

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application Number: 5-19-0345

Applicant: OC Parks

Location: Capistrano Beach County Park, 35005 Beach Road, Dana Point, Orange County (APNs: 12306009, 12306010, 12306014, 12306015)

Project Description: Removal of damaged or imminently threatened public park amenities including sidewalk, boardwalk, stairs, wooden bulkhead, restroom and associated utilities, basketball court, approximately 55 parking spaces, approximately 20 trees, public beach showers, firepits, and light poles; installation of approximately 830 linear feet of sandcubes (one cubic yard each) over a layer of geotextile; installation of approximately 690 linear feet of armor rock along the seaward edge of the coastal trail and park facilities; and construction of an elevated beach terrace (sandy area with benches and picnic tables) immediately inland of a portion of the proposed revetment for a period of two to five years.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The subject coastal development permit (CDP) application requests authorization for the installation of new sandcubes (stacked cubes containing one cubic yard of sand in a geosynthetic bag that function as a shoreline protective device) and new armor rock and also proposes retention of development authorized under multiple emergency permits that were previously granted in response to damage caused by winter storms and high tide events at Capistrano Beach County Park in Dana Point. Between 2004 and 2020,

eight emergency permits¹ were issued to the applicant, OC Parks, for work at this location, six of which were issued within the last five years. Historically, Capistrano Beach has experienced large changes in beach width and development onsite has incurred damage due to storm events. In recent years beach widths have ranged from zero to approximately 100 feet and the built development onsite is currently vulnerable to wave runup, flooding, and erosion, which is expected to be exacerbated by climate change (sea level rise and increased frequency and severity of storm events).

Since the 1980s, this park has been developed with bike and pedestrian paths, a public beach parking lot, and other recreational amenities and provides low cost public access and recreational opportunities.² Through the subject CDP application, OC Parks is seeking after-the-fact authorization for the removal of damaged public walkways, a wooden bulkhead, a public restroom and associated utilities, a basketball court, approximately 55 parking spaces, approximately 20 trees (mostly palm trees), public beach showers, firepits, and light poles—all of which have been demolished and removed from the site pursuant to emergency permits—and requesting approval to newly install approximately 830 linear feet of sandcubes (one cubic yard each) over a layer of geotextile, approximately 690 linear feet of armor rock along the seaward edge of the coastal trail and park facilities, and an elevated beach terrace (sandy area with benches and picnic tables) immediately inland of a portion of the proposed revetment for a period of two to five years until a master adaptation plan can be finalized and implemented. In addition, OC Parks is seeking to retain, for a limited term, sandcubes and armor rock that were installed pursuant to emergency permits that have since lapsed. OC Parks is also seeking to retain, for a limited term, armor rock that was installed without the benefit of the necessary coastal development permit.³

The portion of the proposed project located landward of the mean high water line is within the boundaries of the City of Dana Point and would typically require a local coastal development permit. The portion of the proposed project located seaward of the mean high water line is within the Commission's area of original jurisdiction, where the Commission retains the responsibility to issue coastal development permits. The applicant, local government, and Commission agreed to a consolidated permit application, thus, the Coastal Commission is the permit issuing authority for the entire proposed project and the standard of review is Chapter 3 of the Coastal Act, with the certified Dana Point Local Coastal Program used as guidance.

¹ 5-04-491-G, 5-07-039-G, G-5-15-0044 (nullified), G-5-16-0039, G-5-18-0026, G-5-19-0002, G-5-19-0036, and G-5-20-0034

² CDP No. P-80-6414

³ The County had requested emergency authorization of riprap; however, Commission staff did not find that placement of armor rock would be appropriate and authorized only the placement of sandcubes. Since the County had already begun installation of the armor rock, it was not authorized.

5-19-0345 (Capistrano Beach County Park)

The segments of shoreline protective devices that currently exist onsite, which were mostly installed pursuant to approved emergency permits, serve to protect coastal-dependent uses, including public beach parking, coastal trail, and coastal viewing areas, from substantial damage and erosion. However, this protection is expected to be insufficient to maintain safe public access to these areas during the upcoming winter storm season.

Therefore, OC Parks is proposing to extend shoreline protection in the form of sandcubes and armor rock along the length of the beach park. At this time, OC Parks is proposing a short-term permit (2 to 5 years) to protect the public access and recreation amenities because it is in the process of developing mid- and long-term adaptation plans for the area. The mid-term plan, the Capistrano Beach Park Master Plan, is proposed to be submitted to the Commission for review and approval within the next couple of years. The subject CDP application is, therefore, an interim measure to protect the development onsite (at the expense of public access to sandy/cobble beach area) until OC Parks can finalize the Master Plan. The Master Plan will be based on best available science and informed by public engagement on what types of coastal access and recreational resources are most valued at this location.

Staff recommends the Commission approve CDP application No. 5-19-0345 with eight (8) special conditions: 1) Limited Authorization; 2) Revised Final Plans; 3) Public Access Program; 4) Sensitive Species Protection; 5) Protection of Water Quality during Construction; 6) Permit Compliance; 7) Assumption of Risk, Waiver of Liability and Indemnity; and 8) As-Built Plans. These conditions will ensure that the proposed development is temporary with a 2 year permit term rather than the proposed range of 2 to 5 years, and will be followed up with the Capistrano Beach Park Master Plan, minimizes impacts to public access and recreation, biological resources, and water quality, and minimizes risk to life and property from coastal hazards.

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EXHIBITS

Exhibit 1 – Project Location

Exhibit 2 – Site Plan

Exhibit 3 – Sandcube Design

Exhibit 4 – Emergency Permit History

Exhibit 5 – Sandcubes Monitoring and Maintenance Plan

Exhibit 6 – Draft Capistrano Beach Park Master Plan Alternatives

Exhibit 7 – Projected Future Shoreline Positions

Exhibit 8 – OC Parks’ Short-Term Alternatives Analysis

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit Application No. 5-19-0345 pursuant to the staff recommendation.

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

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the local government's implementation of its Local Coastal Program. 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. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Limited Authorization.

- A. This coastal development permit authorizes the approved shoreline protection (sandcubes and armor rock) for a period of two (2) years (i.e. until November 5, 2022). This time period may be extended up to six (6) months by the Executive Director, for good cause, and as provided in Part C of this special condition. After such time, the authorization for the continuation and/or retention of the armor rock and sandcubes shall cease.
- B. No later than six months prior to the end of the term of this permit identified in Part A of this special condition, the permittee shall apply for a new coastal development permit or amendment to this permit to remove the shoreline protection or modify the term of its authorization, including with respect to any necessary mitigation.
- C. The coastal development permit application submitted by the permittee, pursuant to Part B of this special condition shall include, at a minimum, the nature-based adaptation pilot project feasibility study (Special Condition 6) and the results of the public access surveys (Special Condition 2.D). Provided the new permit application is received and filed as complete before the permit expiration, the expiration date shall be automatically extended until the time the Commission acts on the new application. The application shall also identify and address changed circumstances and/or unanticipated impacts associated with the presence of the rock revetment and sandcubes, including but not limited to excessive scour and impacts to shoreline processes and beach width, or other impacts from coastal hazards and sea level rise.
- D. Failure to obtain a new coastal development permit for an amendment to this permit authorizing an additional term to retain the shoreline protection shall cause this development to be in violation of the terms and conditions of this coastal development permit.

