

CALIFORNIA COASTAL COMMISSION

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W14a

ADDENDUM

DATE: May 8, 2023

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W14a, CDP NO. 5-21-0423 FOR THE COMMISSION MEETING ON WEDNESDAY, MAY 10, 2023.**

This addendum is designed to achieve the following objectives. First, in Section I, Commission staff updates the record by supplementing it with correspondence that was received after publication of the staff report. Section II provides responses to issues raised in the recent correspondence, and Commission staff proposes the Commission incorporate these responses into its findings. Finally, Section III provides corrections and modifications to the staff report in light of the correspondence received.

I. CORRESPONDENCE RECEIVED

The Commission has received one (1) letter in opposition to the staff recommendation from the project applicant. The letter generally asserts the following: (1) that proposed mobile home height of 17-feet-10-inches will not have “significant” blue water view impacts and will be consistent with past Commission actions; (2) that Commission staff’s recommendation to lower the proposed mobile home’s height to 16 feet is not supported by evidence; (3) that the Commission is not reviewing Capistrano Shore applications on a case-by-case basis, and; (4) that the San Clemente Land Use Plan (LUP) does not apply to Capistrano Shores, and is actually an area of deferred certification. The applicant provided Exhibits A-E in support of the alleged claims.

The correspondence is available on the Commission’s website at the following address:
<https://documents.coastal.ca.gov/reports/2023/5/W14a/W14a-5-2023-corresp.pdf>.

II. RESPONSE TO COMMENTS

The following is added as a **Response to Comments** section to the staff report dated April 20, 2023 (as section **H** on staff report page 26, thus renumbering the CEQA section as section **I**):

First, the Commission would like to clarify that the applicant's claim that the San Clemente Land Use Plan (LUP) does not apply to the Capistrano Shores Mobile Home Park is incorrect. As explained in Section G of the staff report ("Local Coastal Program") on page 25, the 2018 LUP Comprehensive Update indeed does not apply to the area, but the "1996 LUP, which was certified by the Commission on March 14, 1996, is the controlling LUP for the Capistrano Shores Mobile Home Park." Thus, the LUP policies cited in the staff report, including in Section B ("Visual Resources") on pages 11-12, apply to this application and to other development in the Park, and may provide guidance.

Second, the Commission clarifies its basis for analysis of visual resource impacts, in connection with the subject CDP application and other development in the Park. It is important to recognize that the Commission approved only certain CDP applications in the Park that contained adequate analysis of project consistency with Chapter 3 policies of the Coastal Act (and the certified LUP providing guidance), which are included in [Appendix B](#) of the staff report; 11 other CDP applications, including that for Unit 75 (CDP No. 5-12-295), which the applicant references, were approved by 'operation of law.'³ The Commission, in its analysis of the subject CDP application for consistency with Chapter 3 policies, the LUP policies providing guidance, and previous Commission actions, did *not* consider the applications deemed approved under 'operation of law,' and thus the 24.9-foot height of Unit 75, for instance, is not relevant.

Furthermore, it was found that every known CDP approval found consistent with Coastal Act Chapter 3 policies (and the LUP as guidance) and located further downcoast than the subject site, starting with Unit 74, was of 16-foot height or less (see [Appendix B](#) of the staff report). The applicant points to Units 80, 81, and 90 as evidence that an 18-foot height or greater would be consistent with the Chapter 3 policies of the Coastal Act and LUP; however, the Commission exercised its case-by-case review of the subject CDP application and found that the subject site is in a transitional area where views from the Marblehead trails and other public vantage points of interest would still be affected with the proposed 17-foot-10-inch height. The Commission agrees with the applicant that homes of similar or greater heights found further upcoast of the site would not have the same degree of visual obstruction, yet would also point to the fact that structures downcoast of the site were often found to be visually obtrusive above a 16-foot height (and, in some cases, above an even lower height threshold). The Commission understands that

³ The CDP applications were not formally withdrawn, and the Permit Streamlining Act deadlines passed, thus these applications were deemed automatically approved by "operation of law," as further articulated in the California Court of Appeal case *Linovitz Capo Shores LLC v. Cal. Coastal Com.* (Case No. G058331).

visual resource impact analyses involve some discretion, but when considering evidence in the record including previous Commission actions that were found compliant with the visual resource protection policies of the Coastal Act and the LUP, the Commission finds that a 16-foot-height at the subject site would be more protective of visual resources. This is evidenced in [Exhibits 3](#) and [4](#) of the staff report and Exhibits D and E attached to the applicant’s letter, which show that a 17-foot-10-inch mobile home at Unit 76 would further obstruct blue water views and views of the surf (“white water” views) and would be substantially more visually obtrusive than neighboring residences (including Unit 75, when considering its original 12-foot height).

Thus, the Commission reiterates that the proposed development’s impact to blue water views will be ‘significant’ under the meaning of the San Clemente certified LUP and CEQA, and thus, only as conditioned at the lower height of 16 feet, could be found consistent with the Chapter 3 policies of the Coastal Act, certified LUP, and previous Commission actions in the area.

III. REVISIONS TO THE STAFF REPORT

The following modifications and corrections are made to the staff report dated April 20, 2023. Language to be added is shown in underlined text, and language to be deleted is identified by ~~strikethrough~~.

- a) Modify the last incomplete paragraph on page 13 of Visual Resources as follows:

[...] Furthermore, the impact would be compounded greatly if the immediate neighboring units in this ~~centermost~~ portion of the Park were to be elevated in a similar fashion.[...]

- b) Add the following entries to Appendix B on page 28:

APPENDIX B – PREVIOUS COMMISSION ACTIONS (HEIGHT SURVEY)

Unit Space #	CDP #	Existing Height (ft.)	Permitted Height (ft.)	Roof Design
<u>90</u>	<u>5-10-180</u>	<u>12</u>	<u>19’10”</u>	<u>Pitched</u>