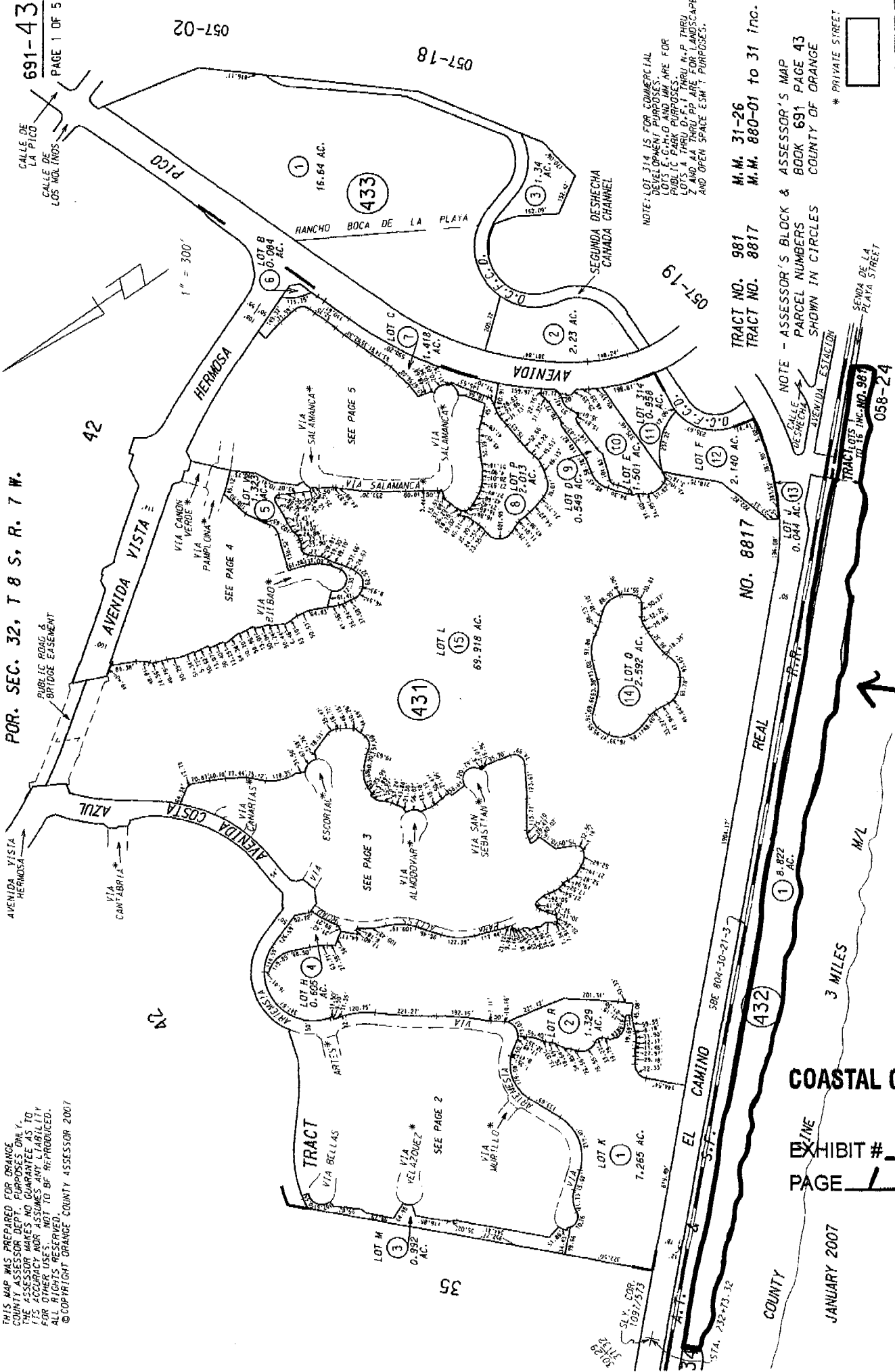
691-43
PAGE 1 OF 5

057-02

057-18

057-19

058-24



NOTE: LOT 314 IS FOR COMMERCIAL DEVELOPMENT PURPOSES AND FOR PUBLIC PARK PURPOSES. LOTS 4 THRU 11 THRU N.P. THRU Z AND AA THRU PP ARE FOR LANDSCAPE AND OPEN SPACE E.S.M.T. PURPOSES.

TRACT NO. 981 M.M. 31-26
TRACT NO. 8817 M.M. 880-01 to 31 inc.

NOTE - ASSESSOR'S BLOCK & ASSESSOR'S MAP PARCEL NUMBERS SHOWN IN CIRCLES

* PRIVATE STREET



Mobile Home Park Parcel

ASSESSOR'S PARCEL MAP

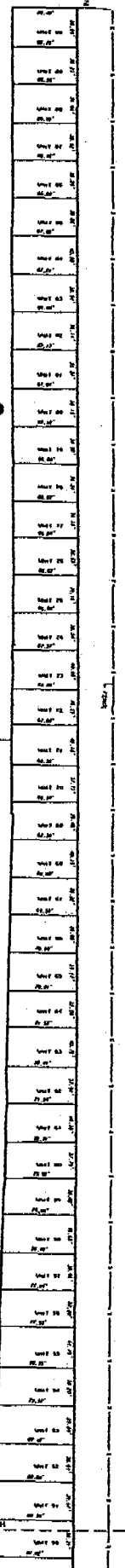
COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 2

JANUARY 2007

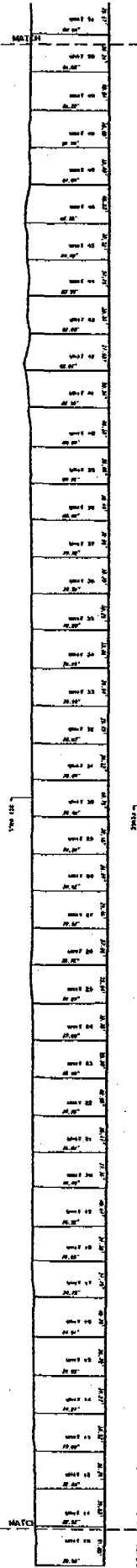
COUNTY

A.T. & S.F. RAILROAD

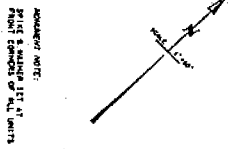
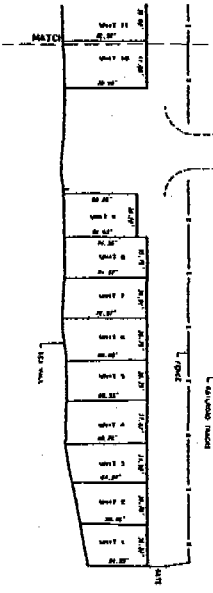


