
CALIFORNIA COASTAL COMMISSION

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F11b

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STAFF REPORT: PERMIT AMENDMENT

Application No.: 5-19-0345-A1

Applicant: Orange County Parks

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

Description of Original Project Approved Pursuant to Permit No. 5-19-0345:
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; redesign of the park entrance; maintenance of existing sandcubes and armor rock onsite and installation of sandcubes, if needed; and construction of an elevated beach terrace (sandy area with benches and picnic tables) for a period of one year.

Description of Pending Permit Amendment No. 5-19-0345-A1: Extend the term of authorization for the development approved under CDP No. 5-19-0345 for an additional four months (until April 9, 2022).

SUMMARY OF STAFF RECOMMENDATION

On December 9, 2020, the Commission acted on a coastal development permit (CDP) application by Orange County Parks (OC Parks) to remove 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; redesign of the park entrance; installation of approximately 870 linear feet of sandcubes (one cubic yard each) over a layer of geotextile; installation of approximately 840 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 at Capistrano Beach County Park. The application for CDP No. 5-19-0345 was submitted as a follow-up to several emergency permits issued in response to damage incurred at the site during high tide and storm events.

The Commission's December 9, 2020 action authorized removal of specific public park amenities (listed above) after the fact; redesign of the park entrance; maintenance of existing sandcubes and armor rock onsite and installation of sandcubes, if needed; and construction of an elevated beach terrace at Capistrano Beach County Park, subject to eight special conditions. As conditioned, the authorization is limited to one year from the Commission's December action and the applicant is required to submit a CDP amendment application to remove the development, implement a nature-based adaptation pilot project (if determined to be feasible) if the amendment application is filed as complete by the authorization expiration date (December 9, 2021), or modify the term of authorization. Thus, the authorization for the approved development would expire on December 9, 2021 unless either a CDP amendment application for the pilot project (if determined to be feasible) is filed as complete, or the permit term is extended.

As part of a CDP amendment application submitted timely by OC Parks on June 6, 2021, the County identified a pilot project alternative, but has yet to submit detailed plans to implement that alternative. Therefore, that file remains incomplete. While County staff expect to have those plans submitted to the Commission by the end of November (prior to the December 9, 2021 permit expiration), Commission staff would need time to review the plans and confirm that the application is complete. Thus, the amendment request currently before the Commission is to modify the timing conditions of CDP No. 5-19-0345 to extend the authorization for the development another four months to April 9, 2022 to allow County and Commission staff time to coordinate on and adjust the pilot project plans, if appropriate.

Commission staff continue to meet with County staff monthly and, based on those discussions and the materials provided up to this point, do not believe that the modification of the permit authorization conditions would result in a significant delay in the potential implementation of a nature-based adaptation pilot project or other development at the site. Therefore, Commission staff recommends the Commission **approve** the proposed changes to the permit timing conditions of CDP No. 5-19-0345.

The motion is on page 5. The standard of review is Chapter 3 of the Coastal Act, with the certified Dana Point Local Coastal Program used as guidance.

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, and at least three Commissioners object to the executive directors' designation of immateriality at the next Commission meeting, or the Executive Director determines that the objection raises an issue of conformity with the Coastal Act or certified Local Coastal Program.

In this case, the Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting a coastal resource or coastal access.

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EXHIBITS

- Exhibit 1 – Project Location
- Exhibit 2 – Approved Project Plans
- Exhibit 3 – Conditions of CDP No. 5-19-0345

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** Coastal Development Permit Amendment No. 5-19-0345-A1 pursuant to the staff recommendation.

Staff recommends a **YES** vote. 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 Coastal Development Permit Amendment No. 5-19-0345-A1 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. Approval of the permit amendment complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

II. CHANGES TO CONDITIONS

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-19-0345, as amended up through amendment number 5-19-10345-A1, and reflected in **Appendix B**, remain in effect. Language to be deleted is shown in ~~strike-out~~ and new language is shown in **bold, underlined**.

Special Condition 1, Limited Authorization of the Shoreline Protection Elements.