2. Revised Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, two hard copies and one electronic copy of revised final plans in substantial conformance with the plans submitted September 3, 2020 except where required to be modified as follows:

- A. The applicant shall maintain and reuse the armor rock and sandcubes that currently exist onsite to the maximum extent feasible. No new armor rock shall be placed onsite without an amendment to this permit. New sandcubes may be placed as needed to replace damaged or removed sand cubes and a minimal amount of new sandcubes may be added if necessary. The footprint of the shoreline protection shall not extend seaward of existing protection, or the linear projection of existing protection, as authorized pursuant to the respective emergency coastal development permit.

- B. The coastal trail shall be extended to span the entire length of the project site. It shall be of sufficient width to comply with ADA accessibility requirements.
- C. A Revised Revetment Monitoring and Maintenance Plan, submitted for review and approval of the Executive Director in substantial conformance with the Sandcubes Monitoring and Maintenance Plan (**Exhibit 5**) submitted September 28, 2020 shall be modified to also require:
 - (1) Periodic inspections (as outlined in the Sandcubes Monitoring and Maintenance Plan) of the sandcubes and surrounding beach area for debris associated with the sandcubes.
 - (2) Immediate removal and disposal of any debris associated with the sandcubes.
 - (3) Replacement or repair of any damaged sandcubes. Replaced or repaired sandcubes shall be located within the as-built footprint of the revetment. No coastal development permit or amendment to this permit shall be required for replacement or repair of any damaged sandcubes within the authorized footprint during the authorized term of this permit.
 - (4) Periodic inspections (weekly during summer months [May through September] and monthly during the rest of the year) of the armor rock and surrounding beach area for any errant or displaced rock. If any rock has been displaced from the as-built footprint, it shall be recovered from the beach and either repositioned into the revetment or removed from the site within thirty (30) days of the inspection.
 - (5) Periodic inspections (weekly during summer months [May through September] and monthly during the rest of the year) of the beach conditions seaward and up and down coast of the revetment for indications of scour, presence or absence of a low-tide or high-tide beach fronting the structure, approximation of available recreational beach width fronting the parking area, as well as for the beach width up and down coast and the presence or absence of rip channels, edge waves for other such conditions.
 - (6) Import and placement of sand shall be conducted in conformance with the Capistrano Beach County Park Sand Compatibility and Use Guidelines prepared for OC Parks by Moffatt & Nichol dated September 2020.
 - (7) Sand placement events shall avoid placement of material on wet sand or in marine waters to the maximum extent feasible.
 - (8) Annual reporting from the inspections, noting any maintenance or replacement of sandcubes (location and number), any errant rock that was placed back onto the structure or removed (location and number), need to import or place sand (number of events, volume of sand and placement location), beach width estimates and the location and timing of any observed scour areas, edge waves, rip channels, etc. Reports shall be submitted to the Executive Director after the first year of monitoring and with any application for a new or amended coastal development permit.
 - (9) The applicant shall undertake monitoring and maintenance of the revetment in accordance with the approved final Revetment Monitoring and Maintenance

Plan. Any proposed changes to the revised Revetment Monitoring and Maintenance Plan or Sand Compatibility and Use Guidelines shall be reported to the Executive Director. No changes to these approved plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

D. The applicant shall prepare a Public Access Survey Plan that, at a minimum, includes:

(1) A beach intercept survey that asks visitors:

- a. To rank the value of Capistrano Beach County Park's public access and recreation amenities including, but not limited to, natural beach area, terraced (elevated) sandy beach, beach parking, bike and pedestrian paths, viewing areas, and picnic tables.
- b. How often they visit the Capistrano Beach County Park.
- c. The mode(s) of transportation they use to get to Capistrano Beach (i.e. public transit, trolley, personal car, carpool, bicycle, etc.).
- d. Baseline demographic and socioeconomic information to understand who is visiting the beach and inform equitable adaptation planning of public access amenities.

(2) A signage plan that encourages public participation in the survey in English and Spanish. The dimensions, material(s), text, font, and location of each sign and/or stencil shall be submitted.

(3) A plan for equitable distribution of the survey throughout the term of permit. The surveys shall be made available in English and Spanish, at a minimum. If electronic survey methods that require access to a smart phone are proposed, paper surveys shall also be provided onsite for the entire duration of the permit term and collected and tabulated along with the electronic data regularly.

3. Public Access Program. By acceptance of this permit, the applicant agrees to, and shall ensure, the following:

- A. Safe public access to or around areas where construction and maintenance activities will occur shall be maintained during all project operations.
- B. Use of public parking areas for storage of construction and/or maintenance materials shall be avoided and where avoidance is not possible, shall be minimized to the greatest extent feasible.
- C. The permittee shall post the site with a notice, in English and Spanish, indicating expected dates of construction and maintenance activities and/or beach closures.
- D. Following construction, the permittee shall maintain at least one (1) ADA-accessible ramp or path to allow pedestrian access from the parking area to the beach.

- E. The permittee shall continue to provide free public access and free vehicle parking during the entire term of this coastal development permit.
- F. The permittee shall implement the Public Access Survey Plan for the entire term of permit.

4. Habitat and Sensitive Species Protection Measures during Project Activities.

- A. Nesting Bird Surveys. For any construction or maintenance activities involving heavy machinery, the permittee shall retain the services of a qualified biologist to conduct nesting bird species surveys in order to determine the presence of bird species including, but not limited to, California least terns, western snowy plovers, great blue herons, and snowy egrets. All project construction activities shall be carried out consistent with the following:
 - (1) The applicant shall ensure that the biologist shall conduct the surveys thirty (30) calendar days prior to construction or maintenance activities to detect any active bird nests or breeding behavior in all trees within a 500-foot radius of the project site. A follow-up survey must be conducted three (3) calendar days prior to the initiation of construction and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first. These surveys shall be submitted to the Executive Director within five days of completion.
 - (2) If an active nest of any shore or wading bird is found within 300 feet of the project, or an active nest for any raptor species is found within 500 feet of the project, the applicant's biologist shall monitor bird behavior and construction noise levels. The nest shall not be removed or disturbed. The biological monitor shall be present during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction related noise. Project-related activities may occur only if noise levels are at or below a peak of 65 dB at the nest site(s). If project-related noise exceeds a peak level of 65 dB at the nest site(s), sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction shall cease and shall not recommence until either new sound mitigation can be employed.
- B. An appropriately trained biologist shall monitor all project activities for disturbance to sensitive species or habitat area. Based on field observations, the biologist shall advise the applicants regarding methods to minimize or avoid significant impacts, which could occur upon sensitive species or habitat areas. The biological monitor shall have the authority to stop work if any adverse impacts to sensitive species at the project site and/or within the project vicinity could result from continuation of the proposed development. The applicants shall not undertake any activity that would disturb sensitive species or habitat area unless specifically authorized and mitigated under this coastal development permit or unless an amendment to this coastal development permit for such disturbance has been obtained from the Coastal Commission.