Unit Space #80
 ↓
 Subject Site

A.T. & S.F. RAILROAD



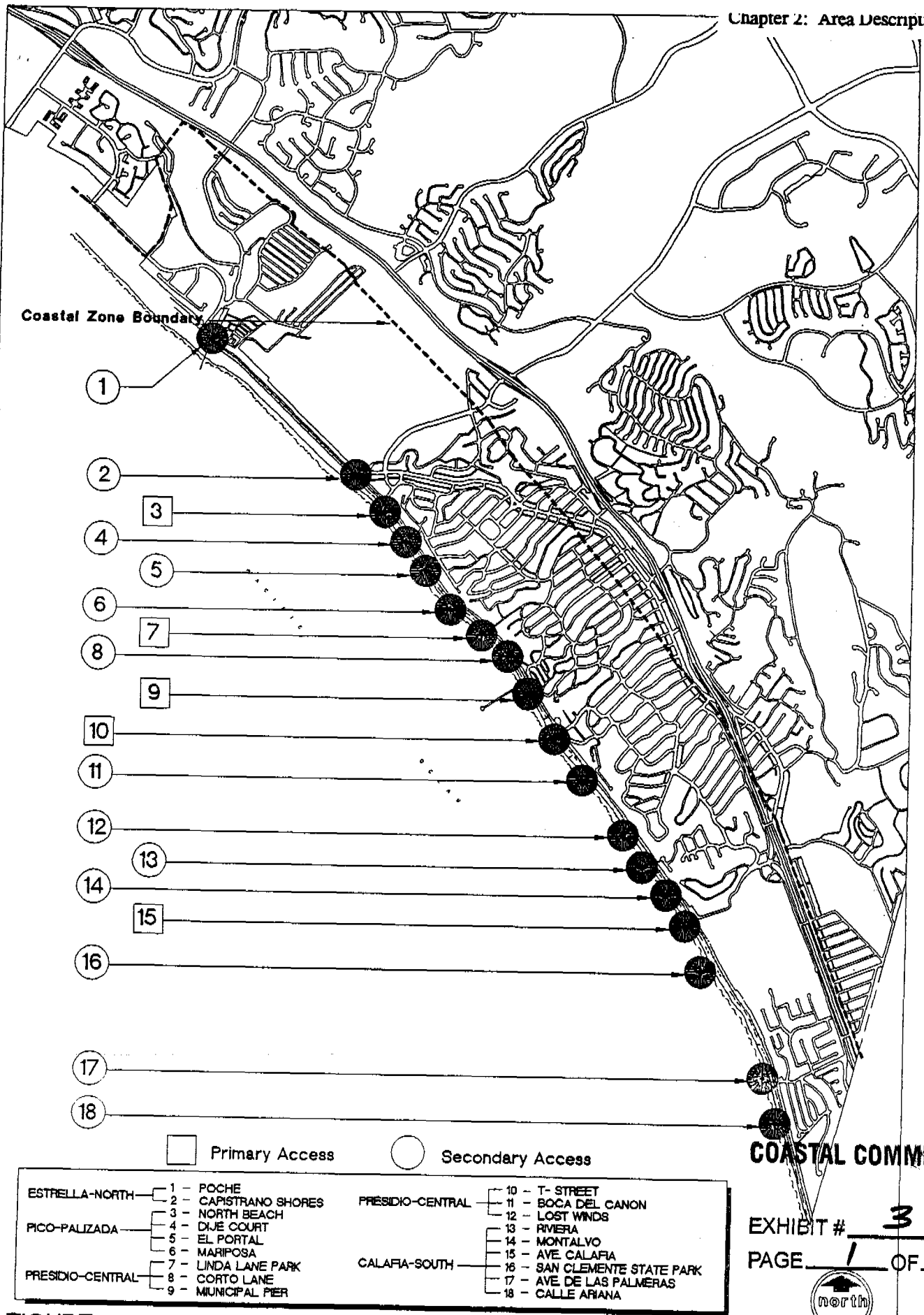
A.T. & S.F. RAILROAD



PREPARED BY: HENRY B. BATHURST 1710 BAYVIEW BOULEVARD SUITE 101 FORT LAUDERDALE, FL 33304 TEL: (352) 433-0000 FAX: (352) 433-0000 MOB NO: (954) 433-1412		PREPARED FOR: HENRY B. BATHURST, INC. 1710 BAYVIEW BOULEVARD SUITE 101 FORT LAUDERDALE, FL 33304 TEL: (352) 433-0000 FAX: (352) 433-0000 MOB NO: (954) 433-1412	
PROJECT NO: 1880 N. E. CAMINO REAL OCEAN FRONT MOBILE HOME LIVING 1880 N. E. CAMINO REAL CITY OF SAN CLEMENTE		SHEET NO. 1	

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EXHIBIT # 2
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EXHIBIT # 3

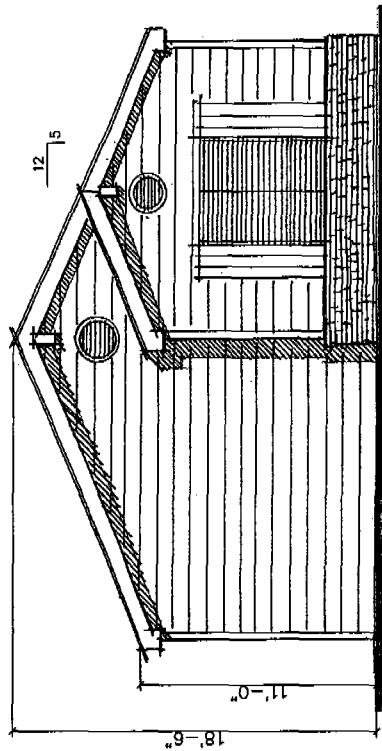
PAGE 1 OF 1



FIGURE 2-5

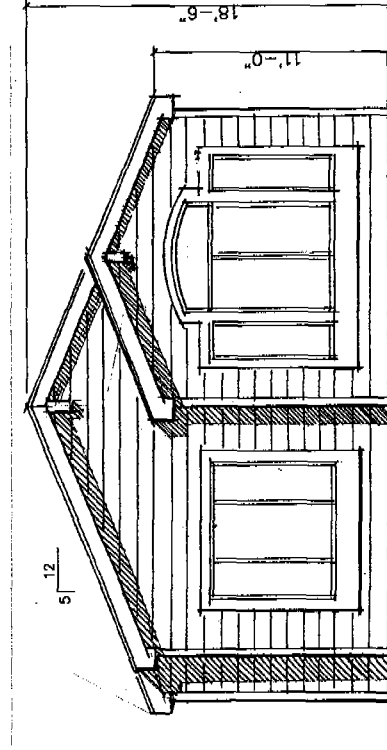


**CITY OF SAN CLEMENTE
COASTAL ACCESS POINTS**



STREET ELEVATION

SCALE: 1/4"=1'-0"



BEACH ELEVATION

SCALE: 1/4"=1'-0"

The development as proposed is approved by the City of San Clemente in concept. This is a preliminary approval and does not grant the recipient any development rights. When approved by the California Coastal Commission, the City will then process the plans for permits. Please check with other City departments and divisions to ensure full compliance with all City codes, standards and requirements.

