

**CALIFORNIA COASTAL COMMISSION**

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# F24a

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## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-09-179-A2

**Permittee:** Frederick E. Hitchcock, Jr.

**Agent:** The Jon Corn Law Firm (Attn: Chandra Slaven)

**Location:** 1880 N. El Camino Real, Unit Space 80, (Capistrano Shores Mobile Home Park), San Clemente (Orange County) (APN: 691-432-02)

**Description of Original Project Approved in 2010:** Installation of a new 1,256 sq. ft., double-wide, 18.5-ft. tall mobile home on an above-ground concrete block pier foundation, hardscape improvements including paver patio, 11-ft. tall patio cover, 30-in. tall masonry seat wall parallel to and inland of the western Unit Space property line, drainage improvements and landscaping on an oceanfront mobile home space.

**Description of Proposed First Amendment:** Amendment request to modify existing Special Condition 4 to remove the required waiver of rights to future shoreline protection and Special Condition 7 to replace the termination or reauthorization condition with a requirement to amend the occupancy agreement to provide future owners notice of the CDP requirements, consistent with past Commission conditions for projects in the Capistrano Shores Mobile Home Park. The revised Special Condition 4 will alternatively require that the applicant acknowledges: (1) that he has no future automatic right to a shoreline protective device; and (2) that the existing revetment may require future work, but that the Commission retains the power to prohibit any alteration that is inconsistent with the lawful application of the Coastal Act, as articulated in a recent Orange County Superior Court decision.

**Staff Recommendation:** Approval with conditions.

## SUMMARY OF STAFF RECOMMENDATION

In June 2010, the Commission approved the coastal development permit (CDP) 5-09-179 with seven special conditions for the installation of a new mobile home and associated improvements at Unit Space 80 within the ocean-fronting Capistrano Shores Mobile Home Park (Park) in the City of San Clemente. Special Condition 4 requires, in part, that the applicant waive any rights to shoreline protection that may exist under Public Resources Code section 30235 for the proposed new mobile/manufactured home. Special Condition 7 requires that upon legal conveyance of the applicant's interest in Unit Space 80 to a third party, the development authorized by CDP 5-09-179 shall terminate and all development authorized by CDP 5-09-179 shall be removed unless the development is reauthorized by another coastal development permit. Special Condition 7 served as an alternative measure to provide future owners notice of the CDP requirements in lieu of a generic deed restriction since the applicant argued the property owner, Capistrano Shores, Inc.<sup>1</sup> was unwilling to record a deed restriction.

Commission Staff recommends approval of the amendment request. **Special Condition 4**, as modified, requires the applicant to acknowledge both: (1) that he has no future automatic right to a shoreline protective device; and (2) that the existing revetment may require future work, but that the Commission retains the power to prohibit any alteration that is inconsistent with the lawful application of the Coastal Act<sup>2</sup>. **Special Condition 7**, as modified, requires an amendment to the individual mobile home owner's occupancy agreement be executed by the applicant to provide future owners notice of the CDP requirements. Both conditions as modified are consistent with conditions imposed on recent applications for replacement mobile/manufactured homes at the Park (e.g. CDP Nos. 5-14-1582, 5-16-0265, & 5-16-0624). The applicant agrees with the staff's recommendation.

**PROCEDURAL NOTE:** The Commission's regulations (14 Cal. Code of Regulations Section 13166.) provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality and the Executive Director determines that the objection does raise an issue of conformity with the applicable standard of review, or
- 3) Objection is made to the Executive Director's determination of immateriality, and three commissioners object to the Executive Director's designation of immateriality

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 San Clemente 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 Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

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<sup>1</sup> The applicant would own the new mobile home, but does not hold fee title to the land at Unit Space 80. Capistrano Shores, Inc. is a non-profit mutual benefit corporation in which the applicant holds a 1/90 "membership" interest which allows the use of the Unit Space 80 for mobile home purposes.

<sup>2</sup> As recently articulated in an Orange County superior court case involving a similar development proposal for a similarly-situated mobile home owner in the Capistrano Shores Mobile Home Park. (*See Capistrano Shores Property LLC v. Cal. Coastal Com.*, Case No. 30-2015-00785032-CU-WM-CJC.)