C. Grunion Monitoring and Avoidance Plan. By acceptance of this permit, the applicant agrees that if feasible, permitted maintenance operations shall avoid seasonally predicted grunion runs, and that if it is infeasible for permitted maintenance operations to avoid seasonally predicted grunion runs, it will abide by the following Grunion Monitoring and Avoidance Plan.

- (1) The applicant shall obtain the seasonally-predicted grunion run schedule from the California Department of Fish and Wildlife website and schedule maintenance to avoid grunion spawning seasons.
- (2) The applicant shall obtain California Department of Fish and Wildlife and Coastal Commission Executive Director approval, as defined in the Coastal Development Permit conditions.
- (3) Assessment by trained personnel (i.e., qualified biological monitor) of the potential of the beach to support grunion spawning at each outlet where work will occur. Grunion monitoring will be required only at sites that have been identified as those supporting grunion spawning.
- (4) A monitoring schedule. If maintenance needs to be performed during the grunion spawning season at an outlet that may support spawning, the predicted grunion run prior to the maintenance work will be monitored. The predicted grunion run will be monitored for three nights: the night after the full or new moon phase and the two following nights. The monitoring would occur from the time of the high tide for two hours following the tide or until the grunion stop running if they are still running two hours after the high tide.
- (5) Results of grunion locations. If grunion are observed to run in the vicinity of an outlet, the area where they ran will be marked physically and/or by Global Positioning System (GPS) locations. The density of the grunion throughout the area will be noted.
- (6) The applicant will ensure that maintenance workers will avoid the spawning area during all work activities.
- (7) If spawning occurred within portions of a maintenance area, work in those areas will be avoided or rescheduled until after the grunion eggs have hatched. This occurs during the two weeks between grunion runs, i.e., the two or three days before every full or new moon or when it has been otherwise determined that the eggs from the run have washed out to hatch

5. Protection of Water Quality during Construction. To protect coastal water quality during construction and demolition activities, the applicant shall comply with the following requirements:

A. General BMPs and Procedures

- (1) Best Management Practices (BMPs) designed to minimize adverse impacts resulting from construction and demolition activities shall be implemented prior to the onset of such activity, including BMPs to minimize erosion and sedimentation, minimize the discharge of pollutants and non-stormwater runoff, and minimize land disturbance, as applicable. The description and

location of all water quality BMPs to be implemented during construction and demolition shall be specified.

- (2) All BMPs shall be maintained in a functional condition throughout the duration of the construction and demolition activities and shall be promptly removed when no longer required.
- (3) The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting shall be prohibited, to minimize wildlife entanglement and plastic debris pollution. Only products with 100% biodegradable (not photodegradable) natural fiber netting shall be allowed.
- (4) All construction methods and equipment to be used shall be specified.

B. BMPs for Construction Activities Adjacent to Coastal Waters

- (1) Construction work and equipment operations below the mean high water line shall be minimized to the extent feasible, and, where possible, shall be limited to times when tidal waters have receded from the authorized work areas.
- (2) All work shall be performed during favorable tidal, ocean, wind, and weather conditions that will enhance the ability to contain and remove, to the maximum extent feasible, construction and demolition debris.
- (3) Equipment or construction materials not essential for construction work shall not be allowed at any time in the intertidal zone.
- (4) The footprint of areas within which demolition and construction activities are to take place (including staging and storage of equipment, materials, and debris; and equipment fueling and maintenance) shall be minimized to the extent feasible, to minimize impacts on the marine environment. Construction activities shall be prohibited outside of designated construction, staging, storage, and maintenance areas.
- (5) Vegetable-oil-based hydraulic fluids shall be used in heavy equipment used in construction lasting one week or longer overwater or adjacent to coastal waters, if feasible.
- (6) Biodiesel fuel shall be used in heavy equipment used in construction lasting one week or longer overwater or adjacent to coastal waters, if feasible.

C. BMPs for Stockpile and Debris Management

- (1) All demolition and construction materials, equipment, debris, and waste shall be properly stored and contained, and shall not be placed or stored where it may be subject to wave, wind, rain, or tidal dispersion, to prevent pollutants from entering coastal waters, sensitive habitats, and the storm drain system.
- (2) All stockpiles, construction materials, and demolition debris shall be enclosed on all sides, covered during rain events, and not stored in contact with the soil, and shall be located a minimum of 50 feet from coastal waters, sensitive habitat, and storm drain inlets.

- (3) Sediment control BMPs shall be installed at the perimeter of staging and storage areas, to prevent sediment in runoff from construction-related activities from entering coastal waters.
- (4) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs, to prevent the accumulation of debris, sediment, and other pollutants that may potentially be discharged into coastal waters.
- (5) All trash and debris shall be disposed of in the proper trash and recycling receptacles at the end of every construction day.
- (6) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (7) All debris resulting from demolition or construction activities, and any remaining construction materials, shall be removed from the project site within 24 hours of completion of the project.
- (8) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

D. BMPs for Spill Prevention and Equipment Maintenance

- (1) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of construction products or materials that may have adverse environmental impacts. The discharge of any construction products or materials into coastal waters shall be prohibited.
- (2) Leaks or spills of fuel, oil, grease, lubricants, hydraulic fluid, chemicals, preservatives, paints, or other construction products or materials shall be immediately contained on-site and disposed of in an environmentally-safe manner as soon as feasible.
- (3) Construction vehicles operating at the project site shall be inspected daily to ensure there are no leaking fluids and shall be serviced immediately if a leak is found.
- (4) Fueling and maintenance of construction equipment and vehicles shall be conducted off-site, if feasible. Any fueling and maintenance of mobile equipment conducted on site shall take place at a designated area located at least 50 feet from coastal waters, sensitive habitat, and storm drain inlets (unless these inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- (5) Equipment, machinery, and vehicles shall be washed only in designated areas specifically designed to contain runoff and prevent discharges into coastal

waters. Thinners, oils, and solvents shall not be discharged into the sanitary sewer or storm drain systems.

