

CALIFORNIA COASTAL COMMISSION

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**F 9b****ADDENDUM**

February 5, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM F 9b**, COASTAL COMMISSION PERMIT APPLICATION
#5-07-258-(Turbow) FOR THE COMMISSION MEETING OF **February 8, 2008**.

Changes to Staff Report

Commission staff recommends modifications and additions to the Summary of Staff recommendations, Section III (Special Conditions) and Section IV (Findings and Declarations) of the staff report for clarification purposes. Language to be added is shown in **bold, underlined italic** and language to be deleted is in ~~strike-out~~, as shown below

1] Pages 1-2 – Modify the Summary of Staff Recommendations, as follows:

~~...No intervening changes... However, a more serious impact to the affordable nature of the housing provided in this mobile home park would be generated by the division and sale of the individual spaces in the manufactured/mobile home park to separate individual land owners. To address this issue, staff is recommending that a condition be imposed which prohibits future conversion of the site to higher income property through subdivision of the land or transfer of ownership of individual spaces. This condition will protect this existing supply of more affordable housing in the coastal zone.~~

Also of concern are potential impacts to public access and water quality. Staff is recommending **APPROVAL** of the proposed project subject to ~~NINE (9)~~ **EIGHT (8)** SPECIAL CONDITIONS requiring: **1)** submittal of Final Project Plans; ~~2)~~ prohibition of future division of land or subsequent sale/transfer of the individual spaces in the manufactured/mobile home park; ~~3)~~ **2)** additional approvals for any future development; ~~4)~~ **3)** submittal of a Parking Signage Plan; ~~5)~~ **4)** Construction-Phase Best Management Practices; ~~6)~~ **5)** submittal of a Final Drainage and Run-Off Control Plan; ~~7)~~ **6)** submittal of a Landscape Plan; ~~8)~~ **7)** condition compliance; and ~~9)~~ **8)** a deed restriction.

2] Pages 4-9 – Modify Section III (Special Conditions), as follows:

III. SPECIAL CONDITONS

...No intervening changes...

2. PROHIBITION OF DIVISON OR SUBSEQUENT SALE/TRANSFER OF INDIVIDUAL SPACES

~~The division of land or the subsequent sale or transfer of the individual spaces in the manufactured/mobile home park is prohibited.~~

2 3. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-07-258. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-07-258. Accordingly, any future improvements to the manufactured homes ~~and other structures~~ **or other 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) and subdivision, condominium conversion, **reconfiguration and reduction or expansion of rental spaces**, or any type of transfer of the land underlying individual spaces, **excepting any transfer of existing legal lots**, shall require an amendment to Permit No. 5-07-258 from the Commission.

3 4. PARKING SIGNAGE PLAN

...No intervening changes...

4 5. CONSTRUCTION BEST MANAGEMENT PRACTICES

...No intervening changes...

5 6. FINAL DRAINAGE AND RUN-OFF CONTROL PLAN

...No intervening changes...

6 7. LANDSCAPE PLAN

...No intervening changes...

7 8. CONDITION COMPLIANCE

...No intervening changes...

8 9. DEED RESTRICTION

...No intervening changes...

3] Pages 10-12 – Modify Section IV.B., as follows:

B. AFFORDABLE HOUSING

Coastal Act Section 30604 states, in part:

~~(f) The commission shall encourage housing opportunities for persons of low and moderate income.~~

~~(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.~~

1. ~~Protection/Provision of Affordable Housing in the Coastal Zone~~

B. DEVELOPMENT IN MOBILE HOME PARKS

1. ~~Protection/Provision of Affordable Housing in the Coastal Zone~~ **City's Housing Authority**

Encouraging the protection and provision of affordable housing is an important **goal and the Legislature has acknowledged through Section 30007 of the Coastal Act that local governments are the entity required to meet the requirements of state and federal law with respect to providing low and moderate income housing.** aspect of the Coastal Act. In enacting Public Resources Code §§ 30604(f) and (g), as well as Government Code §§ 65590 et seq. (the Mello Act),¹ the Legislature clearly expressed the importance of protecting affordable housing in the Coastal Zone. Section 30607 of the Coastal Act requires that “any permit that is issued ..., pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development ... will be in accordance with the provisions of [the Coastal Act].” Sections 30604(f) and (g) are part of the Coastal Act, so the Commission may therefore condition the permit to ensure that it is in accordance with §§ 30604(f) and (g). These provisions express the legislature’s clear intent that the Commission shall encourage the protection of affordable housing.

In addition, the Housing Element of the City of Newport Beach's General Plan (not certified by the Commission) states that the City has had policies in effect since the mid-1980s requiring the provision of affordable housing in association with all new residential developments where more than 4 units are proposed. The Housing Element states that the City uses Section 20.86 of the Municipal Code **to implement Government Code §§ 65590 et seq. (the Mello Act)**¹ and that between January 1, 1989, and January 1, 1994, their program required the development of 24 units in the City's coastal zone that were to be maintained as housing affordable for low-income and moderate-income individuals and/or families pursuant to Section 65590.

...No intervening changes...

¹ The Mello Act generally prohibits local governments from authorizing the conversion or demolition of affordable housing units located in the coastal zone unless those units are replaced on-site, elsewhere in the coastal zone if feasible, or if that is not feasible, within three miles of the coastal zone. Gov. Code §65590.

~~The rents the applicant is identifying would clearly be difficult for persons with low or moderate income to afford. These rents could increase at any time, as neither the City nor HCD exercise rent control over these units. Those rents, however, are likely more affordable than a similarly sized and located single family residence located in the vicinity of the project site. A more serious impact to the affordable nature of the housing provided in this mobile home park would therefore be generated by the division and sale of the individual spaces in the manufactured/mobile home park to separate individual land owners. Dividing and selling the mobile home spaces, along with their structures, would make these lots virtually indistinguishable from other individually owned residences in the area. Their value would increase and affordability decrease, accordingly. Coastal Act Section 30604 encourages the protection of existing, and the provision of new, affordable housing opportunities in the Coastal Zone. While the upgraded Newport Sands Mobile Home Park is not mandated by the City or HCD to be affordable to low and moderate income persons, it would provide less expensive housing than most other comparably sized and located residences in the City. As it stands now, these lots are not divided or able to be transferred as individual lots,² and they therefore provide an opportunity for the Commission to protect some level of affordability in these housing units. Allowing these lot spaces to convert to individual ownership would make these lots less affordable, similar to other single family properties in the City. Thus, the Commission imposes **SPECIAL CONDITION NO. 2**, which prohibits the division of land or subsequent sale or transfer of the individual spaces in the manufactured/mobile home park. This prohibition applies to all forms of individual division and subsequent sale of individual mobile home spaces, including but not limited to, lot divisions and condominium conversion.~~

In addition, the Commission imposes **SPECIAL CONDITION NO. 3²**, which notes requirements for a coastal development permit for future development on the subject site

² On February 5, 2008, the agent for the applicant provided a 'property profile' by Old Republic Title Company, which the agent asserts shows that the existing mobile home park is divided into "12-15 legal lots." The 'property profile' provides a legal description which suggests there are multiple lots. An assessors parcel map was also supplied that depicts the project site divided by lines that suggest the presence of multiple lots. However, neither the 'property profile' or the assessors parcel map that accompanied the profile is evidence of a legal division of the property. No evidence has been supplied to demonstrate the existence of a pre-Coastal Act (prior to 1973) land division on the property. No evidence of a post-1972 land division/lot line adjustment, etc., authorized with a coastal development permit, has been identified. The Commission wouldn't recognize any land division that occurred after 1972 without evidence of a coastal development permit authorizing such division.

If there is a valid, legal land division of the property, sale or transfer of legally existing lots wouldn't require a coastal development permit. However, any lot reconfiguration, combination, division, condominium conversion and/or any other change in intensity of use of any portion of the subject site would require a coastal development permit. It is worth noting that, if the site is divided in the manner depicted on the assessors parcel map that accompanied the 'property profile', a reconfiguration of either the lots and/or the rental parcels and relocation of some or all of the proposed manufactured homes would be required in order to transfer a complete residential structure with the land. A comparison of the depiction of 'lots' on the assessors parcel map with the rental lot configuration identified in Exhibit 2 to the staff report shows that the 'lots' are not aligned with the 'rental spaces'. In addition, the proposed manufactured homes, in some instances, straddle the lines of the 'lots' depicted on the assessors parcel map. A coastal development permit would be required for any such reconfiguration.

which would include, but not be limited to, any division of land that would allow transfer or sale of the individual lots in the mobile home park.

2b. Commission's Regulatory Authority

...No intervening changes...

CONCLUSION

To minimize the adverse impacts upon affordable housing, ~~TWO (2) SPECIAL CONDITIONS~~ have been imposed. **SPECIAL CONDITION NO. 2** prohibits the subdivision and subsequent sale of individual lots in the manufactured/mobile home park. **SPECIAL CONDITION NO. 3** establishes permit requirements for future development. Only as conditioned does the Commission find that the proposed project is consistent with Sections 30604(f) and (g) of the Coastal Act.