- A. This coastal development permit authorizes the approved shoreline protection (sandcubes and armor rock) ~~only for a period of one (1) year (i.e. until **April 9, 2022**~~**December 9, 2024**). After such time, the authorization for the continuation and/or retention of the armor rock and sandcubes shall cease. This time period may be extended as described in Part D of this condition.
- B. No later than June 9, 2021 [six (6) months from the Commission's approval of CDP No. 5-19-0345], the permittee (OC Parks) shall provide a report on the status of the nature-based adaptation pilot project feasibility study and the Capistrano Beach Park Master Plan to the Executive Director. The report shall include recommended benchmarks for completion of these two documents and submittal of the appropriate applications—CDP amendment application, CDP application, and/or Public Works Plan request—to the Coastal Commission's South Coast District office. The Executive Director shall schedule public review and comment on that report at the next available Commission hearing.

- C. No later than six (6) months prior to ~~the end of the term of the authorization identified in Part A of this special condition~~ **December 9, 2021**, 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.
- D. The coastal development permit application submitted by the permittee pursuant to Part C 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 end of the authorization period listed in Part A of this special condition (i.e. by **April 9, 2022**~~December 9, 2024~~), the termination date for that authorization shall be automatically extended until the time the Commission acts on the new application and to allow sufficient time to implement any new or amended project improvements. 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.
- E. Failure to obtain a new coastal development permit for an amendment to this permit authorizing removal of and/or 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.

III. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed development is located at an oceanfront public beach park (Capistrano Beach County Park) where the Commission approved the construction of a bike path (coastal trail), public beach parking lot, restroom, and other recreational amenities in the early 1980s (**Exhibit 1**). 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.

On December 9, 2020, the Commission acted on a coastal development permit (CDP) application by Orange County Parks (OC Parks) to remove 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; redesign of the park entrance; installation of approximately 870 linear feet of sandcubes (one cubic yard each) over a layer of geotextile; installation of approximately 840 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 at Capistrano Beach County

Park for a period of two to five years. The application, CDP No. 5-19-0345, was submitted as a follow-up to several emergency permits issued in response to damage incurred at the site during high tide and storm events.

The Commission's December 9, 2020 action authorized after-the fact removal of specific public park amenities (listed above); redesign of the park entrance; maintenance of existing sandcubes and armor rock onsite and installation of sandcubes, if needed; and construction of an elevated beach terrace at Capistrano Beach County Park (**Exhibit 2**) subject to eight special conditions (**Exhibit 3**). As conditioned, the authorization is limited to one year from the Commission's December 2020 action and the applicant is required to submit a CDP amendment application to remove the development, implement a nature-based adaptation pilot project (if determined to be feasible) if the amendment application is filed as complete by the authorization expiration date (December 9, 2021), or modify the term of authorization. Therefore, the authorization for the approved development would expire on December 9, 2021 unless a CDP amendment application for the pilot project, if determined to be feasible, is filed as complete or the permit term is extended.

As part of a CDP amendment application submitted timely by OC Parks on June 6, 2021, the County identified a pilot project alternative, but has yet to submit detailed plans to implement that alternative. Thus, that file (CDP Amendment No. 5-19-0345-A2) remains incomplete until those plans are submitted and to the satisfaction of the Executive Director. The County has indicated that they expect to submit the pilot project plans to the Commission by the end of November (prior to the December 9, 2021 permit expiration). Commission staff continue to meet with County staff on an at least monthly basis to discuss construction status and condition compliance for CDP No. 5-19-0345, pilot project details to inform the climate adaptation master plan for Capistrano Beach, and progress on site-specific and regional adaptation planning efforts. Thus, Commission staff anticipates that the plan submittal will comply with the terms of the permit and result in a complete application. However, it is likely that further coordination between County and Commission staffs will be necessary to ensure the pilot project plans include all the information necessary for the Commission to adequately review the application. Therefore, the subject application is a request to amend Special Condition 1 of CDP No. 5-19-0345 to extend the permit term four months to April 9, 2022.

Section 13166(a) of the Commission's regulations gives the Executive Director the authority to reject a CDP amendment application if "the proposed amendment would lessen or avoid the intended effect of...a conditionally approved permit." In this case, the Executive Director did not reject the amendment application because, as described below and in the following section, staff does not believe that extending the temporary authorization term four months would affect the timeline for review and potential implementation of a nature-based adaptation pilot project or other development alternatives (e.g. removal of the development authorized under CDP No. 5-19-0345) at the site for the near term or the development and implementation of the mid-term Capistrano Beach County Park Master Plan.

The standard of review is Chapter 3 of the Coastal Act, with the certified Dana Point Local Coastal Program used as guidance.