[Signature]
Date 9/17/07

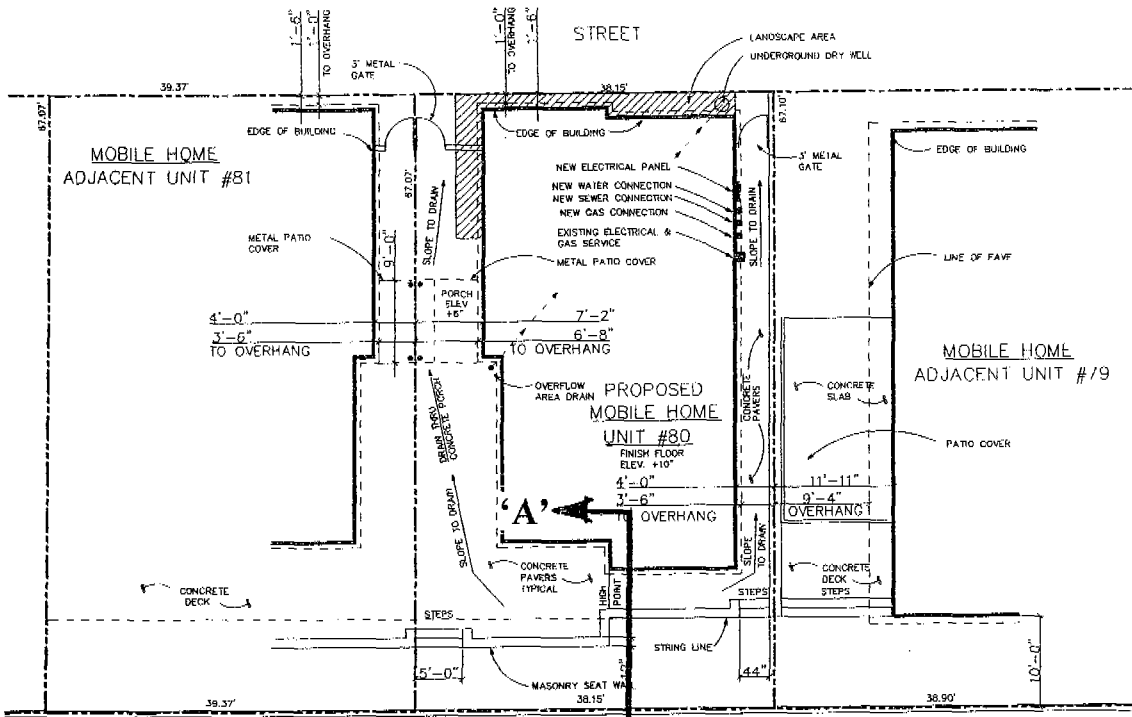
City Planner

COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 4

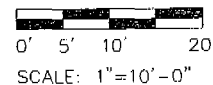
JOB ADDRESS:
1800 NORTH EL CAMINO REAL #80
SAN CLEMENTE, CALIFORNIA

LOT SPECIFICATIONS UNIT #80
LOT AREA: 2,550 SQ.FT.
NEW HOME AREA: 1,256 SQ.FT.
LOT COVERAGE: 49%
OLD HOME AREA: 1,440 SQ.FT.
NEW HOME AREA: 1,256 SQ.FT.
DIFFERENCE: -184 SQ.FT.



PARK APPROVAL *Approved 9/17/09*
 SIGNATURE: *Gordon W. Hall* DATE: *9/17/09*
 PRINT NAME: *Gordon W. Hall*

- NOTES:
1. ANY PATIO STRUCTURE, FENCE GATES AND DECKING LOCATED WITHIN THE 3'-6" SIDE YARD SETBACK IS REQUIRED TO BE CONSTRUCTED OF NON-COMBUSTIBLE MATERIALS.
 2. ALL LANDSCAPING TO BE DROUGHT TOLERANT, NON-EVASIVE NATIVE PLANTING MATERIAL.
 3. SITE DRAINAGE TO SHEET FLOW TOWARDS THE STREET!
 4. ALL AREA DRAINS TO BE DIRECTED TO AN UNDERGROUND DRYWELL APPROPRIATELY SIZED FOR ON SITE INFILTRATION.
 5. ALL CONCRETE PAVERS TO BE NO HIGHER IN GRADE THAN 8" ABOVE STREET ELEVATION.



JOB ADDRESS:
 1800 NORTH EL CAMINO REAL #80
 SAN CLEMENTE, CALIFORNIA

LOT SPECIFICATIONS UNIT #80
 LOT AREA: 2,550 SQ.FT.
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 LOT COVERAGE: 49%

OLD HOME AREA: 1,440 SQ.FT.
 NEW HOME AREA: 1,256 SQ.FT.
 DIFFERENCE: -184 SQ.FT.

The development as proposed is consistent with the policies of the San Clemente Municipal Code, Ordinance 1999, which provides for the development of mobile homes in the City of San Clemente. The proposed development is consistent with the City of San Clemente's General Plan, which encourages the development of mobile homes in the City of San Clemente.