4] Pages 13-14 – Modify Section IV.C., as follows:

C. PUBLIC ACCESS

...No intervening changes...

The Commission has consistently found that two (2) parking spaces are adequate to satisfy the parking demand generated by one (1) individual residential unit. The proposed residential units will each have two (2) designated parking spaces for a total of thirty-four (34) parking spaces. Most will have these parking spaces adjacent to the home, but one (1) of these manufactured homes will have one (1) of its parking spaces adjacent to the home and one (1) near, but not adjacent to the home. In cases like this, a sign plan can be important since it identifies where each units' assigned parking spaces are located. No sign plan was proposed. Since two (2) parking spaces are being provided for each home, the development is consistent with the parking required. In order to assure that adequate parking is provided on-site and that parking is appropriately signed for the private development, the Commission imposes **SPECIAL CONDITION NO. 3 4**, which requires the applicant to submit a Parking Signage Plan. This Plan shall include, but not be limited to, 1) the location of the two (2) parking spaces for each residence; and 2) signage designating the parking spaces for each residence.

Also, the Commission notes that the entry to the street/driveway of the existing mobile home park is not gated and the new proposal does not include any gating of the entry to the community. Such gating would raise issues with regard to consistency with the public access and recreation policies of the Coastal Act. In addition, such gating, if ever sought, would require a coastal development permit as is noted by **SPECIAL CONDITION NO. 2 3**, which advises the applicant of permit requirements for future improvements.

CONCLUSION

To minimize the adverse impacts upon public access, **TWO (2) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 2 3** requires additional approvals for any future development. **SPECIAL CONDITION NO. 3 4** requires the applicant to submit a Parking Signage Plan. Only as conditioned does the Commission find that the proposed project is consistent with Sections 30212 and 30252 of the Coastal Act.

5] Pages 14-16 – Modify Section IV.D., as follows:

D. WATER QUALITY AND THE MARINE ENVIRONMENT

...No intervening changes...

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 45** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

2. Post-Construction Impacts to Water Quality

During storm events, the pollutants which have collected upon the roof and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges. Water pollution can result in decreases in the biological productivity of coastal waters. In addition, impervious surfaces magnify peak flows dramatically which can lead to erosion. In order to mitigate these impacts, the applicant has submitted the following: *Drainage Study* prepared by Nolan Consulting, Inc. dated August 2005. The study states that percolation sumps will be used on-site, which will allow drainage to percolate on-site. While these measures to deal with post construction water quality are acceptable, additional measures are necessary, such as minimization of irrigation and the use of fertilizers and other landscaping chemicals through the use of low-maintenance landscaping and efficient irrigation technology or systems and that trash, recycling and other waste containers, as necessary, shall be provided on-site. Therefore, the Commission imposes **SPECIAL CONDITION NO. 56**, which requires the applicant to submit a Final Drainage and Run-Off Control Plan.

No Landscaping Plans have been submitted with the proposed project. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of

California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Thus, the Commission imposes **SPECIAL CONDITION NO. ~~67~~**, which requires the applicant to submit a Landscape Plan, which consists of native or non-native drought tolerant non-invasive plants.

CONCLUSION

To minimize the adverse impacts upon the marine environment, **THREE (3) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. ~~45~~** identifies Construction-Phase Best Management Practices. **SPECIAL CONDITION NO. ~~56~~** requires the applicant to submit a Final Drainage and Run-Off Control Plan. **SPECIAL CONDITION NO. ~~67~~** requires the applicant to submit a Landscape Plan. Only as conditioned does the Commission find that the proposed project is consistent with Section 30230, 30231 and 30232 of the Coastal Act.

6] Page 16 – Modify Section IV.E., as follows:

E. UNPERMITTED DEVELOPMENT

...No intervening changes...

To ensure that the unpermitted development component of this application is resolved in a timely manner, **SPECIAL CONDITION NO. ~~78~~** requires that the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit, within 90 days of Commission action. Although construction has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon its consistency with the policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

7] Page 16 – Modify Section IV.F., as follows:

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **SPECIAL CONDITION NO. ~~89~~**, which requires that the property owner 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 will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including future development, prohibition on division and/or sale of individual mobile home spaces, parking management, maintenance of water quality and landscaping to which the site is subject.

8] Page 18 – Modify Section IV.H., as follows:

...No intervening changes...

The project is located in an urbanized area. Development already exists on the subject site. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. The Commission is imposing **~~NINE (9)~~ EIGHT (8) SPECIAL CONDITIONS** requiring: 1)

submittal of Final Project Plans; ~~2)~~ prohibition of future division of land or subsequent sale/transfer of the individual spaces in the manufactured/mobile home park; ~~3)~~ 2) additional approvals for any future development; ~~4)~~ 3) submittal of a Parking Signage Plan; ~~5)~~ 4) Construction-Phase Best Management Practices; ~~6)~~ 5) submittal of a Final Drainage and Run-Off Control Plan; ~~7)~~ 6) submittal of a Landscape Plan; ~~8)~~ 7) condition compliance; and ~~9)~~ 8) a deed restriction.

...No intervening changes...

Letters and Ex Parte Communications Rec'd Since Publication of the Staff Report are also attached

- Letter from Alan Block with attachments dated January 31, 2008
- Ex Parte Communication Disclosures from Chairman Kruer, Commissioner Achadjian, and Commissioner Blank

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January 31, 2008

California Coastal Commission
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RECEIVED
South Coast Region
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CALIFORNIA
COASTAL COMMISSION

Re: CDP Application No. 5-07-258 (Turbow)
7000 W. Coast Highway, Newport Beach, CA

Project Description: After the fact request for the removal of sixteen (16) mobile homes and installation of eleven (11) manufactured homes, installation of concrete, carports and decks, additional parking, a drainage system and movement of lot lines (reducing the number of lots from 20 to 17). In addition, the applicant is requesting the approval for installation of four (4) additional manufactured homes, driveways, carports and decks, a drainage system and common parking.

Scheduled: February 8, 2008
Agenda Item: F 9b

Dear Commissioners:

Please be advised that this office represents the applicant Sherwyn Turbow with regard to the above captioned application for Coastal Development Permit ("CDP") No. 5-07-258.

Staff is currently recommending approval of the proposed project subject to nine (9) special conditions as follows: 1) submittal of final project plans; 2) prohibition of future division of land or subsequent sale/transfer of the individual spaces in the manufactured/mobile home park; 3) additional approvals for any future development; 4) submittal of a parking signage plan; 5) construction-phase best management practices; 6) submittal of a final drainage and run-off control plan; 7) submittal of a landscape plan; 8) condition compliance; and 9) the recordation of a deed restriction.

The applicant readily agrees to accept all recommended special conditions with the exception of Special Condition No. 2 relating to affordable housing. The applicant cannot agree to accept a special condition which restricts the applicant from even submitting an

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application for a CDP in the future to possibly divide the land and/or sell or otherwise transfer of the individual spaces in the mobile home park. Such a condition, is not only unreasonable, but moreover, redundant considering an action to divide the land would constitute "development" under the Coastal Act and require a CDP. Further, Special Condition No. 3. specifically provides that any future development on the property would require a separate CDP.

Applicable Facts

The applicant's family has owned the subject property and mobile home park for over 50 years. Between the years 2001 and 2004 the applicant purchased the previously existing older mobile homes in the park, and with applicable approvals from both the State of California Department of Housing and Community Development ("HCD") and City of Newport Beach, began reconfiguring the park to house sixteen (16) new manufactured homes. By the year 2006, eleven (11) manufactured new homes, each containing over 1,100 square feet of living space, were moved onto the property with proper foundations, driveways, carports and decks.

Before the last four (4) manufactured homes could be moved into the park the applicant was contacted by Commission staff and advised that staff had concerns about the drainage system and adequacy of parking for the reconfigured mobile home park. Pursuant to staff's request the applicant submitted CDP application No. 5-06-268 to the Commission for consideration. The application, seeking the same approval as that herein, was accepted for filing by staff on November 9, 2006. Not until early April 2007, as which time the applicant received a copy of the Staff Report, dated March 29, 2007, did he realize that staff was recommending that the approval of the application be subject to special conditions relating to affordable housing 1) restricting any future division of land or the subsequent sale or transfer of the individual spaces, and 2) limiting the remaining four (4) mobile home spaces for occupation by a "trailer coach" of no more than 400 square feet built upon a single chassis.

The applicant and this office immediately thereafter met with staff and challenged the jurisdiction of the Commission to condition the application on providing affordable housing. The applicant, moreover, explained that the manufactured homes proposed for the vacant spaces represented a far better alternative than requiring the applicant to provide a percentage of small trailers or mobile homes to a percentage of it's occupants, in that the manufactured homes provided a substantially less expensive per person occupancy, and offered renters far

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more protection under existing law, than recreational trailer coaches. Because of time considerations with the Permit Streamlining Act, staff agreed that the applicant could withdraw the then pending application and re-file it. As such, this application was resubmitted to staff in August 2007.