6. Permit Compliance.

- A. The permittee shall undertake and maintain the development in conformance with the special conditions of the permit and the final plans, including but not limited to the reconstruction and construction of shoreline protective devices. Any proposed changes to the approved plans shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plans shall occur without a Commission-approved permit amendment unless the Executive Director determines that no permit amendment is required.
- B. The permittee shall submit a nature-based adaptation pilot project feasibility study that, at a minimum, analyzes the feasibility of implementation of a nature-based adaptation strategy, in place of some or all of the revetment (armor rock and sandcubes) authorized by this permit, and that can be included as part of a mid-term or long-term management plan. A pilot project, such as the construction of a living shoreline or cobble berm, shall be submitted to the Executive Director no later than six (6) months prior to this permit's expiration unless the deadline is extended by the Executive Director as outlined in Special Condition 1.A and 1.C of this permit. If the study indicates that a nature-based strategy is feasible, the permittee shall submit a new coastal development permit application or an application to amend this permit to implement the pilot project. If the pilot project is feasible at the southeastern-most portion of the site, the applicant shall submit an alternatives analysis that includes removal of the southern parking area and restoration of the full beach system to the inland extent of the property.
- C. Upon completion of the Capistrano Beach Park Master Plan, the permittee shall submit an application for an amendment to this coastal development permit, a new coastal development permit, or Public Works Plan to the Commission for review and approval for the portions of the plan that constitute development.

- 7. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. **As-Built Plans.** WITHIN 90 DAYS OR PROJECT COMPLETION, the permittee shall submit as-built plans for the approved revetment, which include volume of existing rock, volume and number of sandcubes, revetment footprint, revetment toe and crest elevations, locations of public access paths or ramps, locations of drain pipes or outlets, and locations of the fixed or permanent benchmarks from which the elevation and seaward limit of the revetment can be referenced for required monitoring and necessary maintenance.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

Background

The project site is Capistrano Beach County Park (**Exhibit 1**) located in the City of Dana Point in the County of Orange immediately downcoast of Doheny State Beach and immediately upcoast of the Capistrano Bay District (private gated community of approximately 180 single-family residences). Immediately inland of the site is Beach Road—a private road that provides access to City stormwater treatment facilities to the northwest and the Capistrano Bay District to the southeast—followed by the railway and Pacific Coast Highway. The site is currently developed with a segment of the California Coastal Trail, a public parking lot with landscaping, and shoreline protection in the form of armor rock and sandcubes. The sandcubes are geosynthetic bags filled with a cubic yard of sand and stacked three or four high and two deep along the seaward edge of certain hardscaped areas (**Exhibit 3**).

Historically, this stretch of coastline has been relatively narrow due to prior development on the beach and given the general natural transportation of sediment from San Juan Creek downcoast to San Diego. Capistrano Beach receives much of its sand from San Juan Creek and opportunistic beach nourishment events. However, the beach has been narrower in recent history due to the development of the San Juan Creek watershed, coastline, and San Juan Creek channel. In the late 1920s, a pier and a beach club protected by a seawall were constructed on the project site. Storms in the 1960s damaged the pier, beach club, and its seawall. Cars filled with cement were installed as an emergency measure to protect the beach club and may still exist under the project site. The Capistrano Beach Club was demolished in 1969 and the site was purchased by the County in 1979 and the Beach Park was opened the following year. The most recent beach nourishment event occurred in 2016, but given low levels of sediment input from San Juan Creek and net longshore transport of such sediment southeast past Capistrano Beach, the width of the sandy/cobble beach onsite currently ranges from zero feet to approximately 100 feet. During high tides and/or storm events, the amenities onsite are subject to overtopping and erosion.

The subject coastal development permit (CDP) application is, in part, a follow-up application for development authorized under emergency permits (ECDPs) in response to damage caused by winter storms and high tide events at Capistrano Beach County Park. Between 2004 and 2020, eight ECDP applications were issued for development onsite; six of which were issued within the last five years (G-5-15-0044 was nullified).

Some of the onsite protection is still authorized under recent emergency actions that are addressed through this follow-up permit application, and some was authorized, but is no longer permitted because a follow-up application was not submitted by the required deadline (**Exhibit 4**; see Section IV.E of this staff report).

As conditions of approval of the various ECDPs, OC Parks was required to either submit a follow-up application or remove the development authorized within a specified time period. The subject permit application was received within the required 60 days of issuance of G-5-19-0002, and also serves as the follow-up permit for G-5-19-0036 and G-5-20-0034, and addresses development with expired authorization under CDP Nos. 5-04-491-G, 5-07-039-G, G-5-16-0039, and G-5-18-0026.⁴

The portion of the proposed project located landward of the mean high water line is within the boundaries of the City of Dana Point and would typically require a local coastal development permit. The portion of the proposed project located seaward of the mean high water line is within the Commission's area of original jurisdiction, where the Commission retains the responsibility to issue coastal development permits. Section 30601.3 of the Coastal Act provides that the Commission may process and act upon a consolidated permit application where a proposed project requires a CDP from both a local government and the Commission, and where the applicant, the local government, and the Commission consent to consolidation of the permit application, provided that public participation is not substantially impaired by consolidation, and that Chapter 3 of the Coastal Act is the standard of review for a consolidated permit application. Therefore, because the applicant, local government, and Commission agreed to a consolidated permit application and consolidation will not substantially impair public participation, the Coastal Commission is the permit issuing authority for the entire proposed project and the standard of review is Chapter 3 of the Coastal Act, with the certified LCP used as guidance.

Project Description

The subject application seeks short-term authorization (two to five years) for two categories of development that will serve to protect and provide access to the County's Beach Park amenities until the Capistrano Beach Park Master Plan can be approved by the Commission and implemented: (1) proposed development that reflects onsite conditions and (2) newly proposed development that is not currently onsite. The Master Plan is a mid-term (20 to 30 year) climate adaptation plan that is currently being prepared for the site, which is described in more detail in the following subsection. This interim permit request is for the removal of damaged public sidewalk, boardwalk, stairs, wooden bulkhead, restroom and associated utilities, basketball court, approximately 55 parking spaces, approximately 20 trees (mostly palm trees), public beach showers, firepits, and light poles (Category 1), redesign of the park entrance (Category 2), and installation of approximately 830 linear feet of sandcubes (one cubic yard each) over a

⁴ ECDP No. G-5-15-0044 was issued, but subsequently nullified because OC Parks did not implement the authorized development.

layer of geotextile (Categories 1 and 2), approximately 690 linear feet of armor rock along the seaward edge of the coastal trail and park facilities (Categories 1 and 2), and an elevated beach terrace (sandy area with benches and picnic tables) immediately inland of a portion of the proposed revetment (Category 2) (**Exhibit 2**).