B. Coastal Hazards and Public Access

Section 30253 of the Coastal Act prohibits new development from creating or contributing significantly to the destruction of the site or surrounding area or in any way requiring the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. In this case, new development is not proposed. What is proposed is a four-month extension of the temporary authorization given by the Commission for development, including the retention and modification of shoreline protection at the site. This is proposed, in part, to prevent further damage to the low-cost recreational facilities at the site—access to which has been limited, and at times unsafe during storm events and emergency development activities—until the proposed nature-based adaptation pilot project application is filed as complete.

The public access policies of Chapter 3 of the Coastal Act 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. However, 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. Based on the results of required shoreline monitoring data that was collected between June and September, the County stated that they did not observe evidence of changed circumstances, excessive scour, impacts to shoreline processes or beach width. In any case, mitigation for the impacts of the short-term use of shoreline protective devices on sand supply (and, thus, public access to the beach) must be fully addressed as part of the Master Plan.

As conditioned, the Commission finds that the proposed extension of the deadline to file the nature-based adaptation pilot project application as complete, as allowed pursuant to Special Condition 1 of the underlying permit, is consistent with the underlying permit and with Section 30253 and the public access and recreation policies of the Coastal Act.

C. Coastal Act Violations

Violations of the Coastal Act occurred on the property, including, but not limited to installation of portions of the armor rock at the site without benefit of the necessary coastal development permit prior to the Commission's December 9, 2020 action to temporarily approve repair and maintenance of the protection onsite. The County is requesting to retain the shoreline protection an additional four months.

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.

Consideration of the permit amendment application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. 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 long-term planning efforts and resulting Commission actions. 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.

D. 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.

E. California Environmental Quality Act

Section 13096 of Title 14 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 (one year) 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

- 5-19-0345 adopted staff report (includes permit conditions)

Appendix B: Standard and Special Conditions Pursuant to CDP No. 5-19-0345 through CDP Amendment No. 5-19-0345-A1

NOTE: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-19-0345, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment No. 5-19-0345-A1. Any additions, pursuant to amendment A1, from the previously approved special conditions are shown in **bold**. Thus, this Appendix B provides an aggregate list of all currently applicable adopted special conditions.

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.

SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Limited Authorization of the Shoreline Protection Elements.

- A. This coastal development permit authorizes the approved shoreline protection (sandcubes and armor rock) until **April 9, 2022**. After such time, the authorization for the continuation and/or retention of the armor rock and sandcubes shall cease. This time period may be extended as described in Part D of this condition.
- B. No later than June 9, 2021 [six (6) months from the Commission's approval of CDP No. 5-19-0345], the permittee (OC Parks) shall provide a report on the status of the nature-based adaptation pilot project feasibility study and the Capistrano Beach Park Master Plan to the Executive Director. The report shall include recommended benchmarks for completion of these two documents and submittal of the appropriate applications—CDP amendment application, CDP application, and/or Public Works Plan request—to the Coastal Commission's South Coast District office. The Executive Director shall schedule public review and comment on that report at the next available Commission hearing.
- C. No later than six (6) months prior to **December 9, 2021**, 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.
- D. The coastal development permit application submitted by the permittee pursuant to Part C 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 end of the authorization period listed in Part A of this special condition (i.e. by **April 9, 2022**), the termination date for that authorization shall be automatically extended until the time the Commission acts on the new application and to allow sufficient time to implement any new or amended project improvements. 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.
- E. Failure to obtain a new coastal development permit for an amendment to this permit authorizing removal of and/or 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. Demolition or repair and maintenance (but not demolition and reconstruction) of existing park facilities threatened by further erosion or failure may be conducted as necessary throughout the term of this permit. Prior to undertaking any demolition or repair and maintenance, the applicant shall consult with the Executive Director of the Commission to determine whether separate authorization is required. 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. Pedestrian access shall be extended from the coastal bike trail through the project site in a condition that maximizes accessibility for all people to the extent feasible.
- 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 and for the duration of this permit, the permittee shall maintain the existing informal access path to the beach on the northernmost portion of the parking lot in a condition that maximizes accessibility for all people to the extent feasible whenever beach area is present.
- 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 in the project area 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 the project area, 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 midterm 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 authorization termination deadline is extended by the Executive Director as outlined in Special Condition 1.D 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.