Although the proposed recommended special conditions regarding affordable housing have changed, from restricting the vacant spaces in the mobile home park to trailer coaches with no more than 400 square feet; to setting aside 25% of the total units in the park for affordable housing; to the present recommendation prohibiting future land divisions or sale or transfer of the individual spaces in the mobile home park, staff has continually contended, despite the applicant's disagreement, that the Commission had jurisdiction to condition the application in order to preserve and protect affordable housing in the coastal zone.

As stated above, the applicant obtained HCD and City of Newport Beach approval when he converted the former Flamingo Trailer Park to the Newport Sands Mobile Home Park in 2002-2003. In January 2003 only one of the previously existing mobile homes and tenants still resided in the park. At that time, the tenant who owned his own old mobile home, paid a monthly rent of \$1,200 for the space alone. The new manufactured/mobile homes with spaces rent for between \$2,300 to \$2,600 per month depending on whether they have an attached carport and deck. The units with carports and decks, including space, rented for \$2,000 in January 2004.

The applicant vigorously contends that it has been unreasonably singled out by Commission staff for special regulation from all the other mobile home parks existing in the coastal zone in the Newport Beach area. As evidenced during our discussions with staff, the Lido Peninsula Resort and Bayside Village mobile home parks have both systematically removed mobile homes and replaced them with manufactured/mobile homes at substantially higher monthly rents than that charged by Newport Sands. Further the City of Newport Beach which operates the Marina Park mobile home park, and charges a minimum of \$1,550 per space, not including the living unit, has given eviction notice to all 56 of its mobile home tenants advising them that the mobile home park will be closing down in order to build a public park and playground on the premises.

Further, it should be understood that none of the pre-existing or existing rental spaces in the subject mobile home park have ever been designated as affordable units in the Housing Element of General Plan for the City of Newport Beach.

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Argument

As explained further below, the applicant respectfully submits that the sections of the Staff Report cited as the basis for the recommended special condition related to affordable housing, Sections 30604(f) and (g) of the Coastal Act (Pub. Res. Code §30000 et seq.), do not provide any basis for conditioning of the application by the Commission. Staff has misinterpreted the intent of Sections 30604(f) and (g), as explained in the attached letters from the Bill's author, State Senator Denise Moreno Ducheny ("Ducheny"). Those sections, enacted four years ago have never been successfully applied in the manner now suggested by staff, and were not intended to resurrect the Commission's authority to regulate affordable housing in the coastal zone.

1. The Commission Lost Permit Jurisdiction Over Affordable Housing in 1981

Prior to 1981, Section 30213 of the Coastal Act included an affordable housing policy: "Housing opportunities for persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, shall be protected, encouraged, and, where, feasible, provided."

In 1981, because of controversy over the Commission's application of this policy, the Legislature repealed that policy, enacted provisions in the Coastal Act removing the Commission's authority over affordable housing, and transferred the authority to regulate affordable housing in the coastal zone to local governments under Government Code section 65590. (Stats. 1981, c. 1007, p. 3900.)

Thus, to address LCPs, the Legislature provided in Section 30500.1 of the Coastal Act that "[n]o local coastal program shall be required to include housing policies and programs."

In addition, to address the Commission's jurisdiction over CDPs, the Legislature further provided in Section 30607.2(c) that no new CDP "shall be denied, restricted, or conditioned by the commission in order to implement housing policies or programs." (Emphasis added.)

Those provisions, including the explicit prohibition on denial, restriction, or conditioning of a permit application to implement housing policies or programs, remain in effect and are applicable today.

Since 1981, the Commission has not had jurisdiction to regulate affordable housing

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in the coastal zone. That has been and remains a local government function in the coastal zone under the detailed requirements of Government Code section 65590. Indeed, as the local government Commissioners can readily attest, there are numerous other complex statutory provisions dealing with the intricacies of affordable housing, applicable only to local government and which are beyond the expertise of Coastal Commission staff. (*See e.g.*, Health & Saf. Code § 50093 [low income], § 50462 [affordable housing]; Govt. Code §§ 65008(c) [middle income] and (e) [preferential treatment], § 65580-65590 [housing element], § 65913.1-.2 [zoning to meet housing needs] § 65913.3 [consolidated permit processing], § 65913.4 [regulatory concessions and incentives]; § 65915-18 [density bonuses and other incentives].)

In short, the Commission lacks the authority to deny, restrict or condition the project on affordable housing grounds.

2. Sections 30604(f) and (g) of the Coastal Act do not Provide Regulatory Authority for the Commission to Re-Regulate Affordable Housing in the Coastal Zone

The Staff Report purports to reassert Commission jurisdiction over affordable housing by relying on language in two provisions added to the Coastal Act in 2003, Sections 30604(f) and (g). While these sections have been in effect now for four years, the Commission, to our knowledge, has never applied them in the manner recommended by staff. In any case, there are multiple reasons why these provisions do not provide any basis for the Commission to condition the instant application on affordable housing grounds.

The Staff Report briefly notes, but does not quote either section. Sections 30604(f) and (g) read in their entirety as follows:

“(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential density or range of density established by local zoning plus the addition additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.”

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“(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.”

Nothing in these two provisions changed the basic regulatory authority of local governments over affordable housing or, significantly, the provisions of the Coastal Act divesting the Commission of direct authority to regulate affordable housing. Government Code section 65590 was not changed. More to the point, the prohibition on the Commission from requiring housing policies/programs in LCPs or denying, restricting, or conditioning CDPs was not changed.

What was changed, however, was the following. In Section 30604(f), the Legislature required the Commission “encourage” affordable housing, citing one instance: The issuing agency of the Commission on appeal may not reduce a project’s residential density which includes a density bonus, unless it “makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.” Thus, Section 30604(f) requires the Commission to encourage affordable housing in the coastal zone by permitting the Commission to reduce a project’s density, including a density bonus, to ensure conformity with the coastal resource policies in Chapter 3 of the Coastal Act only as a last resort – i.e., if substantial evidence demonstrates there is no other feasible way to avoid impacting coastal resources.

Second, both provisions state that it is important for the Commission to “encourage” affordable housing in the coastal zone. However, they stop well short of the original language in Section 30213 of the Act, which additionally required that affordable housing opportunities be “protected” and “where feasible, provided.” In fact, “encourage” is a word capable of precise definition. It means “to inspire with courage, spirit, or hope” (hearten), “to spur on” (stimulate), and “to give help or patronage to” (foster). (Merriam-Webster’s Collegiate Dictionary (10th Ed.).) The Commission “encourages” affordable housing when, for example, it determines how to approve a higher density project that may otherwise conflict with other coastal resource policies. But, “encourage” is not synonymous with “protect” or “where feasible, provide,” and it does not mean the power to deny, restrict, or condition a permit to address affordable housing. It cannot have that meaning because Section 30607.2(c) – as implemented now by the Commission since 1981 – provides that no new CDP “shall be denied, restricted, or conditioned by the commission in order to implement housing policies or programs.”

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Further, the legislative history of Senate Bill ("SB") 619, which gave rise to Sections 30604(f) and (g), staff's own analysis of that bill, and its letter to the Bill's author, Ducheny, confirm that the Legislature never intended these two provisions to confer renewed authority on the Commission to regulate affordable housing, as it had prior to 1981. As introduced, SB 619 would have eliminated local public hearings for affordable housing projects up to 150 units and prevented the Commission from reducing densities of proposed affordable housing projects in the coastal zone. The bill was then amended to permit the Commission to reduce the density of an affordable housing project upon a specific finding, essentially in the language of current Section 30604(f). Staff then produced a bill analysis, but without noting the amendment. The bill analysis recommended that the Commission take an "oppose" position, and suggested:

"... that a more effective approach would be to restore the Commission's ability to require affordable housing as a component of large development projects. Amending the Coastal Act to allow the Commission to encourage affordable housing through regulatory and local coastal program planning actions consistent with coastal resource protection policies should be considered as a substitute to the proposed approach set forth in the bill."

Thereafter, Executive Director Douglas wrote to the Bill's author, expressing the Commission's opposition to the Bill, but only requesting that the Legislature restore the provision of public hearings for large, multi-family housing projects in the coastal zone.

The next version of the Bill in fact deleted the provision eliminating local public hearings. Significantly, however, no language was added to the Bill (or deleted from the existing Coastal Act) to permit the Commission to encourage affordable housing through permit and LCP planning actions.