The proposed demolition has already occurred pursuant to approved emergency work. When the basketball court and restroom were removed, the existing line of development was pulled back to be in line with the adjacent upcoast area and the site is now an unpaved dirt area developed with picnic tables and firepits. Portable restroom facilities were installed, as required by the conditions of the ECDPs. The ocean-fronting row of parking spaces was made inaccessible to the public through the installation of a row of K rails. Additionally, some public walkways were repaired. These improvements are proposed to be retained as part of the application.

OC Parks is also requesting to retain the shoreline protection that currently exists onsite. This includes sandcubes located in four locations: (1) across the City of Dana Point's treated stormwater outlet pipes adjacent to the bike path/coastal trail in the upcoast/northwest portion of the site (G-5-19-0036), (2) along the seaward edge of where the basketball court and wooden boardwalk used to be (G-5-18-0026), (3) on either side of the culvert in the downcoast/southeastern portion of the site (G-5-19-0002), and (4) along the southernmost end of the site (G-5-16-0039). Authorization for the sandcubes installed at the second and fourth listed locations has expired. Requested shoreline protection also includes armor rock that has been placed along the seaward side of the parking lot from the entrance road to the upcoast edge of the location of the demolished restroom facilities (5-04-491-G and 5-07-039-G) and along a portion of the site where the basketball court and boardwalk used to be. The rock onsite is either unpermitted or the authorization for the rock has expired. Unpermitted development is discussed in more detail in Section IV.E of this staff report.

Furthermore, in addition to retention of sandcubes and armor rock currently onsite, the development, as proposed, involves the placement of approximately 300 linear feet of new sandcubes along the seaward edge of the bike path/coastal trail and 800 tons of new armor rock and to maintain the current line of development. Any debris onsite would be removed during construction. The rock would be placed between the entrance road and the downcoast end of the demolished wooden boardwalk to reinforce the rock already onsite and close gaps in the rock armoring (approximately 150 linear feet). The sandcubes are proposed to be monitored and maintained through the implementation of OC Parks' proposed Sandcubes Monitoring and Maintenance Plan (**Exhibit 5**), which involves opportunistic sand placement of up to 20,000 cubic yards per year over exposed sandcubes that would be temporarily stored (OC Parks expects less than one week per placement event) in the southern end of the public beach parking lot.

OC Parks is also conducting a feasibility study for a nature-based adaptation strategy, such as a cobble berm, to inform the Master Planning effort that will be submitted to the Commission for review and approval pursuant to an amendment or separate CDP or a Public Works Plan. OC Parks would submit the feasibility study to the Executive Director upon completion. If determined to be feasible, the applicant proposes to replace some of the existing revetment with such a structure and monitor its effectiveness.

Capistrano Beach Park Master Plan

Condition 17 of ECDP No. G-5-19-0002, issued January 15, 2019 (and Condition 16 of ECDP No. G-5-19-0036), required the applicant to either remove the development and restore the site within 60 days or submit a follow-up CDP application that includes an alternatives analysis with a Climate Change Adaptation Plan. In the summer of 2019, Orange County began developing a Master Plan for the County Park at Capistrano Beach. The planning process started with stakeholder interviews and has included three public workshops and other engagement efforts to identify mid-term adaptation alternatives for the next 20 to 30 years. Commission, OC Parks, and City staff coordinate regularly (once a month) on the Master Plan and related efforts.

Thus far, the Master Planning process has resulted in the identification of three (3) alternatives—Protect, Protect and Retreat, and Accommodate and Retreat—based on the public’s prioritization of recreational amenities, which are summarized in **Exhibit 6**. All three alternatives include maintenance of some public access and recreation amenities including the coastal trail, public turnaround area and various amounts of parking, restroom facilities, and seating areas. All three alternatives also include terraced sandy beach areas and varying amounts of protection.

OC Parks is also involved in long-term regional planning efforts and is exploring adaptation measures such as sand nourishment, creation of an offshore reef, and installation of a groin. OC Parks is in the process of applying for funding through Proposition 68, which funds acquisition, restoration, and public access programs.

B. Public Access and Recreation

Section 30210, *Access; recreational opportunities; posting*, 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 30213, *Lower cost visitor and recreational facilities; encouragement and provision*, states, in part:

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

Section 30221, *Oceanfront land; protection for recreational use and development*, states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The proposed development is located at an oceanfront public beach park where the Commission approved the construction of a bike path (coastal trail), public beach parking lot, restroom, and other recreational amenities (CDP Nos. P-80-6414 and 5-84-300). The selected project alternative is proposed, in part, to prevent further damage to these low

cost recreational facilities and proposed viewing and picnic areas—access to which has been limited, and at times unsafe during storm events and emergency development activities—until a Master Plan informed by the public’s preferred use of the area is approved by the Commission and implemented. However, through the proposed protection of these built amenities, OC Parks would be sacrificing public access to the sandy/cobble beach areas that would be occupying the area proposed to be developed with the revetment, especially during high tides and the winter storm season.

The public access policies of Chapter 3 of the Coastal Act listed above require maximum access and recreational opportunities, including lower cost opportunities, to be protected and provided. In this case, both the public’s access to and use of the natural shoreline and the beach park amenities provide low cost recreational opportunities. Thus, the loss of sandy/cobble beach area for the stabilization of built public access and recreation areas (including but not limited to the proposed terraced beach area) could be considered somewhat self-mitigating, but more information is needed regarding which forms of access and recreation maximize public access at this location. As discussed in the Section 30235 override subsection of this staff report (Section IV.C below), mitigation for the impacts of the proposed short-term use of shoreline protective devices on sand supply (and, thus, public access to the beach) and the impacts of the removal of public access amenities such as showers, restrooms, and firepits is only appropriate for the short-term development proposal and mitigation for such impacts must be fully addressed as part of the Master Plan.

Special Condition 1 limits the term of the subject permit to two years and **Special Condition 6** requires the applicant to submit the Capistrano Beach Park Master Plan to the Commission for review and approval. OC Parks has already made efforts to survey the public on their preferred use of the OC Parks’ beach park through the Master Plan process, which will address public access and recreation at the site and any appropriate mitigation for access thereto. In addition, **Special Conditions 2.D and 3** requires OC Parks to develop and implement a Public Access Survey Plan that will make surveys in both Spanish and English available to visitors at the park to help inform how future use of the site can maximize public access and recreation. These surveys would encourage visitors to rank their preferred amenities at this site, whether they be natural sandy and/or cobble beach, public parking, terraced beach area, bike and pedestrian paths, picnic tables, or other recreational amenities, provide demographic and socioeconomic information, and list the mode(s) of transportation used to access the site in order to inform equitable consideration of Master Plan alternatives.