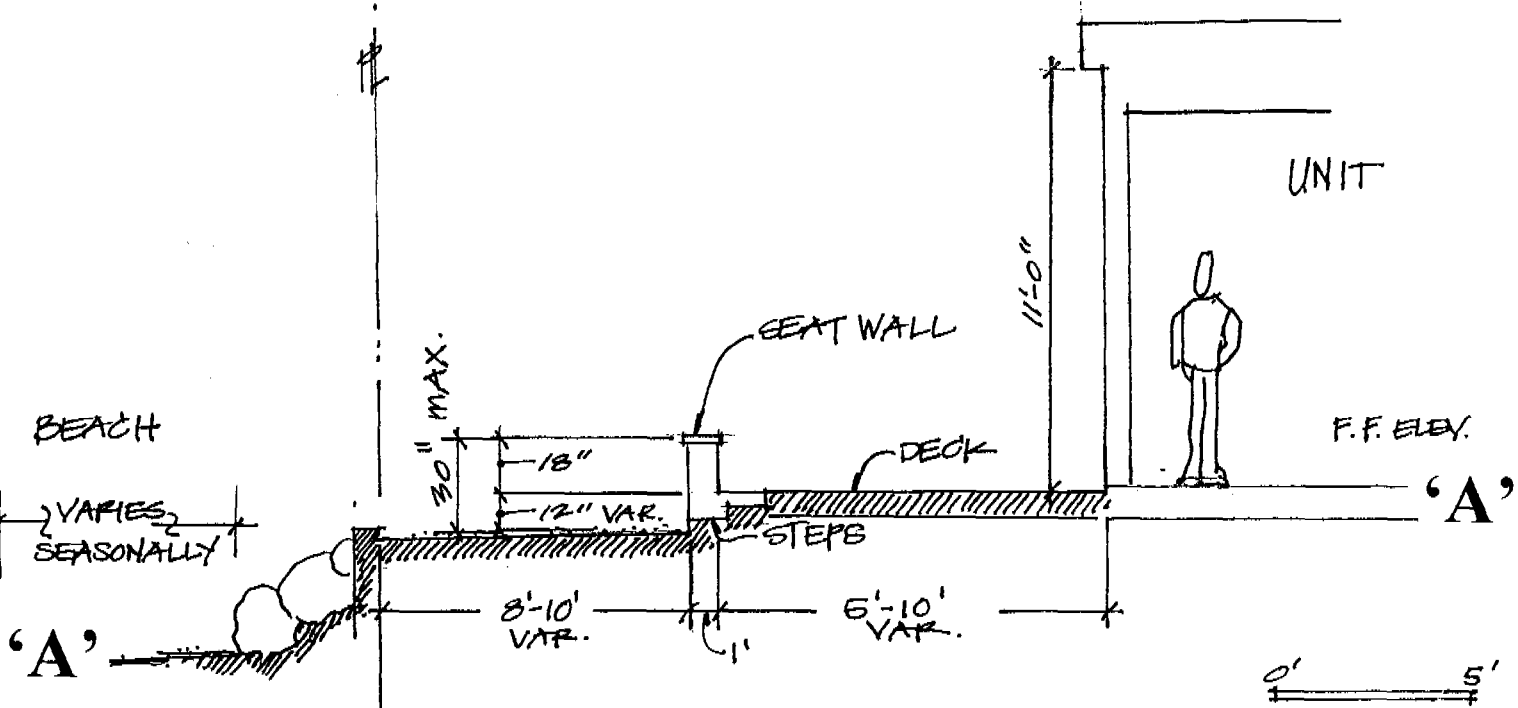
Don Nichols 9/17/09
For New Unit meeting logs

OWNER INFORMATION UNIT #80:
 FREDERICK E. HITCHCOCK JR. TRUSTEE OF
 FREDERICK E. HITCHCOCK JR.
 1999 FAMILY TRUST
 AS RESTATED, ON MARCH 21, 2008

SIGNATURE: *Frederick E. Hitchcock Jr.*
 PRINT NAME: FREDERICK E. HITCHCOCK JR.

ADJACENT OWNER APPROVAL UNIT #81
 SIGNATURE: _____ DATE: _____
 PRINT NAME: FREDERICK E. HITCHCOCK JR.