Finally, on September 5, 2007, the Bill's author, Ducheny, wrote the Commission to clarify the Legislature's intent in adding Sections 30604(f) and (g) to the Coastal Act. She explained:

"In authoring SB 619, my broad intent was to streamline processes for permitting housing, especially affordable housing. I wished to encourage state agencies, including the Coastal Commission, to facilitate affordable housing statewide, including in the coastal zone where the development was consistent with local coastal plans, by streamlining the land use approval process to permit higher density residential development with an affordable housing component."

California Coastal Commission
Re: CDP Application No. 5-07-258 (Turbow)
January 31, 2008

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“To harmonize affordable housing development with coastal resource protection, Sections 30604(f) and (g) were added to the Coastal Act to require that the Commission or local governments, *before* reducing the density of a project below that allowed by local zoning and the state density bonus law, make a finding supported by substantial evidence that the density cannot be accommodated on the site without negatively affecting coastal resources.”

More significantly, State Senator Ducheny recently explained in a second letter to Executive Director Peter Douglas dated, January 24, 2008, that SB 619 was not intended to “provide the Coastal Commission with any new jurisdiction or ability to interfere with local land use policy and planning.” Ducheny stated:

“[a]s laudable as it is for the Commission staff to want to promote affordable housing in the coastal zone, the authority to do so lies directly with local jurisdiction. SB 619 simply directs the Commission to approve density bonuses if they are otherwise consistent with the Coastal Act.”

A copy of State Senator Denise Moreno Ducheny’s September 5, 2007 and January 24, 2008 letters to Commission Executive Director Peter Douglas are attached hereto as **Exhibits 1 & 2** and hereby incorporated by reference. As noted above, the Bill did not modify or change the provisions of the Coastal Act that prohibit the Commission from requiring housing policies/programs in LCPs or denying, restricting, or conditioning CDPs. Nor was it intended to do so, as explained by the Bill’s author.

3. Sections 30604(f) and (g) are not Coastal Policies, and Therefore Cannot be the Basis for a Conditional Approval or Denial of a Permit

It is also worth noting that the Staff Report further treats Sections 30604(f) and (g) as though they are policies set forth in Chapter 3 of the Coastal Act (commencing with Section 30200 *et seq.*). Significantly, however, they are not coastal resource policies, but rather are included instead in Chapter 7 of the Act.

Section 30604(a) of the Coastal Act establishes the basic findings requirement for approval of a coastal development permit where, as here, there is no certified LCP. It states, in relevant part:

“Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed

development is conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program in conformity with Chapter 3 (commencing with Section 30200).”

Thus, the Commission reviews an application for CDP for its conformity with the coastal resource policies in Chapter 3 of the Coastal Act (Sections 30200-30265.5). If the project conforms with the policies in Chapter 3, a CDP “shall be issued.” Accordingly, the Act not only provides that the Commission has no permit jurisdiction or LCP jurisdiction over affordable housing, but the provisions cited by staff are not coastal resource considerations here because they are not set forth in Chapter 3 of the Act. While the Legislature certainly could have included Sections 30604(f) and (g) in Chapter 3 – and indeed could have explicitly resurrected Commission jurisdiction over affordable housing in the coastal zone, it did not.

4. The Commission Cannot Deny, Restrict, or Condition the CDP under Section 30607 of the Coastal Act With Respect to Sections 30604(f) and (g)

The Staff Report cites as support for the recommendation relating to affordable housing Section 30607 of the Coastal Act, which provides that “any permit that is issued . . . pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development . . . will be in accordance with the provisions of [the Coastal Act].”

Section 30607 is inapplicable to the staff recommendation for several reasons. First and foremost, it authorizes the Commission to impose “reasonable” terms and conditions to ensure consistency “with the provisions of” of the Act. This makes sense only when the Commission determines whether a project is in conformity with the provisions in Chapter 3 of the Coastal Act since, if there is conformity, Section 30604(a) requires that the permit “shall be issued.” As noted, Sections 30604(f) and (g) are not contained in Chapter 3 of the Act. Second, as explained above, the other provisions of the Act added by the Legislature in 1981 make clear that the Commission has no LCP jurisdiction over affordable housing and no new CDP “shall be denied, restricted, or conditioned by the commission in order to implement housing policies or programs.” (Pub. Res. Code, §§ 30500.1, 30607.2(c).) Clearly, the general provisions of Section 30607 regarding conditions cannot trump, or supersede, the specific provisions on Section 30607.2 that prohibit conditions to implement housing policies or programs.

In essence, Special Condition No. 2, which prohibits the applicant from dividing the

California Coastal Commission
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land and subsequent sale/transfers of individual spaces as a means of controlling impacts on affordable housing is in direct contrast with Section 30607.2(c) of the Coastal Act. Said section restricts the Commission from denying, restricting or conditioning a CDP in order to implement housing policies or programs. Further, as referenced above, the spaces in the applicant's mobile home park have never been designated as providing affordable units in the Housing Element of the General Plan for the City of Newport Beach.

Although the applicant has no plans to divide the land and/or sell or otherwise transfer the individual spaces in the mobile home park, a special condition prohibiting from doing so, at any time in the future, is patently unreasonable. The division of land is a "development" under the Coastal Act and would require a separate CDP. Further, Special Condition No. 3, which the applicant does not contest, specifically requires a CDP for any future development on site. The prohibition of a future land division and/or subsequent sale or transfer of the individual spaces on the basis of preserving and protecting affordable housing is neither warranted nor reasonable and the application should be approved with the deletion of Special Condition No. 2.

Conclusion

The applicant respectfully submits that Sections 30604(f) and (g) of the Coastal Act do not provide a basis for the imposition of Special Condition No. 2 and the application should be approved without said recommended condition.

I will be present at the hearing to answer any of your questions.

Thank you for your courtesy, cooperation, and anticipated support.

Respectfully Submitted,

LAW OFFICES OF
ALAN ROBERT BLOCK
A Professional Corporation


ALAN ROBERT BLOCK

ARB:ah
enclosures

California Coastal Commission

Re: CDP Application No. 5-07-258 (Turbow)

January 31, 2008

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cc: Commissioners

Fernie Sy

Teresa Henry

Sherwyn Turbow

Susan McCabe

Michael Turbow

Jim Joffe

Michael Broida

EXHIBIT 1

COMMITTEES
CHAIR BUDGET AND FISCAL REVIEW
VICE CHAIR AGRICULTURE
CHAIR JOINT LEGISLATIVE BUDGET
JOINT LEGISLATIVE AUDIT

California State Senate

SENATOR
DENISE MORENO DUCHENY
FORTIETH SENATE DISTRICT



STAFF COMMITTEES
CHAIR CALIFORNIA-MEXICO
COOPERATION
CHAIR COLORADO RIVER
CHAIR OVERSIGHT OF THE
UC ENERGY LABS
ORDERS
CALIFORNIA WORKFORCE
INVESTMENT
STATE PUBLIC WORKS

September 5, 2007

Patrick Kruer, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

Re: SB 619 (2003) and Coastal Act sections 30604(f) and (g)

Dear Chairman Kruer:

It has come to my attention that, during the Commission's consideration of development projects in the coastal zone, some Commission staff recommendations have relied, in part, on two sections of the Coastal Act, sections 30604(f) and (g), and the specific intent of the legislature in enacting them in 2003 as part of my bill, SB 619. This letter is written to clarify my intent in adding those provisions to the Coastal Act.

As you know, in the 1980's the Legislature removed language from the Coastal Act that provided the Commission with a policy to protect, encourage, and, where feasible promote, affordable housing, and transferred the authority over affordable housing in the coastal zone to local government.

In authoring SB 619, my broad intent was to streamline processes for permitting housing, especially affordable housing. I wished to encourage state agencies, including the Coastal Commission, to facilitate affordable housing statewide, including in the coastal zone where the development was consistent with local coastal plans, by streamlining the land use approval process to permit higher density residential development with an affordable housing component. SB 619 was intended to encourage the approval of developments with affordable housing units but was not intended to affect any authority the Commission may or may not have to require affordable housing in all developments. To harmonize affordable housing development with coastal resource protection, Sections 30604(f) and (g) were added to the Coastal Act to require that the Commission or local governments, *before* reducing the density of a project below that allowed by local zoning and the state density bonus law, make a finding supported by substantial evidence that the density cannot be accommodated on the site without negatively affecting coastal resources.

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STATE CAPITOL ROOM 5035
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FAX 916 327-3522

CHULA VISTA OFFICE
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CHULA VISTA, CA 92010
TEL 619 409-7650
FAX 619 409-7659

IMPERIAL VALLEY OFFICE
1224 STATE STREET, SUITE D
EL CENTRO, CA 92243
TEL 760 335-3444
FAX 760 335-3444

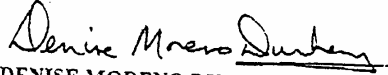
COACHELLA VALLEY OFFICE
53-000 ENTERPRISE WAY, SUITE 114
COACHELLA, CA 92236
TEL 760 398-5241
FAX 760 398-5270



Patrick Krueger
September 5, 2007
Page 2

I hope this letter will assist you in your review of development projects proposed in the coastal zone.