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Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Memorandum of Decision

Exhibit 3 – Writ of Mandate

## I. MOTION AND RESOLUTION

### **Staff Recommendation of Approval**

Staff recommends that the Commission adopt the following resolution. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Motion:**

*I move that the Commission **approve** Coastal Development Permit Amendment 5-09-179-A2, pursuant to the staff recommendation.*

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

### **Resolution:**

The Commission hereby **approves** the proposed coastal development permit amendment and adopts the findings set forth below on the grounds that the development, as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

This permit is granted subject to the following 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. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
3. **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.
4. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

**NOTE:** The seven special conditions approved by the Commission in its prior action on Coastal Development Permit Application No. 5-09-179 are listed below. Special Conditions 1 through 3, 5 and 6 continue to apply; however, the applicant requests amendments to Special Condition 4 and 7 as follows: (Language to be added to the conditions is shown in **underlined and bold text**, and language to be deleted is identified by ~~strike-out~~):

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

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

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

#### 2. Drainage Plan

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

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

All areas affected by construction activities not occupied by structural development shall be re-vegetated for erosion control purposes. Vegetated landscaped areas shall consist of non-invasive and drought-tolerant plants. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

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

- A. ~~No repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device is authorized by this coastal development permit.~~
- B. ~~By acceptance of this Permit, the applicant waives, on behalf of himself and all successors and assigns of Unit Space #80, any rights to new shoreline protection that may exist under Public Resources Code Section 30235 to protect the proposed new mobile home on Unit Space #80.~~
- C. ~~By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns to Unit Space #80, that the applicant and all successors and assigns shall remove the development authorized by this permit, including the residence, foundations, patio covers, if any government agency has issued a permanent order that the structure not be occupied due to the threat of or actual damage or destruction to the premises resulting from waves, erosion, storm conditions, sea level rise, or other natural hazards in the future. In the event that portions of the development fall to the beach before they are removed, the applicant or successor shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.~~

Shoreline Hazards

**No repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device protecting the mobile home park (Capistrano Shores Mobile Home Park) owned by Capistrano Shores Inc., is authorized by this coastal development permit (the “Permit”). By acceptance of this permit, the applicant, on behalf of himself and all successors and assigns to the applicant’s mobile home space (Unit 80), acknowledges that (a) Unit 80 and any structures within that space may become threatened in the future (by floods, wave uprush, tsunami, sea level rise, etc.) and (b) the revetment and bulkhead owned by Capistrano Shores, Inc., that currently protect the entire park, may not continue to provide the protection that they currently provide unless they can be repaired, maintained, enhanced, or reinforced in the future. However, the applicant, on behalf of himself and all successors and assigns, further acknowledges that**

**expansions or alterations thereof require a Coastal Development permit, which the Commission may deny if future requests for such expansions or alterations are inconsistent with the lawful application of the Coastal Act as articulated in the ruling of the Orange County Superior Court in *Capistrano Shores Property LLC v. California Coastal Commission*, Case No. 30-2015-00785032-CU-WM-CJC, which is attached to the findings for this Permit as Exhibits 2 & 3.**

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

5. Future Development

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

6. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that Unit Space #80 may be subject to hazards from flooding and wave uprush, tsunami, sea level rise, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all 5-09-179 (Hitchcock) Staff Report–Regular Calendar Page 6 of 14 liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards.

7. Termination or Reauthorization

The development authorized in Coastal Development Permit No. 5-09-179 shall terminate on the legal conveyance of the applicant's or co-applicant's interest in Unit Space #80 to a third party, subject to the exception listed herein. For purposes of this Special Condition, a "third party" is any person or entity that is not the applicant (Frederick E. Hitchcock Jr.) nor a beneficiary under The Frederick E. Hitchcock Jr. 1999 Family Trust dated November 1, 1999 (the co-applicant for this permit). Prior to the conveyance to a third party, all development authorized by Coastal Development Permit No. 5-09-179 shall be removed in accordance with a plan pre-approved by the Executive Director, unless the development is reauthorized by another Coastal Development Permit. Commission approval of the third party application for reauthorization of the permit must be made prior to the date of legal conveyance to the third party. Revocation of the Trust shall be considered conveyance to a third party, for purposes of this condition.