The subject application also includes proposed temporary storage of up to 20,000 cubic yards of beach-compatible sand in the parking lot for opportunistic placement over the sandcubes consistent with the OC Parks’ Sandcubes Monitoring and Maintenance Plan (**Exhibit 5**) and Sand Compatibility and Use Guidelines. OC Parks is required to revise the Sandcubes Monitoring and Maintenance Plan, submit a final Revetment Monitoring and Maintenance Plan, and adhere to the final approved version of the Plan and Guidelines (**Special Condition 2**). While the storage of such sand is anticipated to impact up to 15 parking spaces for a period of less than one week, to maximize public access, **Special Condition 3** is imposed to avoid or minimize usage of the parking area for storage and construction staging.

Special Conditions 2 and 3 also aim to maximize public access and low cost recreational opportunities by maintaining safe access around construction and maintenance activities, posting notices in English and Spanish about construction scheduling, continuing to provide free public access and vehicle parking, prohibit the extension of the footprint of shoreline protection (sandcubes and armor rock) farther seaward, and extend the coastal trail across the entire site. Furthermore, to maximize public access for all people, as required by Section 30210, **Special Condition 3** requires, at a minimum, one ADA-accessible ramp or path to be provided from the built park amenities down to the natural shoreline area.

As conditioned, the subject development maximizes public access and recreational opportunities at the site for the short-term duration of the permit and helps inform the mid-term Master Plan, but does not fully address the impacts to public access. Thus, the proposed development is not fully consistent with the public access policies of Chapter 3 of the Coastal Act and requires the Section 30235 override discussed in a following subsection.

C. Coastal Hazards and Visual Resources

Coastal Act Section 30253, *Minimization of adverse impacts*, states, in 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. ...

Coastal Act Section 30235, *Construction altering natural shoreline*, states:

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. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Coastal Act Section 30251, *Scenic and visual qualities*, states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

As described in the Section IV.A of the staff report, the built development at this site has been subject to damage from storm events, flooding, and erosion since the 1960s with increasing requests for authorization of emergency development in recent years to

address such damage, remove significant amenities from the site such as parking, a basketball court, and numerous trees, and restore some level of public access to the site. While storm events, sea level rise, and sediment input are hard to predict, this trend is expected to continue and accelerate as sediment supplies remain the same or decrease and as sea levels rise and the frequency and intensity of storm events increase due to climate change.

A coastal resiliency study prepared by Moffatt & Nichol for OC Parks in April 2019 (Appendix A), analyzed two sea level rise scenarios (1.6 feet and 3.3 feet) that reflect sea level rise conditions that are higher than the extreme risk aversion (H++) scenarios for 2030 and 2050 as defined in the best available science for California, *Rising Seas in California: An Update on Sea Level Rise Science* (OPC, 2018). The study uses Coastal Storm Modeling System (CoSMoS) data, which projects that with 1.6 feet of sea level rise, the shoreline position with winter erosion could be in line with the middle of the existing parking lot and with 3.3 feet of sea level rise the shoreline position could be at Beach Road. Additionally, a 2014 report on coastal processes at the adjacent Doheny State Beach⁵ indicates that the site has a shoreline erosion rate of 14 feet per year since 1980, although much of the erosion is episodic. **Exhibit 7** includes graphics from the April 2019 study showing the estimated shoreline position with 1.6 feet and 3.3 feet of sea level rise.

Thus, a no project alternative would likely result in additional damage to and erosion of the parking facilities, landscaping, walkways and bike path, terraced beach area, and potentially the City's stormwater treatment system's outfall pipes.⁶ This could lead to rapid erosion of fill material, exposure of remnants of older development, and closures of the park due to unsafe conditions onsite. Understanding the risks and vulnerabilities the site faces regarding coastal hazards, the applicant is preparing mid- and long-term adaptation plans for the area. Therefore, OC Parks is requesting the proposed new development for a short-term 2- to 5-year period as an interim measure to protect the park's amenities until the Master Plan can be implemented.

OC Parks proposes to maintain shoreline protection constructed pursuant to approved ECDPs and extend protection laterally across the site to minimize the potential for further damage to remaining OC Parks facilities, including the beach parking lot and coastal trail, during the next couple of winter storm seasons. They want to rely upon the proposed protection to allow time to develop a mid- and long-term park plan and propose to rely upon both the armor rock and the sandcubes to provide sufficient protection to minimize risks to the remaining OC Parks facilities for the proposed interim period.

⁵ *Updated Coastal Processes and Hydraulic/Hydrology Studies for Doheny State Beach*, Coastal Environments, 11 September 2014

⁶ These pipes extend seaward from the City's stormwater facilities located landward of the bike path in the northern portion of the project site. The pipes are located below the beach, but the ends of the pipes have been exposed at times.

Coastal Act Section 30253 requires new development to minimize risks to life and property in hazardous areas and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. Section 30253 prohibits new development that would “in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” Coastal Act Section 30251 also requires that development minimize alteration of natural landforms (such as this beach), and also requires that scenic and visual qualities be protected.

Shoreline protective devices can have a variety of negative impacts on coastal resources including adverse effects on shoreline sand supply, scenic qualities, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. When a shoreline is armored with a shoreline protective device, such as the proposed revetment (sandcubes and armor rock), the natural exchange of material from the armored area to the beach or shoreline area and offshore sand supply system is interrupted and, if the shoreline area would have otherwise eroded, there is a measurable loss of material to the beach, shoreline, and offshore sand supply system as a result.

In this case, while the proposed revetment will contribute to changes in the beach morphology and loss of sand supply, the authorization for the shoreline protective device is temporary (limited to a two-year period [**Special Condition 1**]) and will assure stability and structural integrity of the coastal-dependent park amenities for the duration of the term of permit. Armor rock can provide long-term protection of the park amenities through dissipation of wave energy and an engineered rock revetment could be, thus, more than sufficient for interim protection and appropriate in certain areas subject to high wave energy. However, given the amount of space required for rock revetments, their documented impacts on sand supply, and requirements for use of mechanized equipment to remove such protective devices, **Special Condition 2** prohibits additional rock (beyond what is currently onsite) from being added to the revetment.