Sincerely,



DENISE MORENO DUCHENY
State Senator, 40th District

cc: Peter Douglas, Ex. Dir., California Coastal Commission
Members, Coastal Commission

EXHIBIT 2

COMMITTEES
CHAIR, BUDGET AND FISCAL REVIEW
1ST CHAIR, AGRICULTURE
CHAIR, JOINT LEG. SLATIVE BUDGET
JOINT LEGISLATIVE AUDIT

California State Senate

SENATOR
DENISE MORENO DUCHENY
FORTIETH SENATE DISTRICT



SELECT COMMITTEES
CHAIR, CALIFORNIA-MEXICO
COOPERATION
CHAIR, COLORADO RIVER
CHAIR, OVERSIGHT OF THE
LEGISLATIVE
CHAIR
CHAIR, WORKFORCE
INVESTMENT
STATE PUBLIC WORKS

January 24, 2008

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Douglas:

On September 5, 2007 I sent the Commission a letter expressing my intent in authoring SB 619, a bill enacted by the legislature in 2003 which added two sections of the Coastal Act, sections 30604(f) and (g) relating to density bonuses for affordable housing. I am disturbed to learn that you continue to ignore the clear expression of legislative intent as well as the Commission's clear direction to cease interpreting SB 619 as a mechanism to regulate affordable housing.

As stated in my letter of September 5, 2007, the legislature's intent in enacting SB 619 was to encourage density bonuses for affordable housing on a statewide basis. My office worked with you and your staff to ensure that the Coastal Commission would retain authority to ensure compliance with the resource protection policies of the Coastal Act. However, nothing in the legislation proposed to change, in any way, a local jurisdiction's authority over land use decisions. Specifically, nothing in SB 619 provides the Coastal Commission with any new jurisdiction or ability to interfere with local land use policy and planning. I am disappointed to see that my good faith efforts to address the Commission's legitimate concerns over resource protection have been misconstrued.

As laudable as it is for the Commission staff to want to promote affordable housing in the coastal zone, the authority to do so lies clearly with the local jurisdiction. SB 619 simply directs the Commission to approve density bonuses if they are otherwise consistent with the Coastal Act. Please provide me a written acknowledgement that you understand that Coastal Act Sections 30604 (f) and (g) do not change the plain reading of the law regarding the Coastal Commission's lack of authority to regulate affordable housing in the coastal zone.

Sincerely,

DENISE MORENO DUCHENY
State Senator, 40th District

cc: Patrick Kruer, Chairman
Members, Coastal Commission

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F9b

FRIDAY, ITEM 9B

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

5-07-258 (TURBOW) Replacement and reconfiguration of 20 mobile homes with 16 manufactured homes at 7000 West Coast Highway, Newport Beach

Date and time of receipt of communication:
Thursday, January 31st at 10 AM

Location of communication:
Phone call

Type of communication:
Phone call

Person(s) in attendance at time of communication:
Susan McCabe

Person(s) receiving communication:
Pat Kruer

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

We discussed the project and the staff recommendation. The project was described as a replacement of 20 mobile homes with 16 manufactured homes in an existing mobile home park. It was explained that the applicant is in agreement with all conditions except Special Condition #2, which prohibits the division or transfer of individual lots within the mobile home park. The concern is that this condition deals with affordable housing—an issue that the applicant's representatives state is not within the purview of the Commission. The applicant requests that this condition be removed.

Date: 1/31/08

Signature of Commissioner: _____



RECEIVED
South Coast Region

FEB 04 2008

CALIFORNIA
COASTAL COMMISSION

RECEIVED
South Coast Region

JAN 30 2008

CALIFORNIA
COASTAL COMMISSIONFORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

RECEIVED
JAN 25 2008
CALIFORNIA
COASTAL COMMISSION

Date and time of communication:

1-23-08 3PM

Location of communication:

TELEPHONE(If communication was sent by mail or
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication:

SUSAN McCABE

Identity of person(s) receiving communication:

K.H. ACHAOJIAN


Name or description of project:

S-07-258 F9b MOBILE HOMES

Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

BACKGROUND INFO. ON REMOVAL OF 20 MOBILE HOMES
REDUCTION SPACES FROM 20 TO 17 SPACES (16 Manufactured homes)
11 units already in place - Reduction allows for more parking spaces
NOT satisfied by condition prohibiting future division of land
for development

1-23-08
Date
Signature of Commissioner

If communication occurred seven (7) 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 (7) 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 (7) 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.

APPENDIX 2

F9b

~~FRIDAY, ITEM 7B~~

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name of project:	5-07-258 (TURBOW)
Date and time :	1/25/08 noon
Location of communication:	K&S Ranch
Type of communication	Personal Meeting
Person initiating communication:	Susan McCabe
Person receiving communication:	Steve Blank

Name or description of project:

Replacement and reconfiguration of 20 mobile homes with 16 manufactured homes at 7000 West Coast Highway, Newport Beach

Detailed substantive description of the content of communication:

We discussed the project and the staff recommendation. The project was described as a replacement of 20 mobile homes with 16 manufactured homes in an existing mobile home park.

It was explained that the applicant is in agreement with all conditions except Special Condition #2, which prohibits the division or transfer of individual lots within the mobile home park. The concern is that this condition deals with affordable housing—an issue that the applicant's representatives state is not within the purview of the Commission.

We also discussed a letter sent to Commission staff by Senator Ducheny, the author of the bill cited by staff as the rationale for imposition of Special Condition #2, and her position that her bill does not grant the Commission the authority to regulate affordable housing. The applicant requests that Special Condition #2 be removed.

Date: 1/28/08

Signature of Commissioner: _____



CALIFORNIA COASTAL COMMISSION

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

F 9b

Filed: August 3, 2007
49th Day: September 2, 2007
180th Day: January 30, 2008
(Extended 90-Days)
270th Day: April 29, 2008
Staff: Fernie Sy-LB
Staff Report: January 17, 2008
Hearing Date: February 6-8, 2008
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-07-258

APPLICANT: Sherwyn Turbow

AGENT: Alan Block; and Susan McCabe

PROJECT LOCATION: 7000 West Coast Highway, City of Newport Beach (Orange County)

PROJECT DESCRIPTION: The proposed project consists of the removal of 20 mobile homes, reconfiguration and reduction of rental spaces from 20 to 17 spaces, and installation of 16 manufactured homes, foundations, driveways, carports and decks, additional parking, and drainage system, and leaving one rental space vacant for parking purposes. Removal of the homes and installation of 11 new units has already been completed without a coastal development permit.

SUMMARY OF STAFF RECOMMENDATION:

The proposed development involves the conversion of an existing twenty (20) space mobile home park to a seventeen (17) space manufactured housing development. Removal of nineteen (19) mobile homes and installation of eleven (11) manufactured homes has already occurred without benefit of a coastal development permit. The applicant proposes to install five (5) additional pre-fabricated homes on five (5) of the remaining vacant and reconfigured spaces and leaving one (1) rental space vacant for parking purposes. One concern raised by this project relates to the impact of removal of twenty (20) mobile homes from the affordable housing stock in the coastal zone and replacement with pre-fabricated housing that may not be as affordable to the same segment of the population as the pre-existing mobile homes that were observed and appeared to be trailer coaches. The applicant is proposing to replace the "trailer coach" type of mobile home with "manufactured housing." The definition of "mobile homes" in Health and Safety Code §18008 includes "manufactured homes," as defined in Health and Safety Code §18007. Therefore, the proposed replacement housing will remain a mobile home park and be somewhat similar to what was previously located on-site. The rents the applicant is identifying for the new manufactured homes would be more difficult for persons with low or moderate income to afford. Those rents, however, are likely more affordable than a similarly sized and located single family residence located in the vicinity of the project site. Therefore, staff is not recommending any conditions to address the cost of the proposed housing. However, a more serious impact to the affordable nature of the housing provided in this mobile home park would be generated by the division and sale of the individual spaces in the manufactured/mobile home park to separate individual land owners. To address this issue, staff is recommending that a condition be imposed which prohibits

future conversion of the site to higher income property through subdivision of the land or transfer of ownership of individual spaces. This condition will protect this existing supply of more affordable housing in the coastal zone.

Also of concern are potential impacts to public access and water quality. Staff is recommending **APPROVAL** of the proposed project subject to **NINE (9) SPECIAL CONDITIONS** requiring: **1)** submittal of Final Project Plans; **2)** prohibition of future division of land or subsequent sale/transfer of the individual spaces in the manufactured/mobile home park; **3)** additional approvals for any future development; **4)** submittal of a Parking Signage Plan; **5)** Construction-Phase Best Management Practices; **6)** submittal of a Final Drainage and Run-Off Control Plan; **7)** submittal of a Landscape Plan; **8)** condition compliance; and **9)** a deed restriction.