Occupancy Agreement

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**

**AMENDMENT, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the landowner and the applicant have executed an Amendment to the Occupancy Agreement for the applicant's mobile home space, (1) stating that pursuant to this permit, the California Coastal Commission has authorized the placement of a manufactured home and related accessory structures, including without limitation, manufactured home foundation system and patio covers, on the mobile home space, subject to terms and conditions that restrict the use and enjoyment of the manufactured home and related accessory structures located on the mobile home space; and (2) stating that the Special Conditions of this permit are restrictions on the use and enjoyment of the manufactured home and related accessory structures located on the mobile home space. The Amendment to the Occupancy Agreement shall also state that, in the event of an extinguishment or termination of the Occupancy Agreement for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the manufactured home and accessory structures located on the mobile home space of the mobile home park so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on the mobile home space. Notwithstanding the foregoing, the landowner and lessee may, at their discretion, extend, assign, execute a new Occupancy Agreement, providing that the Occupancy Agreement provision required under this Permit Condition may not be deleted, altered or amended without prior written approval of the Executive Director of the Coastal Commission or by approval of an amendment to this coastal development permit by the Commission, if legally required.**

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND LOCATION

In June 2010, the Commission approved the coastal development permit (CDP) 5-09-179 with seven special conditions for the installation of a new mobile home and associated improvements. Special Condition 4 requires, in part, that the applicant waive any rights to shoreline protection that may exist under Public Resources Code section 30235 for the proposed new mobile/manufactured home. Special Condition 7 requires that upon legal conveyance of the applicant's interest in Unit Space 80 to a third party, the development authorized by CDP 5-09-179 shall terminate and all development authorized by CDP 5-09-179 shall be removed unless the development is reauthorized by another coastal development permit. Special Condition 7 served as an alternative measure to provide future owners notice of the CDP requirements in lieu of a generic deed restriction since the applicant argued the Park property owner, Capistrano Shores, Inc.<sup>3</sup>, was unwilling to record a deed restriction. In June 2016, the applicant submitted an amendment request to modify only Special Condition 7. This application was given the record number CDP 5-09-179-A1 but was never filed and was returned to the applicant.

The applicant is requesting new amendment (CDP 5-09-179-A2) to modify existing Special Condition 4 to remove the required waiver of rights to future shoreline protection and Special Condition 7 to replace the deed restriction requirement with a requirement to amend the occupancy agreement, consistent with the most recent Commission imposed conditions for similar projects in the Capistrano Shores Mobile Home Park. **Special Condition 4**, as modified, requires the applicant to acknowledge both: (1) that he has no future automatic right to a shoreline protective device; and (2) that the existing revetment may require future work, but that the Commission retains the power to prohibit any alteration that is inconsistent with the lawful application of the Coastal Act<sup>4</sup>, consistent with the Commission's action on the most recent applications for replacement mobile/manufactured homes at the Park (CDP Nos. 5-14-1582, 5-16-0265, & 5-16-0624). **Special Condition 7**, as modified, requires an amendment to the individual mobile home owner's occupancy agreement be executed by the applicant.

The project site, unit space 80, is located within the 90-space Capistrano Shores Mobile Home Park ("Park"), located between the first public road (El Camino Real (ECR)) and the sea and seaward of the Orange County Transportation Authority (OCTA) railroad tracks in San Clemente (**Exhibit 1**). The Park is a legal non-conforming use on a stretch of beach developed with a single row of 90 mobile/manufactured homes parallel to the shoreline on a lot zoned OS2 Privately Owned Open Space (intended for open space – no formal easement) and designated Open Space in the City of San Clemente Land Use Plan (LUP). A rock revetment and bulkhead that were constructed before enactment of the Coastal Act protect the mobile home park property from direct wave attack. No improvements are proposed to the existing bulkhead or revetment as part of this CDP amendment request.

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<sup>3</sup> The applicant would own the new mobile home, but does not hold fee title to the land at Unit Space 80. Capistrano Shores, Inc. is a non-profit mutual benefit corporation in which the applicant holds a 1/90 "membership" interest which allows the use of the Unit Space 80 for mobile home purposes.

<sup>4</sup> As recently articulated in an Orange County superior court case involving a similar development proposal for a similarly-situated mobile home owner in the Capistrano Shores Mobile Home Park. (*See Capistrano Shores Property LLC v. Cal. Coastal Com.*, Case No. 30-2015-00785032-CU-WM-CJC.)