Sandcubes, on the other hand, are more temporary in nature and have been observed to provide adequate temporary protection (with monitoring and maintenance) in some locations at this site starting in 2016 when sandbags and sandcubes were installed pursuant to approved ECDPs. Sandcubes are, however, prone to damage (tears and holes) even in the short-term, which can affect the function of the protective device and pollute the beach. In addition, exposed sandcubes degrade the visual quality of the beach. Thus, OC Parks’ proposal includes a Sandcubes Monitoring and Maintenance Plan to minimize exposure of the sandcubes and remove (and replace, if needed) sandcubes and associated debris. Removal of sandcubes can minimize impacts to coastal resources when the geosynthetic bags are cut (so that the beach-compatible sand contents remain on the beach) and properly disposed of. **Special Condition 2.C** requires OC Parks to revise the Sandcubes Monitoring and Maintenance Plan to immediately dispose of any debris and add armor rock monitoring and maintenance measures, submit a final Revetment Monitoring and Maintenance Plan, and adhere to the final approved version of the Plan and Guidelines. Thus, as conditioned, the proposed project would assure stability and structural integrity of the development onsite, though it may contribute to erosion of the beach. The project would alter the beach in

order to protect coastal-dependent uses. The project would mostly maintain the visual quality of Capistrano Beach, but would not enhance or protect the visual quality. As conditioned, the proposed development would not be consistent with Coastal Act Sections 30251 and 30253, and thus requires the Section 30235 override discussed in a following subsection.

Furthermore, the only new proposed improvements to the site that would rely on the proposed temporary shoreline protective device is the terraced beach area encompassing the area previously occupied by the basketball court and restroom facilities and associated picnic tables and benches that serve to partially mitigate public access impacts as described in the previous section of this staff report and the other developments onsite approved by the Commission in the 1980s support coastal-dependent uses. In addition, while the impacts of the proposed protection temporarily affect the sand supply at the property, risks to life and property are minimized through the short-term protection. Public safety concerns could arise if the OC Parks amenities onsite are unprotected and experience further damage. Recognizing the temporary nature of the protection, **Special Condition 6** requires submittal of the Master Plan for Commission review to comprehensively address concerns relating to the vulnerability of the site to coastal hazards.

Alternatives

OC Parks identified alternatives to the proposed project (**Exhibit 8**) including removal of all protection along the shoreline, removal of protection and import/placement of sand, removal of protection and construction of vegetated dunes, installation of armor rock onsite (including replacement of sandcubes with rock), installation of sandcubes onsite (including replacement of rock), and replacement of the sandcubes and armor rock with a nature-based form of protection, such as a cobble berm.

While removal of all protection onsite would minimize impacts to shoreline sand supply and beach access and recreation, it would not maintain any of the other park assets and amenities onsite. The erosion that caused the loss of park assets and lead to the emergency installation of rock and sandcubes would likely continue, causing the loss of more upland park assets. The applicant instead proposes the alternative to protect other public access (via the bike path/coastal trail and public beach parking) and water quality (the City's stormwater treatment facility). OC Parks contends that the proposed project design would minimize the need for near-term storm damage repair and maintenance, reduce the expenditure of public funds, and reduce public access impacts to the site from additional construction. The proposed action would forestall additional losses and pause the major changes to the park area to allow for development of the Master Plan (**Special Condition 6**).

Alternatives to implement short-term or interim nature-based adaptation strategies, such as beach nourishment and construction of a living shoreline, were not selected due to the limited availability of large volumes of appropriate beach sand and an expectation that imported sand would likely be eroded quickly and the sediment transported south along the littoral cell. As a short-term response, it is unlikely that vegetation could be established sufficiently before the winter storm season. The construction of a nature-based form of protection has not been ruled out and it could be proposed in the future, if

determined to be feasible. However, this permit, as conditioned, does not preclude implementing a nature-based adaptation strategy in the future at this site.

Section 30235 Override

Coastal Act Section 30235 requires approval of shoreline protective devices in certain, limited situations, including when necessary to protect coastal-dependent uses and existing structures and public beaches in danger from erosion, when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In this case, the armor rock and sandcubes are proposed to protect coastal-dependent uses (coastal trail, beach parking, and other recreation amenities) for the next 2 to 5 years until a mid-term adaptation strategy can be implemented. As described in Section IV.B and the previous two subsections, as conditioned, the permit is for a temporary two year authorization (**Special Condition 1**) for protection of Commission-approved coastal-dependent facilities that provide public access and low cost recreation opportunities at Capistrano Beach.

In an effort to minimize the proposed alternative's impacts on shoreline sand supply, OC Parks is proposing to: (1) monitor the sandcubes, (2) import beach-compatible sand as necessary and consistent with the OC Parks' Sand Compatibility and Use Guidelines (Appendix A), and (3) submit a feasibility study (which is already underway) for a nature-based adaptation pilot project to the Executive Director for implementation, if feasible. **Special Conditions 2 and 6** are imposed to ensure the project is implemented as approved including plans for monitoring of the revetment (sandcubes and armor rock) and submittal of the pilot project feasibility study.

In addition, to further minimize impacts of the proposed development and of future development that may be proposed as part of the Master Plan consistent with Coastal Act Sections 30253 and 30235, the term of authorization for this armoring is limited to two years by which time the feasibility study must be provided to the Executive Director (**Special Conditions 1 and 6**), the minimum amount of new sandcubes may be installed, however, no additional rock is allowed to be placed onsite (**Special Condition 2**), and the follow-up CDP or CDP amendment application must identify and address changed circumstances and/or unanticipated impacts associated with the presence of the rock and sandcube revetment, including excessive scour and impacts to shoreline processes and beach width, or other impacts from coastal hazards and sea level rise (**Special Conditions 1**). Thus, an amendment to the permit would be required to implement the pilot project and extend the term of the permit when more information is available regarding the timeline for Commission action on the Master Plan. **Special Condition 6** requires the applicant to submit the Capistrano Beach Park Master Plan to the Commission for review and approval.

Despite the known adverse impacts from shoreline armoring to beach recreation, habitat, landforms, visual resources and biological resources and habitat (as discussed in this staff report), there is no feasible alternative to the armoring that could both protect the coastal-dependent uses and remain as close to consistent with all applicable provisions of the Coastal Act as this project would. At this point in time, the temporary armoring is authorized using the "override" provision of 30235 of the Coastal Act.

Some of the impacts from shoreline armor can be quantified, and the Commission often requires mitigation. For this project, the project has been conditioned to minimize the footprint of the protection and the temporary approval of the armoring will minimize the loss of beach that will result from fixing the location of the back beach. The access amenities, including the terraced beach area and public ADA access ramp, will provide some mitigation for these impacts. The addition of up to 20,000 cubic yards of sand to minimize visual impacts of the shoreline armoring will offset the short-term impacts to local sand supply. As conditioned, the proposed short-term/interim project conforms with the coastal hazard policies of Chapter 3 of the Coastal Act.