Section 30600(c) 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 City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is the policies of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS RECEIVED: Approval-in-Concept (No. 1320-2006) from the City of Newport Beach Planning Department dated June 5, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; *Drainage Study* prepared Nolan Consulting, Inc. dated August 2005; Letter from Commission staff to J & H Property Management, Inc. dated August 15, 2006; Letter from Nolan Consulting, Inc. to J & H Property Management, Inc. dated August 31, 2006; Letter from the California Department of Housing and Community Development to the City of Newport Beach dated March 7, 2005; Review by the City of Newport Beach Public Works Department dated January 21, 2006; and Review by the City of Newport Beach Fire Department dated January 5, 2006; Letter from J & H Property Management, Inc. to Commission staff dated April 9, 2007; Letter from Alan Robert Block to Commission staff dated June 1, 2007; Letter from Alan Robert Block to Commission staff dated June 26, 2007; Information from the applicant received June 7, 2007; Letter from Alan Robert Block to Commission staff dated July 12, 2007; and Letter from Alan Robert Block to Commission staff dated December 13, 2007.

LIST OF EXHIBITS

1. Vicinity Maps
 2. Site Plans
 3. Floor Plans/Elevations
-

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-07-258 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 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 policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the 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 this permit is reported to the Commission. 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 CONDCTIONS

1. FINAL PROJECT PLANS

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of Final Project Plans (i.e. site plan, floor plans, elevations, cross-sections, grading, foundation, etc.). These Final Project Plans shall be in substantial conformance with the project plans received August 3, 2007, except that those plans shall be revised to reflect the changes to the applicant's proposed project description, as described by the applicant in a letter, which was received by the Commission's South Coast office on January 17, 2008. The Final Project Plans shall identify the one (1) vacant and reconfigured space to be used for parking purposes and shall also identify the one (1) space that previously had an existing mobile home that was recently sold to the applicant; and the applicant is proposing in install a new manufactured home on this space.
- B.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. PROHIBITION OF DIVISON OR SUBSEQUENT SALE/TRANSFER OF INDIVIDUAL SPACES

The division of land or the subsequent sale or transfer of the individual spaces in the manufactured/mobile home park is prohibited.

3. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-07-258. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-07-258. Accordingly, any future improvements to the manufactured homes and other structures 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) and subdivision, condominium conversion or any type of transfer of the land underlying individual spaces, shall require an amendment to Permit No. 5-07-258 from the Commission.

4. PARKING SIGNAGE PLAN

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full sized copies of a Parking Signage Plan. The plan shall be prepared by a qualified professional and shall include the following:

- (1) Provisions, such as but not limited to, the assignment of two (2) parking spaces for each unit along with signage that identifies the parking spaces assigned to each residence (i.e. manufactured/mobile home); and
 - (2) The project plans shall include, at a minimum, the following components: a sample of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil. Signage shall be posted that specifies allowable use of each parking space and applicable restrictions. The signs shall be clearly visible to motorists from the driveway running through the middle of the mobile home park, Highland Street and Grant Street.
- B.** The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. CONSTRUCTION BEST MANAGEMENT PRACTICES

- A.** The permittee shall comply with the following construction-related requirements:
- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
 - (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - (3) 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;
 - (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and 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 coastal waters; and
 - (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
- B.** Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;

- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a stormdrain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

6. FINAL DRAINAGE AND RUN-OFF CONTROL PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) copies of a Final Drainage Study for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The Drainage Study shall be in substantial conformance with the *Drainage Study* prepared Nolan Consulting, Inc. dated August 2005. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (1) The WQMP shall incorporate appropriate structural and non-structural Best Management Practices (BMPs) (site design, source control and treatment control) into the development, designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site;
- (2) Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible;
- (3) Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized through the use of low-maintenance landscaping and efficient irrigation technology or systems;
- (4) Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals;
- (5) Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate pollutants of concern (including trash,

debris and vehicular fluids such as oil, grease, heavy metals and hydrocarbons) through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;

- (6) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs;
- (7) All structural and/or treatment control BMPs shall be designed, installed, and maintained for the life of the project in accordance with well-recognized and accepted design principles and guidelines, such as those contained in the California Stormwater Quality Association Best Management Practice Manuals;
- (8) At a minimum, all BMP traps/separators and/or filters shall be, at a minimum, inspected and cleaned/repaired or otherwise maintained in accordance with the following schedule: (1) prior to the start of the winter storm season, no later than October 15th each year, (2) inspected monthly thereafter for the duration of the rainy season (October 15th -April 30), and cleaned/maintained as necessary based on inspection and, (3) inspected and maintained where needed throughout the dry season;
- (9) Debris and other water pollutants removed from structural BMP(s) during clean out shall be contained and disposed of in a proper manner; and
- (10) It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. LANDSCAPE PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full sized copies of a Landscape Plan that demonstrate the following:

- (1) The plan shall demonstrate that:
 - (a) All landscaping shall consist of native or non-native drought tolerant non-invasive plant species. 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) (

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>). Any existing landscaping that doesn't meet the above requirements shall be removed;

- (b) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage; and
- (c) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;

(2) The plan shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the temporary irrigation system, topography of the developed site, and all other landscape features, and
- (b) a schedule for installation of plants.

B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. CONDITION COMPLIANCE

Within 90-days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant in writing for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the policies of the Coastal Act.

9. 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(s) 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 shall include a legal description of the entire parcel or parcels 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 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

The project site (Newport Sands Mobile Home Park (formerly known as the 'Flamingo')) is located at 7000 West Coast Highway in the City of Newport Beach, Orange County (Exhibit #1). The project site is 30,270 square feet in size and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Medium Density Residential and the proposed project adheres to this designation. To the North of the project site is Highland Avenue and then residential structures. To the East of the project site are residential structures and then the Semeniuk Slough. To the South of the site is Grant Street and then residential structures. To the West of the site is Coast Highway, West Newport Park, residential structures and then the Santa Ana River Mouth Beach, a public beach. The City of Newport Beach attracts visitors year round due to its unique recreational opportunities, large harbor and marina facilities, and its coastal amenities. Like many beach communities, Newport Beach receives an annual influx of visitors during the summer.

The proposed project consists of the removal of twenty (20) mobile homes, reconfiguration and reduction of rental spaces from twenty (20) to seventeen (17) spaces, and installation of sixteen (16) manufactured homes, foundations, driveways, carports and decks, additional parking, and drainage system, and leaving one rental space vacant for parking purposes. A portion of the above-described project is an 'after-the-fact' request. The after-the fact request consists of removal of nineteen (19) mobile homes, reconfiguration and reduction of rental spaces from twenty (20) to seventeen (17) spaces and installation of eleven (11) manufactured homes, foundations, driveways, carports and decks, additional parking, and a drainage system. These are mobile home spaces, not legally divided lots. The manufactured homes consist of either 1,163 square feet or 1,209 square feet (two different models) and are two-stories (approximately 25-feet above existing grade).

The development which has not yet occurred is the removal of one more mobile home (i.e. the 20th mobile home) described further below and installation of five (5) additional manufactured homes on five (5) of the remaining vacant and reconfigured spaces (dimensions will be the same as discussed previously for the manufactured homes already installed) and installation of foundations, driveways, carports and decks, additional parking, and a drainage system (Exhibits #2-3). This will leave one (1) of the 17 rental spaces vacant for parking purposes. No grading or landscaping is being proposed. Entry to the street/driveway of the existing mobile home park is not gated and the new proposal does not include any gating of the entry to the community. A total of thirty-four (34) parking spaces will be provided on-site. Two (2) parking spaces are provided for each home.

As originally submitted, all of the previously existing mobile homes have been removed except for one (1) mobile home that remained on-site (mobile home was owned by the resident, but the

resident rented the mobile home space from the applicant) and no development was planned to take place with this mobile home or rental space. However, since the initial submittal, the owner of this mobile home has moved out of the mobile home park and has sold their mobile home to the applicant. The applicant intends to install a manufactured home on this site (1 of the 5 additional manufactured homes to be installed with the proposed project). Hence, the project plans need to be revised to reflect this change in the applicant's proposal. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to submit final project plans.

B. AFFORDABLE HOUSING

Coastal Act Section 30604 states, in part:

- (f) The commission shall encourage housing opportunities for persons of low and moderate income.*
- (g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.*

1. Protection/Provision of Affordable Housing in the Coastal Zone

Encouraging the protection and provision of affordable housing is an important aspect of the Coastal Act. In enacting Public Resources Code §§ 30604(f) and (g), as well as Government Code §§ 65590 et seq. (the Mello Act),¹ the Legislature clearly expressed the importance of protecting affordable housing in the Coastal Zone. Section 30607 of the Coastal Act requires that "any permit that is issued ..., pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development ... will be in accordance with the provisions of [the Coastal Act]." Sections 30604(f) and (g) are part of the Coastal Act, so the Commission may therefore condition the permit to ensure that it is in accordance with §§ 30604(f) and (g). These provisions express the legislature's clear intent that the Commission shall encourage the protection of affordable housing.