## **B. HAZARDS**

Section 30235 of the Coastal Act states in relevant part:

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...*

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

*New development shall do all of the following:*

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

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

Though just guidance here, the certified San Clemente Land Use Plan (LUP) also contains policies to address hazard areas. Policy VII.5 of the LUP reflects Section 30253 of the Coastal Act verbatim.

LUP Policy XV.4 states in relevant part:

*Designate lands for protection of significant environmental resources and protection of life and property from environmental hazards...*

The project site is located within the 90-space Capistrano Shores Mobile Home Park (“Park”), located between the first public road (El Camino Real (ECR)) and the sea and seaward of the Orange County Transportation Authority (OCTA) railroad tracks in San Clemente. A pre-Coastal Act rock revetment and bulkhead protects the mobile home park property from direct wave attack. No improvements are proposed to the existing bulkhead or revetment. Coastal hazards associated with beachfront development include, but are not limited, to wave attack, erosion, sea level rise, flooding, and impacts to public beach access. In addition, a primary issue concerning coastal hazards is the potential expectation that the existing revetment may be augmented in the future to protect new development at the project site. Any seaward encroachment of the revetment would directly impact existing lateral public access along the shoreline and encroach onto State tidelands or lands subject to the public trust.

Under coastal development permit amendment application No. 5-09-179-A2, the applicant does not propose any changes or improvements to the existing bulkhead/revetment along the portion that protects the mobile home park. Any repair or maintenance, enhancement, reinforcement or other activity to the existing bulkhead/revetment is the responsibility of Capistrano Shores Inc., which owns the land that the Unit 80 mobile home occupies (and the other mobile home unit spaces) and all common areas in the mobile home park. The applicant is only responsible for

repair/maintenance to the mobile home, landscape, and ancillary structures (i.e., decks, patios, and garden walls) on Unit 80. Capistrano Shores Inc. would be the applicant for the coastal development permit required for any modifications to the existing bulkhead/revetment that may be necessary to protect existing structures. Although the bulkhead/revetment that currently protects the mobile home park may require repair, maintenance, enhancement, or reinforcement in the future, **Special Condition 4**, as amended, requires that the applicant acknowledge that the Commission retains full power and discretion to prohibit any expansions or alterations thereof that would be inconsistent with the lawful application of the Coastal Act as articulated in a recent Orange County Court decision.

Regarding the latter point, a recent Orange County Superior Court opinion issued in late 2016, *Capistrano Shores Property LLC v. Cal. Coastal Com.*, Case No. 30-2015-00785032-CU-WM-CJC (the “Court Opinion”) provided guidance on the Commission’s authority to condition a similarly-situated project proposal in the Capistrano Shores Mobile Home Park with respect to shoreline protection, taking into consideration future coastal hazards (**Exhibits 2 & 3**). Special Condition 4 has been drafted in conformance with, and in reference to, that Court Opinion. Although the Court Opinion involved the owner of Unit 12 in the Capistrano Shores mobile home park (not the current applicant for unit 80), and therefore is not binding on the current applicant as a matter of law, the applicant for Unit 80 is amenable to the same special condition ultimately imposed on the owners of Unit 12 following remand by the Court Opinion in that case. Furthermore, the erosion and flooding hazards at issue are identical for similarly-situated mobile home owners proposing similar development projects in the same mobile home park. Therefore, in drafting Special Condition 4 for the current project proposal, staff determined it to be reasonable to rely on and reference the Court Opinion.

Given that the applicant does not have an automatic right to expand or alter the revetment in ways that are inconsistent with lawful application of the Coastal Act (and the park owner may not choose to or be able to do so), the mobile home may need to be altered or removed in the future either in response to changes to the revetment or to threats posed by shoreline hazards. Therefore, **Special Condition 4** also establishes requirements related to response to future coastal hazards, including relocation and/or removal of structures that may be threatened in the future if any government agency has issued a permanent order that the structure is not to be occupied due to the threat of or actual damage or destruction to the premises resulting from waves, erosion, storm conditions, sea level rise, or other natural hazards in the future, and in the event that portions of the development fall to the beach before they are removed, requiring the applicant or successor(s) to remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