ADJACENT OWNER APPROVAL UNIT #79
 SIGNATURE: _____ DATE: _____
 PRINT NAME: _____



Section 'A'-'A' at Deck/Seat Wall
for Units 80 and 81

COASTAL COMMISSION

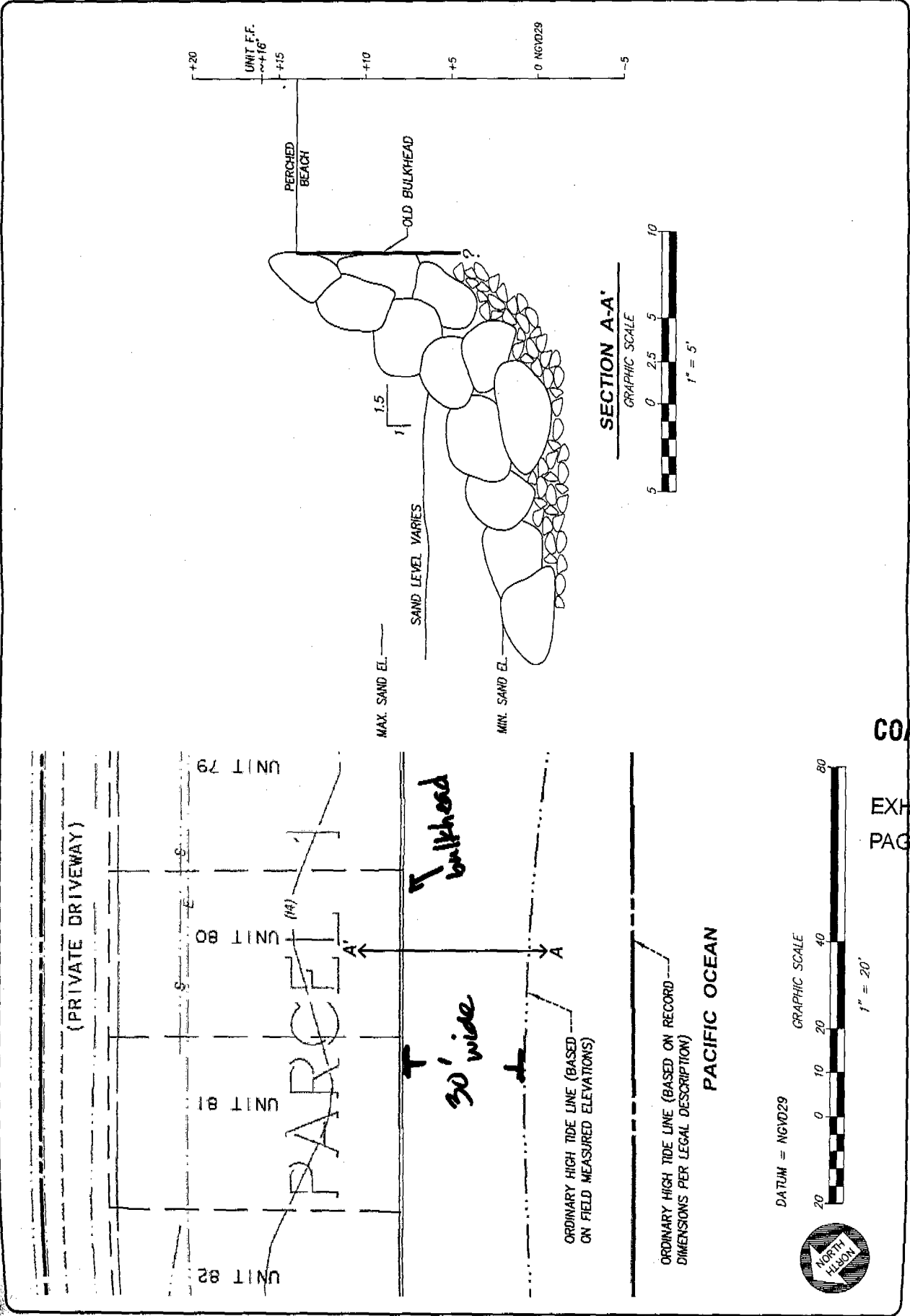
EXHIBIT # 4
 PAGE 3 OF 4

PROFESSIONAL SEAL
 STATE OF CALIFORNIA
 CIVIL ENGINEER
 No. C 4752
 Exp. 12/31/09
 DAVE SCHMAHL
 DRAFTING BY

CSI
 Geotechnical - Geologic - Coastal - Environmental
 5741 Palmer Way, Carlsbad, CA 92010
 760-438-3155