In addition, the Housing Element of the City of Newport Beach's General Plan (not certified by the Commission) states that the City has had policies in effect since the mid-1980s requiring the provision of affordable housing in association with all new residential developments where more than 4 units are proposed. The Housing Element states that the City uses Section 20.86 of the Municipal Code to implement the Mello Act and that between January 1, 1989, and January 1, 1994, their program required the development of 24 units in the City's coastal zone that were to be maintained as housing affordable for low-income and moderate-income individuals and/or families pursuant to Section 65590.

Affordable housing can be found in mobile home parks. The subject site is a mobile home park registered (No. 30-0164-MP) with the State Department of Housing and Community Development (HCD), and is identified in the City's General Plan Housing Element as one of ten mobile home parks in the City, which in total contain approximately 972 mobile home spaces. Of these ten (10) mobile home parks, six (including the subject site) are within the

¹ The Mello Act generally prohibits local governments from authorizing the conversion or demolition of affordable housing units located in the coastal zone unless those units are replaced on-site, elsewhere in the coastal zone if feasible, or if that is not feasible, within three miles of the coastal zone. Gov. Code §65590.

coastal zone and contain a combined total of 716 spaces. The City's Housing Element recognizes these mobile home parks as a pool of more affordable housing within the City. However, the City does not include any of the mobile homes in their inventory of affordable units within the City because these mobile home parks are regulated by HCD, not the City.

The types of homes that are typically found in these mobile home parks and were observed on-site prior to their removal are of the "trailer coach" variety, as defined in the California Vehicle Code Section 635 (trailer coach is defined as "a vehicle, other than a motor vehicle designed for human habitation or human occupancy for industrial, professional, or commercial purposes, for carrying property on its own structure, and for being drawn by a motor vehicle). The applicant is proposing to replace this type of mobile home with "manufactured housing." The definition of "mobile homes" as defined in Health and Safety Code §18008 includes "manufactured homes," as defined in Health and Safety Code §18007. Therefore, the proposed replacement housing will be somewhat similar to what was previously located on-site. However, the Housing Element does state that many mobile homes in the City's mobile home parks have been converted to "manufactured housing", which the Housing Element states are "... not affordable to low-income and moderate-income individuals and families." The Housing Element expresses some concern about this trend toward market rate units within the City's mobile home parks.

As described above, the applicant seeks approval for the removal of twenty (20) mobile homes, reconfiguration and reduction of rental spaces from twenty (20) to seventeen (17) spaces and installation of sixteen (16) manufactured homes, foundations, driveways, carports and decks, additional parking, and a drainage system. The mobile homes removed from the site were individually owned; each owner rented or leased the mobile home space from the owner of the mobile home park (i.e. the landowner). The applicant indicates that the park trailer spaces rented from a few hundred dollars a month to \$1,300.00 per month. In the proposed development, the mobile homes will be replaced with less transient manufactured structures placed on poured concrete foundations. These new structures are/would be owned by Newport Sands (along with the land) and rented to tenants. The applicant indicated that the structures and spaces together will rent for \$2,300.00-\$2,500.00 per month. The applicant represents that the manufactured homes/structures are individually registered with the State Department of Housing and Community Development (HCD). The applicant states that because these structures have individual titles in a "rental community", the structures can be individually sold and titled to new homeowners in the future. The new owner of the structure would then rent or lease the mobile home space (the land on which the home is built) from Newport Sands.

The rents the applicant is identifying would clearly be difficult for persons with low or moderate income to afford. These rents could increase at any time, as neither the City nor HCD exercise rent control over these units. Those rents, however, are likely more affordable than a similarly sized and located single family residence located in the vicinity of the project site. A more serious impact to the affordable nature of the housing provided in this mobile home park would therefore be generated by the division and sale of the individual spaces in the manufactured/mobile home park to separate individual land owners. Dividing and selling the mobile home spaces, along with their structures, would make these lots virtually indistinguishable from other individually owned residences in the area. Their value would increase and affordability decrease, accordingly. Coastal Act Section 30604 encourages the protection of existing, and the provision of new, affordable housing opportunities in the Coastal Zone. While the upgraded Newport Sands Mobile

Home Park is not mandated by the City or HCD to be affordable to low and moderate income persons, it would provide less expensive housing than most other comparably sized and located residences in the City. As it stands now, these lots are not divided or able to be transferred as individual lots, and they therefore provide an opportunity for the Commission to protect some level of affordability in these housing units. Allowing these lot spaces to convert to individual ownership would make these lots less affordable, similar to other single family properties in the City. Thus, the Commission imposes **SPECIAL CONDITION NO. 2**, which prohibits the division of land or subsequent sale or transfer of the individual spaces in the manufactured/mobile home park. This prohibition applies to all forms of individual division and subsequent sale of individual mobile home spaces, including but not limited to, lot divisions and condominium conversion.

In addition, the Commission imposes **SPECIAL CONDITION NO. 3**, which notes requirements for a coastal development permit for future development on the subject site.

b. Commission's Regulatory Authority

The State Department of Housing and Community Development (HCD) regulates mobile home parks under the State Mobile Home Parks Act and has adopted regulations governing construction and occupancy of privately owned mobile homes within California. Except for certain enumerated categories of local land use regulations, the Mobile Home Parks Act preempts local government police power authority to regulate land uses affecting mobile home parks. However, the Mobile Home Parks Act does not address or prevent application of statewide policies of the Coastal Act. The Commission finds that the proposed project constitutes "development," as defined in the Coastal Act, that is not exempt from coastal development permit requirements. According to a letter dated March 7, 2005, HCD does not consider the proposed project consisting of the re-configuration of the mobile home park as new construction of the park and concluded that Commission approval was not necessary since, in their view, Commission approval is only required on new construction projects. However, HCD has no authority to make any determination about the Commission's regulatory authority. Such authority rests solely with the Commission. Neither HCD nor the applicant consulted with the Commission regarding HCD's determination. The proposed project fits the definition of "development", as defined in the Coastal Act, and requires approval from the Commission.

CONCLUSION

To minimize the adverse impacts upon affordable housing, **TWO (2) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 2** prohibits the subdivision and subsequent sale of individual lots in the manufactured/mobile home park. **SPECIAL CONDITION NO. 3** establishes permit requirements for future development. Only as conditioned does the Commission finds that the proposed project is consistent with Sections 30604(f) and (g) of the Coastal Act.

C. PUBLIC ACCESS

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

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by...

(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

The subject site is an inland lot, but it is near the beach and the Semeniuk Slough in the City of Newport Beach. Public access to the Slough is available at the end of Highland Street and Grant Street, approximately 200-feet East of the project site. Public access to the beach is available at the other end of Highland Street and Grant Street, approximately 500-feet West of the project site.

When a private development does not provide adequate on-site parking, users of that development who arrive by automobile are forced to occupy public parking used by visitors to the coastal zone. To the far East of the project site lies the Semeniuk Slough, a wetland considered an environmentally sensitive habitat area and unique coastal resource in the City's Certified Land Use Plan. To the far West of the project site lies the public beach. The proximity of these coastal access facilities to the project site solidifies the importance of adequate parking for private development. Insufficient parking on the project site may result in users of that development taking up spaces that the public may use to access areas such as Semeniuk Slough and the public beach. Thus, all private development must provide adequate on-site parking to minimize adverse impacts on public access.

A total of thirty-four (34) parking spaces will be provided on-site. Thus, at least two (2) parking spaces are provided for each of the 16 proposed homes.

The Commission has consistently found that two (2) parking spaces are adequate to satisfy the parking demand generated by one (1) individual residential unit. The proposed residential units will each have two (2) designated parking spaces for a total of thirty-four (34) parking spaces. Most will have these parking spaces adjacent to the home, but one (1) of these manufactured homes will have one (1) of its parking spaces adjacent to the home and one (1) near, but not adjacent to the home. In cases like this, a sign plan can be important since it identifies where each unit's assigned parking spaces are located. No sign plan was proposed. Since two (2) parking spaces are being provided for each home, the development is consistent with the parking required. In order to assure that adequate parking is provided on-site and that parking is appropriately signed for the private development, the Commission imposes **SPECIAL CONDITION NO. 4**, which requires the applicant to submit a Parking Signage Plan. This Plan shall include, but not be limited to, 1) the location of the two (2) parking spaces for each residence; and 2) signage designating the parking spaces for each residence.

Also, the Commission notes that the entry to the street/driveway of the existing mobile home park is not gated and the new proposal does not include any gating of the entry to the community. Such gating would raise issues with regard to consistency with the public access and recreation policies of the Coastal Act. In addition, such gating, if ever sought, would require a coastal development

permit as is noted by **SPECIAL CONDITION NO. 3**, which advises the applicant of permit requirements for future improvements.