D. Biological Resources and Water Quality

Section 30230 of the Coastal Act, *Marine resources; maintenance*, 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, *Biological productivity; waste water*, 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act, *Environmentally sensitive habitat areas; adjacent developments*, states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Biological Resources

The proposed development has the potential to impact habitat for a variety of wildlife that are part of the marine ecosystem afforded protection under Coastal Act Sections 30230 and 30231 of the Coastal Act. Potential habitat for shorebirds, wading birds, and marine species, including grunion, has been and could continue to be impacted through the loss of trees onsite during previous authorized emergency activities and through the loss of natural beach area, which may not be consistent with these Coastal Act sections. Potential replacement of trees that may provide habitat for bird breeding, nesting, and roosting activities and restoration of sandy/cobble beach habitat is not proposed at this

time due to the short-term nature of the permit, but would be addressed in the Master Plan and long-term planning efforts for the site. **Special Condition 6** requires the applicant to submit the Capistrano Beach Park Master Plan to the Commission for review and approval.

In addition, **Special Condition 4** is imposed to require monitoring of the site to avoid impacts to sensitive species and habitats, nesting and breeding bird surveys to be conducted, and implementation of grunion and sensitive bird avoidance measures during construction activities, including activities associated with opportunistic maintenance of the proposed sandcubes. This condition includes requirements for a qualified resource specialist to conduct nesting bird surveys during nesting season and monitor the site during development activities, for construction activities to avoid or minimize impacts to nesting birds, and for the applicant to acquire a seasonal grunion run schedule and implement surveying and avoidance measures.

Furthermore, **Special Condition 2** requires that opportunistic placement of sand avoid wet sandy areas and marine waters to the maximum extent feasible to minimize impacts to intertidal beach infauna and marine organisms that may be impacted by potential increases in the turbidity of the water. Therefore, as conditioned, the proposed development minimizes impacts to sensitive species, biological productivity, and populations of marine organisms, but is not fully consistent with Coastal Act Sections 30230, 30231, and 30240 because, for example, grunion spawning habitat area is reduced as a result of this project. Thus, the Section 30235 override is required as discussed in the previous section. One of the goals of the Master Plan is to address such inconsistencies.

Water Quality

Sections 30230 and 30231 also require development to protect water quality through means such as minimizing adverse effects of waste water discharges and controlling runoff. As proposed, the development would protect the City of Dana Point stormwater treatment facilities which are located landward of the northwestern portion of the site with outlet pipes that run under the beach and are, at times, exposed. If damaged, these facilities could result in adverse impacts to water quality if untreated stormwater is discharged into the ocean. **Special Condition 6** requires the applicant to conduct development as proposed and conditioned.

Additionally, damaged sandcubes have the potential to impair water quality through the deposition of geosynthetic material on the beach or in the ocean. To minimize such impacts, OC Parks proposes to implement a Sandcube Monitoring and Maintenance Program (**Exhibit 5**). This program requires the applicant to monitor the sandcubes at least once a week, remove any sandcube debris, and prevent damage to the sandcubes by covering them with beach-compatible sand. **Special Condition 2**, in part, requires revisions to the proposed program clarify that inspection of the areas around the sandcubes, including areas seaward of the location of the sandcubes will be conducted and that any debris will be immediately disposed of.

Furthermore, to avoid water quality impacts during construction, the Commission imposes **Special Condition 5**, which requires the applicant to follow construction best

management practices that prevent construction activities and construction related debris from entering and impacting coastal waters.

As conditioned, marine resources will be maintained, and special protection will be given to areas and species of special biological significance for the short-term project.

E. Coastal Act Violations

Violations of the Coastal Act have occurred on the property including but not limited to installation of portions of the armor rock at the site and the continued presence of some sandcubes and other portions of the armor rock along the shoreline without benefit of the necessary coastal development permit. As described above, the sandcubes and portions of the armor rock that are proposed for after-the-fact authorization were previously approved under several emergency permits that have since expired, and, thus, they now constitute unpermitted development.

Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

In order to obtain after-the-fact authorization of the unpermitted development described above, the County is requesting to retain the shoreline protection that currently exists onsite. This includes sandcubes located in four locations: (1) across the City of Dana Point's treated stormwater outlet pipes adjacent to the bike path/coastal trail in the upcoast/ northwest portion of the site (G-5-19-0036), (2) along the seaward edge of where the basketball court and wooden boardwalk used to be (G-5-18-0026), (3) on either side of the culvert in the downcoast/southeastern portion of the site (G-5-19-0002), and (4) along the southernmost end of the site (G-5-16-0039). Authorization for the sandcubes installed at the second and fourth listed locations has expired. The rock for which the permits have expired is found along the seaward side of the parking lot from the entrance road to the upcoast edge of the location of the demolished restroom facilities (5-04-491-G and 5-07-039-G). The rock along the portion of the site where the basketball court and boardwalk used to be is wholly unpermitted. In summary, the emergency permits (5-04-491-G and 5-07-039-G) for armor rock in some locations have since expired, and the portion of armor rock where the basketball court and boardwalk used to be was installed without obtaining a valid coastal development permit.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in authorization of the sandcubes and armor rock going forward. Commission enforcement staff will consider its options for a comprehensive resolution of the violations described herein as a separate matter, including, potentially, resolving the remaining issues through the mid-term and long-term planning efforts and resulting Commission actions referenced in this staff report. Approval of this permit is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions

in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action for any unresolved violations or violations of this permit, just as it was prior to this permit approval for engaging in unpermitted development.

F. Local Coastal Program

The City of Dana Point has a Certified Local Coastal Program (LCP) that was effectively certified in 1989. Since then, parts of the LCP have been updated through LCP amendments. The proposed development is taking place partially within the City's permitting jurisdiction and partially within the Commission's area of retained permitting jurisdiction under Coastal Act Section 30519(b). The applicant, local government, and Commission agreed to a consolidated permit application.

Section 9.69.030(c) "Authority to Grant Permit" of the City's Certified Implementation Plan (IP)/City's Zoning Code, states that for any development that lies partially within the City and Coastal Commission permit jurisdiction, the Coastal Commission shall be the responsible agency for the issuance of any Coastal Development Permit for the entire development. Thus, the standard of review is Chapter 3 of the Coastal Act and the policies of the certified Dana Point LCP may provide guidance.

G. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit application 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 feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available for the short-term development proposal which would substantially lessen any significant adverse effect which the development may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to have a limited term of permit (two years) and mitigate the identified impacts, is the least environmentally damaging feasible alternative, has no remaining significant environmental effects, and complies with the applicable requirements of the Coastal Act to conform to CEQA.

Appendix A: Substantive File Documents

- *Capistrano Beach County Park Coastal Resilience Study*, Moffat & Nichol, 25 April 2019
- *Capistrano Beach County Park Sand Compatibility and Use Guidelines*, Moffatt & Nichol, September 2020