Because the applicant does not own the land upon which Unit 80 is situated, the applicant cannot record a deed restriction. The Commission finds that if the deed restriction is not recorded against the parcel, it would not change or weaken the requirement for the applicant to acknowledge the risks and agree to remove the structure if it becomes unsafe for occupancy. The purpose of the deed restriction is simply to notify future owners of the permit conditions of approval. In June 2010, Commission staff brought forth its recommendation for approval of CDP 5-09-179 with a condition that required the recordation of a deed restriction. The applicant, however, indicated that the park property owner, Capistrano Shores Inc., was unwilling to record the deed restrictions recommended by Commission staff. Alternatively, the Commission imposed a condition to provide future owners

notice of the CDP requirements in lieu of a generic deed restriction through a “Termination or Reauthorization” special condition, which requires that upon legal conveyance of the applicant’s interest in Unit Space 80, the development authorized by the underlying permit would terminate and all development authorized by the underlying permit would have to be removed unless the development is reauthorized by another coastal development permit.

Since the approval of CDP 5-09-179 in 2010, the Commission has reviewed and approved other coastal development permit applications for the replacement of mobile/manufactured homes at the Park and has imposed a newer alternative condition to ensure that future owners are notified. The applicant requests that the Commission replace the existing “Termination or Reauthorization” condition with this newer alternative condition. An Occupancy Agreement Amendment between the land owner and the applicant will serve to notify future owners or occupants of the new mobile home of the permit requirements, with the amendment stating that: (1) pursuant to this permit, the California Coastal Commission has authorized the placement of a mobile/manufactured home and related accessory structures, including without limitation, manufactured home foundation system and patio covers, on Unit 80, subject to terms and conditions that restrict the use and enjoyment of the manufactured home and related accessory structures located on Unit 80; and (2) the Special Conditions of this permit are restrictions on the use and enjoyment of the manufactured home and related accessory structures located on Unit 80. Thus, the Commission approves the request to amend **Special Condition 7**, replacing the existing “termination or reauthorization” condition with a condition requiring an amendment to the individual mobile home owner’s occupancy agreement be executed by the applicant in place of the. The amended condition is consistent with recent Commission action in the Park.

Thus, as conditioned, the permit ensures that any prospective future owners of any of the development approved on Unit 80 pursuant to the coastal development permit, will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which Unit 80 is subject, and the Commission’s immunity from liability. The amendment to the occupancy agreement will indicate that the California Coastal Commission has authorized development on Unit 80, subject to terms and conditions that restrict the use and enjoyment of Unit 80 only and does not restrict the remainder of the land that the mobile home park occupies.

Since the scope of the development in this case is limited to Unit 80, the Commission has focused discussion on the fact that its authorization for placement of a new mobile home on that space (and ancillary development) does not necessarily mandate or support any future requests for repair, maintenance, or expansion of shoreline protection if doing so would be inconsistent with the lawful application of the Coastal Act, considering the Coastal Act’s policies and goals. In addition, representatives for Capistrano Shores, Inc. were previously notified that repair, maintenance or enhancement of the existing shoreline protection, if deemed necessary, should occur as part of a comprehensive plan for the entire mobile home park. The Capistrano Shores Mobile Home Park Homeowner Association submitted a coastal development permit application in February 2012 which in addition to park wide improvements, included maintenance of the existing shoreline protective device. That application has since remained incomplete, pending submittal of additional information regarding the bulkhead/rock revetment and project alternatives. Any such repairs/enhancements should occur within the mobile home park’s private property and not further encroach onto the public beach. No additional shoreline protective devices should be constructed for the purpose of protecting ancillary improvements (e.g., patios, decks, fences, landscaping, etc.)

located between the mobile home and the ocean. For any type of future shoreline hazard response, alternatives to the shoreline protection must be considered that will eliminate impacts to coastal and recreational resources including, but not limited to, scenic visual resources, recreation, and shoreline processes. Alternatives would include but are not limited to: relocation and/or removal of all or portions of the mobile home and ancillary improvements that are threatened, and/or other remedial measures capable of protecting the mobile home without shoreline stabilization devices. Alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting a mobile home that may be in danger from erosion and other coastal hazards.

### **C. PUBLIC ACCESS**

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30212 of the Coastal Act states, in 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 30213 of the Coastal Act states:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30223 of the Coastal Act states:

*Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Furthermore, the San Clemente Land Use Plan contains policies regarding public coastal access, including the following:

LUP Policy IX.14 mirrors Section 30212 of the Coastal Act.