CONCLUSION

To minimize the adverse impacts upon public access, **TWO (2) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 3** requires additional approvals for any future development. **SPECIAL CONDITION NO. 4** requires the applicant to submit a Parking Signage Plan. Only as conditioned does the Commission find that the proposed project is consistent with Sections 30212 and 30252 of the Coastal Act.

D. WATER QUALITY AND THE MARINE ENVIRONMENT

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.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

The protection of water quality is an important aspect of the Coastal Act. Water from the project site will flow into the City of Newport Beach's storm drain system and will ultimately drain to the Pacific Ocean. Beach closures occurring throughout Orange County, including those in Huntington Beach and Laguna Beach, have been attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources. In addition, the proximity of the project site to the Semeniuk Slough and the beach heighten the need for the protection of water quality.

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION NO. 5** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

2. Post-Construction Impacts to Water Quality

During storm events, the pollutants which have collected upon the roof and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges. Water pollution can result in decreases in the biological productivity of coastal waters. In addition, impervious surfaces magnify peak flows dramatically which can lead to erosion. In order to mitigate these impacts, the applicant has submitted the following: *Drainage Study* prepared by Nolan Consulting, Inc. dated August 2005. The study states that percolation sumps will be used on-site, which will allow drainage to percolate on-site. While these measures to deal with post construction water quality are acceptable, additional measures are necessary, such as minimization of irrigation and the use of fertilizers and other landscaping chemicals through the use of low-maintenance landscaping and efficient irrigation technology or systems and that trash, recycling and other waste containers, as necessary, shall be provided on-site. Therefore, the Commission imposes **SPECIAL CONDITION NO. 6**, which requires the applicant to submit a Final Drainage and Run-Off Control Plan.

No Landscaping Plans have been submitted with the proposed project. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Thus, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires the applicant to submit a Landscape Plan, which consists of native or non-native drought tolerant non-invasive plants.

CONCLUSION

To minimize the adverse impacts upon the marine environment, **THREE (3) SPECIAL CONDITIONS** have been imposed. **SPECIAL CONDITION NO. 5** identifies Construction-Phase Best Management Practices. **SPECIAL CONDITION NO. 6** requires the applicant to submit a Final Drainage and Run-Off Control Plan. **SPECIAL CONDITION NO. 7** requires the applicant to submit a Landscape Plan. Only as conditioned does the Commission find that the proposed project is consistent with Section 30230, 30231 and 30232 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

Development, including removal of nineteen (19) mobile homes, reconfiguration and reduction of rental spaces from twenty (20) to seventeen (17) spaces and installation of eleven (11) manufactured homes, foundations, driveways, carports and decks, additional parking, and a drainage system has occurred on the subject site without the required coastal development permit. The applicant is requesting after-the-fact approval for removal of nineteen (19) mobile homes, reconfiguration and reduction of rental spaces from twenty (20) to seventeen (17) spaces and installation of eleven (11) manufactured homes, foundations, driveways, carports and decks, additional parking, and a drainage system. The application was submitted by the applicant in response to enforcement action taken by the Commission's Enforcement Division.

To ensure that the unpermitted development component of this application is resolved in a timely manner, **SPECIAL CONDITION NO. 8** requires that the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit, within 90 days of Commission action. Although construction has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon its consistency with the policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **SPECIAL CONDITION NO. 9**, which requires that the property owner 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 will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including future development, prohibition on division and/or sale of individual mobile home spaces, parking management, maintenance of water quality and landscaping to which the site is subject.

G. 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 with the policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an

LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies, among others, that relate to development at the subject site:

Parking, Policy 2.9.3-3 states,

Require that all proposed development maintain and enhance public access to the coast by providing adequate parking pursuant to the off-street parking regulations in the Zoning Code as of October 13, 2005.

Public Access and Recreation, Policy 3.1.1-1 states,

Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal parks, and trails.

Water Quality, Policy 4.3.2-14 states,

Whenever possible, divert runoff through planted areas or sumps that recharge the groundwater dry wells and use the natural filtration properties of the earth to prevent the transport of harmful materials directly into receiving waters.

The parking for the proposed project is consistent with the parking standards/requirements in the certified Land Use Plan, thus the project is consistent with Policy 2.9.3-3. By being consistent with the parking standards of the LUP, the project is consistent with Policy 3.1.1-1. By conditioning the project for construction-phase best management practices and submittal of a Final Drainage Study, the project is consistent with Policy 4.3.2-14. The proposed development, as conditioned, is consistent with policies of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the policies of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, 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 further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Newport Beach is the lead agency for California Environmental Quality Act (CEQA) purposes. The project was determined by the City to be Categorical Exempt.

The project is located in an urbanized area. Development already exists on the subject site. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. The Commission is imposing **NINE (9) SPECIAL CONDITIONS** requiring: **1)** submittal of Final Project Plans; **2)** prohibition of future division of land or subsequent sale/transfer of the individual spaces in the manufactured/mobile home park; **3)** additional approvals for any future development; **4)** submittal of a Parking Signage Plan; **5)** Construction-Phase Best Management Practices; **6)** submittal of a

Final Drainage and Run-Off Control Plan; **7)** submittal of a Landscape Plan; **8)** condition compliance; and **9)** a deed restriction.

As conditioned, 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.



PROJECT SITE

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 2

SANTA

NEWPORT
SHORES

TRAILER PARK
COAST

LANCASTER STREET

HIGHWAY

PROJECT SITE

WEST NEWPORT PARK

COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 2

SUNKIT ST

OLIVE ST

SEASHORE ST

SONORA ST

NORDIN ST

HIGHLAND ST

GRANT ST

FLAMINGO TRAILER PARK

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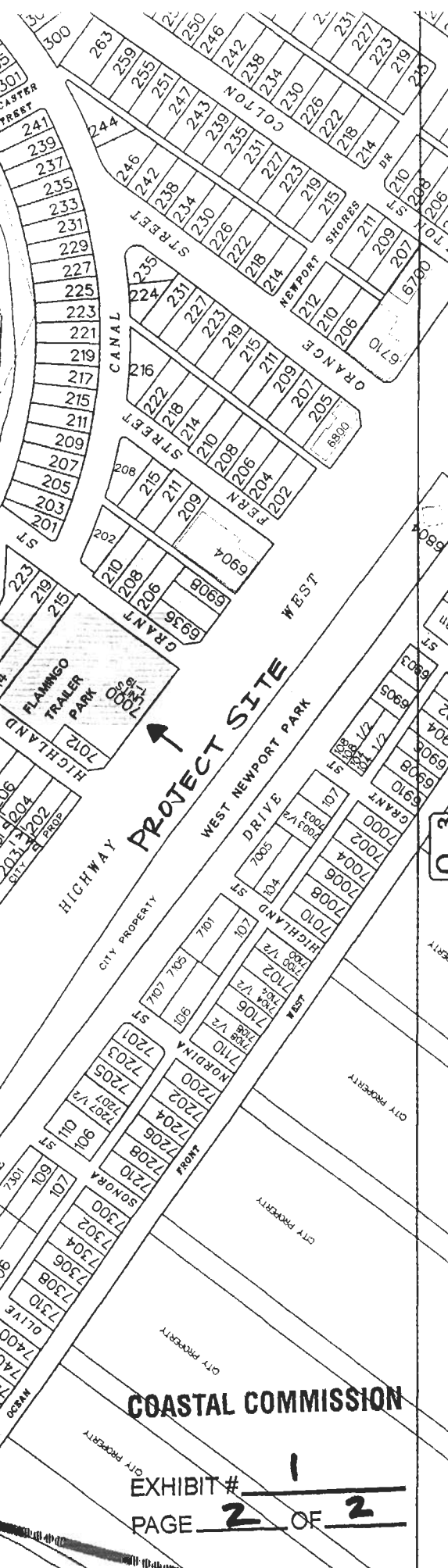
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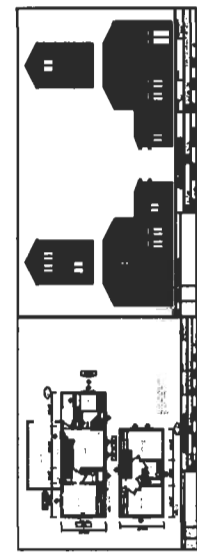
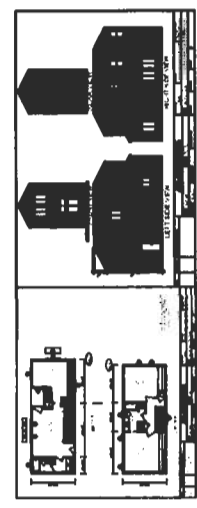
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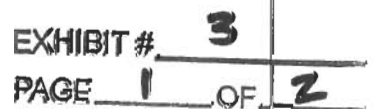
HIGHLAND ST

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A4	Newport
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A5	Newport
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