CLIENT: Frederick Hirschack &
 W.O. S5951
Capistrano Shores
Units 80 and 81

DATE: 11/06/09
 DRAWN BY: [blank]
 CHECKED BY: [blank]
 TITLE: **S1**



COASTAL COMMISSION
 EXHIBIT # 4
 PAGE 4 OF 4

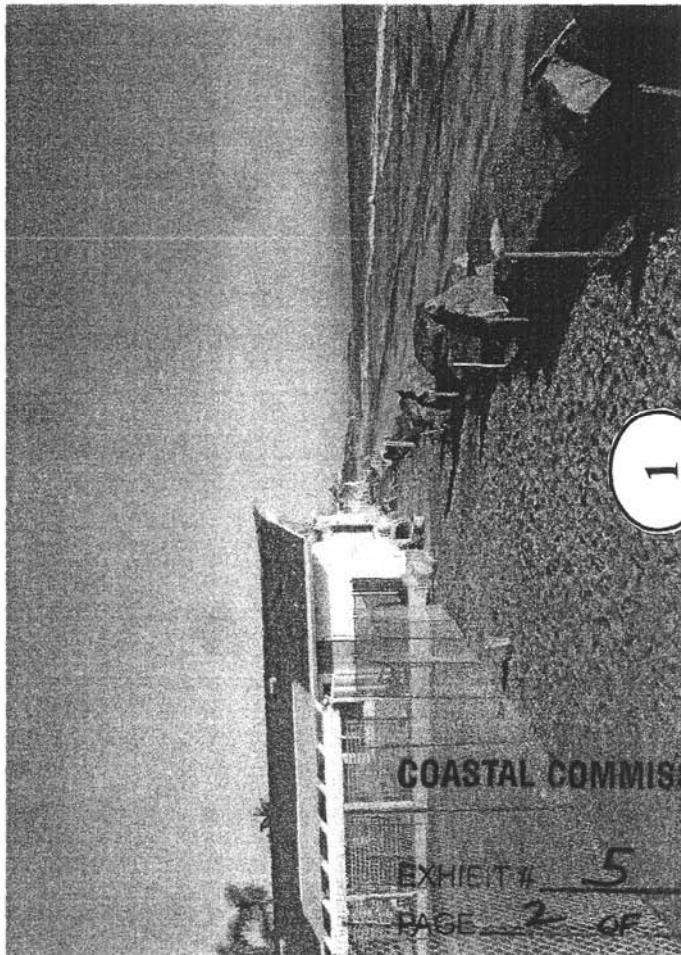
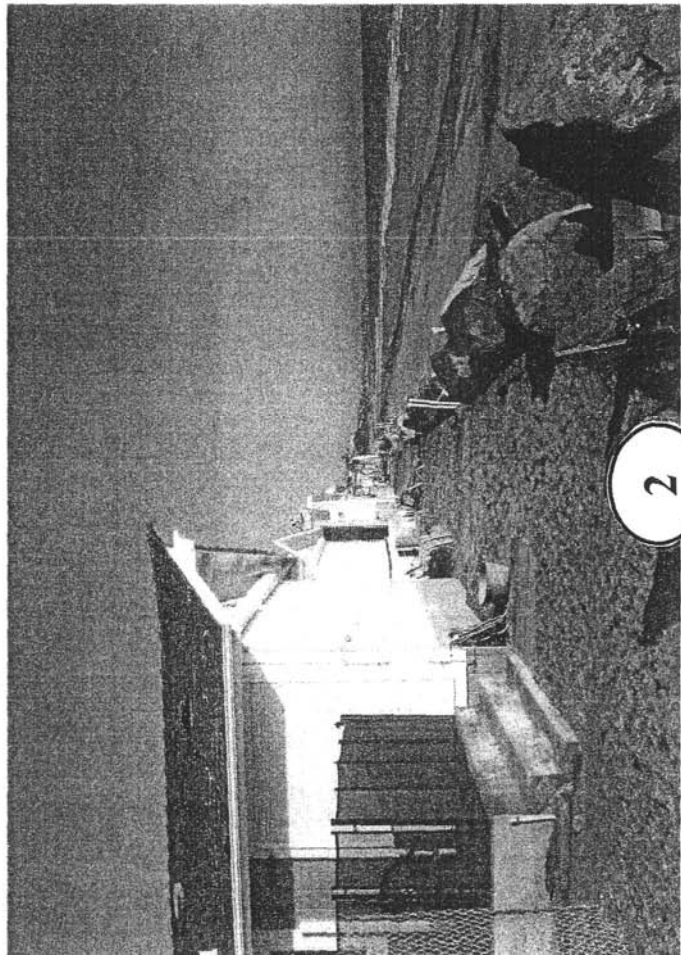
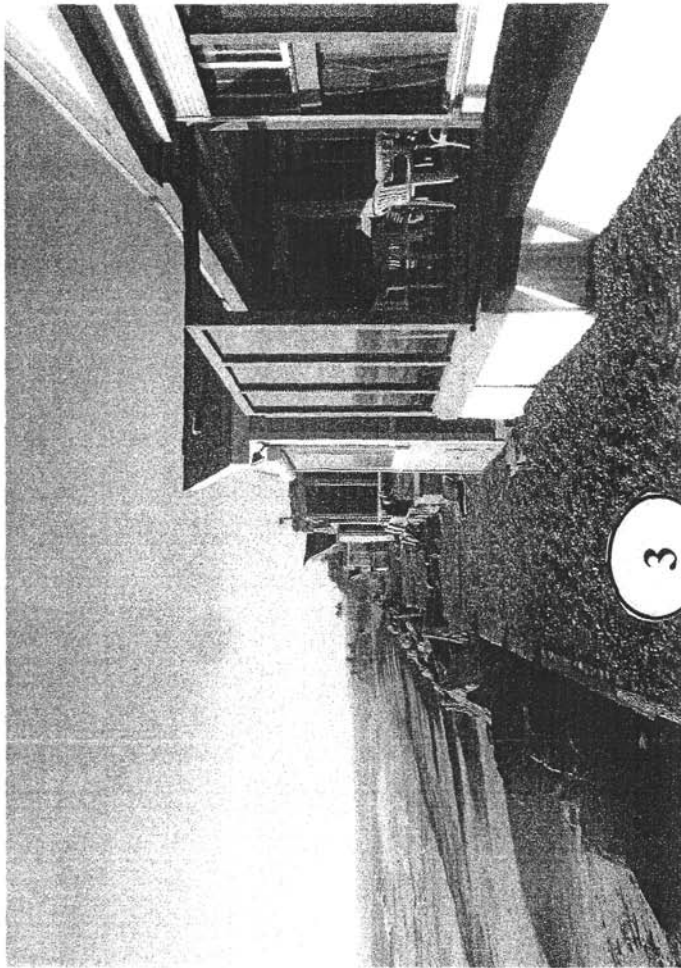
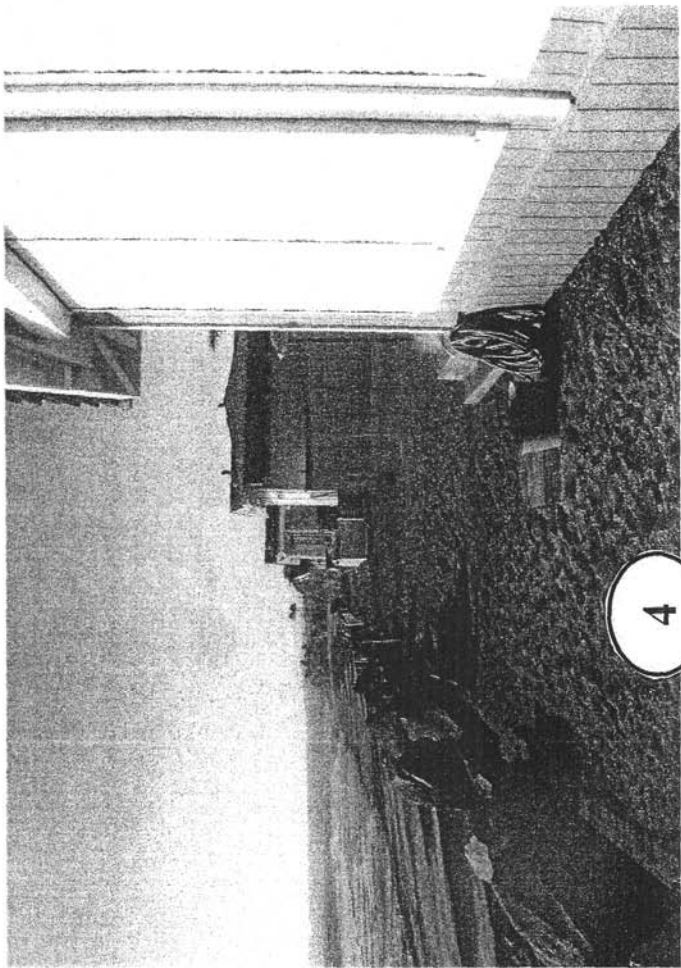
Application No.: 5-09-179 (Unit #80) and,
Application No.: 5-09-180 (Unit #81)