LUP Policy IX.15 states in relevant part:

*New developments lying between the first public roadway and the shoreline shall provide both physical and visual access to the coastline.*

As shown in **Exhibit 1**, the proposed project site is located between the first public road and the sea directly seaward of the OCTA railroad tracks.

The adjacent North Beach area is a heavily used public beach. North Beach is a popular regional coastal access point as it is located along a popular regional bike route along El Camino Real, it is also the trailhead to the popular San Clemente Coastal Trail, and is the site of a Metrolink/Amtrak train stop. Because of the supply of public parking, popularity of the adjacent North Beach area, and the location of vertical access north of the mobile home park at Poche Beach, the public beach in front of the mobile home park is used by sunbathers, and beach strollers, and the beach is a popular surfing location.

The beach in front of this site, and the mobile home park, is narrow, varying from a few feet to 70 feet, depending on the season. High tide extends up to the existing rock revetment which makes public access difficult to impossible during high tide. Because of the narrow beach in this location, allowing a future shoreline protective device to protect a new residential structure could adversely impact public access by occupying existing sandy beach and deprive the beach of sand renourishment.

Shoreline protective devices are all physical structures that occupy space. When a shoreline protective device is placed on a beach area, the underlying beach area cannot be used as beach. This generally results in the privatization of the public beach and a loss of space in the public domain such that the public can no longer access that public space. The encroachment also results in a loss of sand and/or areas from which sand generating materials can be derived. The area where the structure is placed will be altered from the time the protective device is constructed, and the extent or area occupied by the device will remain the same over time, until the structure is removed or moved from its initial location. Coastal shoreline experts generally agree that where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the sea and the upland.

In addition, sea level has been rising for many years. Also, there is a growing body of evidence that there has been an increase in global temperature and that acceleration in the rate of sea level rise can be expected to accompany this increase in temperature. The best available science at this time, consisting of the 2018 Update to the Ocean Protection Council's *State of California Sea-Level Rise Guidance, 2018 Update* and the April 2017 Update to the *Rising Seas in California: An Update on Sea-Level Rise Science*, predicts that sea level in this region could rise between 2.1 and 6.7 feet by 2100 (some shoreline experts have more recently indicated that sea level could rise 5.7 to 6.9 feet by the year 2100). Mean sea level affects shoreline erosion in several ways, and an increase in the average sea level will exacerbate all of these conditions. On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, leading to a faster loss of the beach as the beach is squeezed between the landward migrating ocean and the fixed backshore.

Given the foregoing potential impacts to access and shoreline sand supply that a shoreline protective device would cause (among other coastal resource impacts), the applicant would be taking a risk by relying on future alterations to the existing revetment which may not be approved. To adequately protect public access, recreation, and shoreline sand supply, especially in light of probable future sea level rise, **Special Condition 4**, as amended, requires the applicant to acknowledge that he has no future automatic right to a shoreline protective device and further requires the applicant to acknowledge the risk that, although the existing revetment may warrant alterations in the future to respond to coastal hazards, the Commission retains the authority to deny

any future request for such alteration or expansion that is inconsistent with the lawful application of the Coastal Act as articulated in the Court Opinion.

#### **D. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. In March 2016, the City submitted an amendment application requesting a compressive update of the LUP. On February 8, 2018, the Commission approved a comprehensive LUP update with suggested modifications and additional revisions. On April 13, 2018, the Commission adopted the revised findings to the comprehensive LUP update and determined that the findings were in support of the Commission's February 8, 2018 action. However, certification of the comprehensive LUP update is still pending.

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

#### **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The proposed amendment affects only special conditions 4 (relating to shoreline protective devices) and 7 (relating to termination and reauthorization/occupancy agreement) and does not authorize any new activity or development. As such, as conditioned by the original coastal development permit and amendment and herein, the proposed amendment to CDP No. 5-09-179 is consistent with the public access, water quality and visual resource protection policies of the Coastal Act and there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act and CEQA.

## **Appendix A – Substantive File Documents**

1. City of San Clemente certified Land Use Plan
2. Application No. 5-09-179
3. Coastal Development Permit (CDP) Nos. 5-09-179, 5-09-180, 5-14-1582, 5-16-0265, 5-16-0624, and 5-10-180
4. CDP Amendment No. 5-10-180-A1