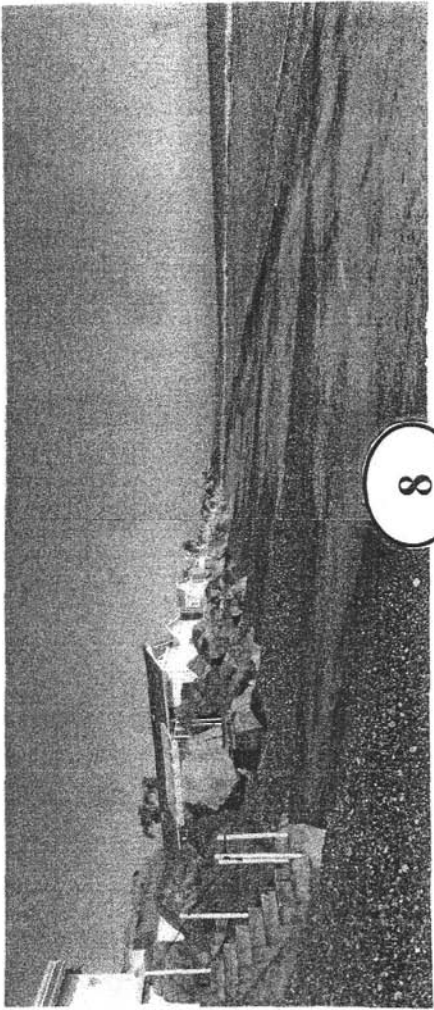
**SITE PHOTO
INDEX MAP**



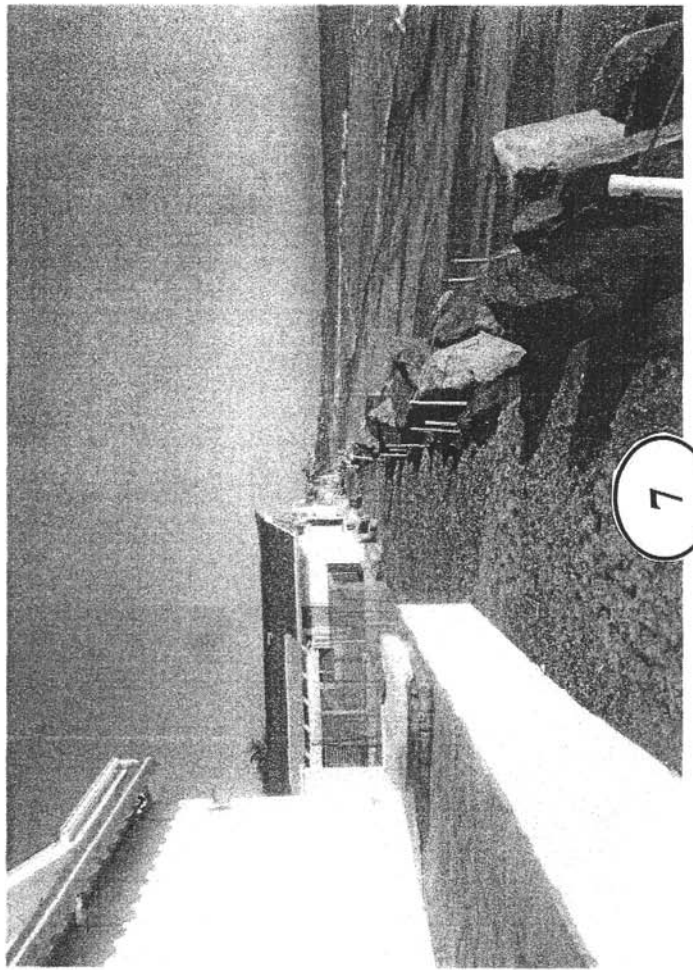
COASTAL COMMISSION

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PAGE 1 OF 3

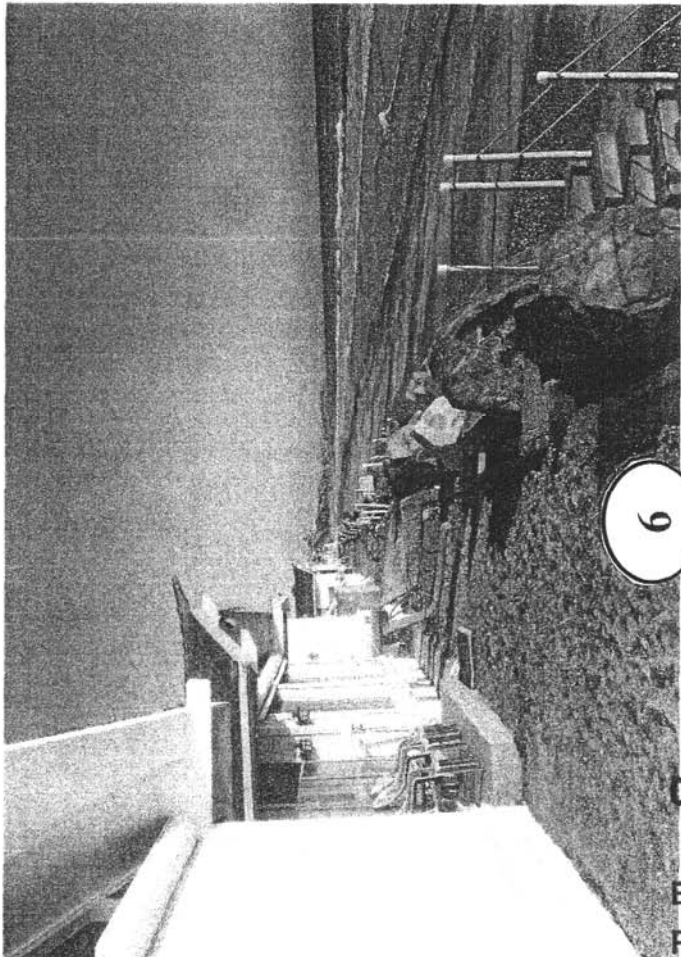




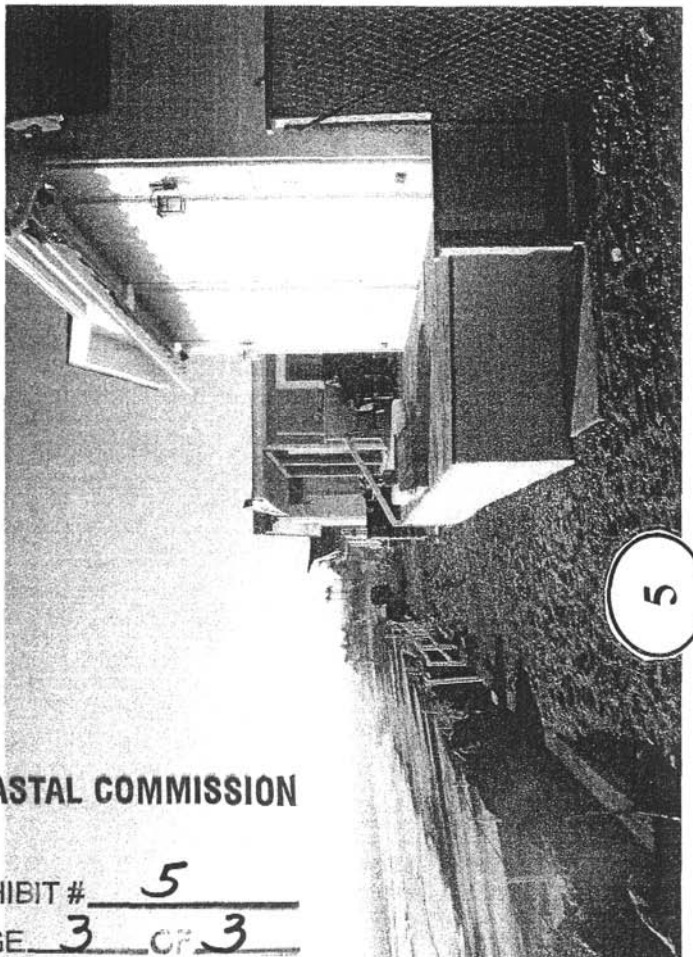
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7



6



5

COASTAL COMMISSION

EXHIBIT # 5
PAGE 3 OF 3



CAPISTRANO SHORES

1880 N. El Camino Real
San Clemente, CA 92672

Tel: (949) 492-6616

Fax: (949) 492-0884

Email: onthebeach@caposhores.com

RECEIVED
South Coast Region

MAR 11 2010

CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 2

March 2 2010

Mr. Fritz Hitchcock
P O Box 8610
City of Industry, CA 91748

via email: fehhar@earthlink.net

Re: Coastal Commission

Mr. Hitchcock,

The purpose of this letter is to clarify certain ownership, operations and procedural questions which have arisen as a result of your applications to re-install your mobile homes for which you were given permission more than 2 years ago to remove (Coastal Commission Waiver dated January 15, 2008, attached).


You have correctly described your Membership status in Capistrano Shores Inc. (attached letter dated 2/3/10) which allows the reinstallation and use of your mobile home on Units 80 and 81 (including footings, decks, drainage devices and landscaping), but it does not include ownership of the underlying fee title, the right to conduct repair, maintenance, or reconfiguration of the seawall, or the right to encumber the property with deed restrictions or other such special conditions.

As you know, we are in the process of completing a Wave Run-up Study and View Analysis for the entire Capistrano Shores Inc. property. This was requested by the Commission in relation to the proposed two-story application before the Commission which has nothing to do with your application. During our meeting with the Commission, we agreed to do the studies and we will do so. Our expectation is that these reports will be completed after approval of your reinstallation of your mobile homes. Our reports should not impact your application in any manner. In the interim, we support

your proposed modifications to the Coastal Commission Staff Report, primarily because you do not have the authority to comply with all the special conditions as previously proposed.

Please call if we can provide further clarification. We look forward to the successful re-installation of your mobile home properties.

Sincerely,



Mark Howlett, President
Capistrano Shores Inc.

COASTAL COMMISSION

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The Planning Associates

Hardy M. Strozier, Inc.

Jonathan Petke, Inc.

3151 AIRWAY AVENUE, SUITE R-1

COSTA MESA, CALIFORNIA 92626

TELEPHONE: (714) 556-5200

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May 24, 2010

Ms. Sharlyn Sarb, Director
CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

RECEIVED
South Coast Region

MAY 26 2010

Attention: Ms. Lilianna Roman, Coastal Program Analyst

Subjects: Application No. 5-09-179 (Hitchcock, San Clemente) and
Application No. 5-09-180 (Hitchcock, San Clemente)

CALIFORNIA
COASTAL COMMISSION

Ladies and Gentlemen:

The purpose of this letter is to request your favorable consideration for approval of Applications No. 5-09-179 and 180 with a recommended new Special Condition that is intended to substitute for the Special Condition No. 8 ("Generic Deed Restriction"). Our recommended Special Condition is denoted as "Special Condition No. 7" in keeping with what we understand to be the staff's current numbering scheme for the special conditions.

Mr. Hitchcock will agree to the enclosed Special Condition that imposes an obligation to remove the development authorized by the subject permits, prior to conveyance to a third party, unless that third party has notified the Executive Director in writing of his/her agreement to become bound by the permit, or unless the development becomes reauthorized by another permit. Please see the attached suggested Special Condition No. 7, "Termination, Extension or Reauthorization."

This suggested text is preferable to the draft "Generic Deed Restriction" condition that was included in the February 2010 staff report prepared for Mr. Hitchcock's original application for several reasons:

1. The deed restriction condition requires the recording of the permit with the County Recorder's Office, but there is no guarantee, and more importantly, *no obligation*, for a potential purchaser of the applicant's mobile home units in Unit Space #80 and #81 to conduct a search at the County Recorder's Office. Without notice of the permit, the new mobile home owner may claim that he/she is not bound by the terms of the permit, regardless of the assertion by the Commission that the permit "runs with the land."

By contrast, imposing a requirement on the third party purchaser to notify the Executive Director in writing that he/she agrees to become bound by the permit *before* the mobile home interest can transfer will guarantee that the conditions of the permit will continue. In the event that the interest is transferred without the required pre-acknowledgment, the Commission will have its usual full power of enforcement under the Coastal Act for development without a permit. Any such enforcement action – if necessary – can be undertaken on the face of the recommended Condition No. 7 (attached), without having to potentially litigate the issue of whether the third party recipient of the mobile home is subject to the terms of the permit (the deed restriction "notice" issue).

2. Our recommended Condition No. 7 keeps the Commission in control of the permit compliance issues by limiting the action to the Commission and the applicant and any successor who agrees in writing to become bound by the permit. Introducing a third party into the equation – Capistrano Shores, Inc. – is potentially problematic. For one thing, the applicant owns a very small share of the corporation (approximately three percent) and has no ability to control the actions of the Capistrano Board of Directors, which acts on behalf of the entire membership. It is akin to asking a single member of a Homeowners' Association to control the actions of the entire Association. If the Capistrano Shores Board decides that it does not want to record a deed restriction applicable to Mr. Hitchcock's units, there is nothing that the applicant can do to force that action. All the Board would have to show in court in response to any lawsuit brought by Mr. Hitchcock is that it is acting in the interests of all the mobile home owners in refusing to deed restrict the land, especially when there are alternatives available to the Coastal Commission to accomplish the same result as the deed restriction.

From the Commission's perspective, relying on third party actions in the administration and management of the permit is fraught with its own potential problems. Even were the Capistrano Board to record the subject deed restriction, the Commission would be without enforcement tools vis-à-vis the Board with regard to the continuing viability of that deed restriction because the Board would not be a party to the permit.

In sum, our recommended Condition No. 7 keeps the lines of communication and enforcement clean and direct as between the Commission and the permit holder, without either side trying to control the actions of a third party who is not before the Commission.

3. From the applicant's perspective, if the Commission imposes the "Generic Deed Restriction" condition, he will effectively be denied a permit by the Commission because the Capistrano Board has already indicated that it wants the "notice to successors" issue to be resolved by the applicant and the Commission without the use of a deed restriction. Under these circumstances, a court may find that the applicant will have suffered a regulatory taking for imposition of a permit condition that they cannot comply with for reasons that are beyond the applicant's control.

For all these reasons, and especially for the reason that our recommended Condition No. 7 accomplishes the goal of the Generic Deed Restriction in a much more direct and verifiable manner, we urge you to accept our suggested text.

Please call or forward any additional instructions on how to successfully process these permits.

Sincerely,



Jon Petke

CC: Mr. Frederick E. Hitchcock, Applicant

COASTAL COMMISSION

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APPLICANT PROPOSED SPECIAL CONDITION IN LIEU OF GENERIC DEED RESTRICTION

Termination, Extension or Reauthorization

The development authorized in Coastal Development Permit No. 5-09-179 shall terminate on the conveyance of either co-applicant's interest in Unit Space #80 to a third party who is not a co-applicant, subject to the exceptions listed herein. Prior to that conveyance, all development authorized by Coastal Development Permit No. 5-09-179 shall be removed in accordance with a plan pre-approved by the Executive Director, unless one of the following two exceptions apply: (i) the third party recipient notifies the Executive Director in writing that the recipient agrees to become bound by the terms of Coastal Development Permit No. 5-09-179, or (ii) the development is reauthorized by another Coastal Development Permit. Submission of the third party notification or application for reauthorization of the permit must be made prior to the date of legal conveyance to the third party. If a third party submits notification to the Executive Director of acceptance of the terms of this permit, the development authorized by this permit shall terminate on the conveyance of the third party's interest in Unit Space #80 to any other party, subject to the exceptions listed herein.

COASTAL COMMISSION

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