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W12b

ADDENDUM

DATE: December 9, 2025

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W12b, CDP NO. A-5-DPT-24-0005 FOR THE COMMISSION MEETING ON WEDNESDAY, DECEMBER 10, 2025.**

This addendum is designed to achieve the following objectives. First, Section I updates the record by supplementing it with correspondence the Commission received after publication of the staff report, which is also posted to the Commission's website under the "Correspondence" tab for this item on the agenda, and provides responses to issues raised in the recent correspondence. Section II provides minor modifications to the recommended Special Condition 7.

I. CORRESPONDENCE AND RESPONSE TO COMMENTS

The following is incorporated into the findings as a **Response to Comments** section to the staff report dated November 25, 2025 (as Section **IV.H** on staff report page 56, thus renumbering the CEQA section as Section **IV.I**):

The Commission received one letter from Jeremy Talcott on behalf of the Pacific Legal Foundation in opposition to the staff recommendation. Specifically, Mr. Talcott's letter objects to Special Conditions 6 and 7 and asserts that these conditions, as proposed, violate fundamental constitutional principles that preserve the applicants' right to maintain their existing seawall and their rights to install additional armoring in the future consistent with Public Resources Code Section 30235 and the U.S. and California Constitutions.

<u>California precedent supports the validity of Special Conditions 6 and 7, and demonstrates that the imposition of these conditions does not constitute a taking.</u>

Mr. Talcott asserts that the requirement that the applicants waive their right to protect their home from coastal hazards and requiring the removal of the home if it comes to be located on Public Trust lands by means of the migration of the Mean High Tide Line (MHTL) or if coastal hazards make the home inaccessible is unconstitutional under Article 1, Section 1 of the California Constitution. This is contrary to California precedent, where courts have held that a right to build a seawall to protect one's property under California Constitution

Article 1 Section 1 “is not the equivalent of a vested right to protect one’s property in a particular manner where the method chosen is one regulated by government.” *Whaler’s Village Club v. Cal. Coastal Commission* (1985) 173 Cal.App.3d 240, 252-53; see also *Lindstrom v. CCC* (2019) 40 Cal.App.5th 73, 104, fn. 32 (holding that landowners do not have a *right* to build a seawall to protect structures on their property; rather, "[i]n general, an individual has no ‘vested right to protect property in a particular manner where the method chosen is one that is regulated by government . . . .'" (quoting *Barrie v. California Coastal Com*. (1987) 196 Cal.App.3d 8, 15)). Further, courts have specifically upheld Coastal Commission conditions that prohibited the future construction of shoreline armoring, finding that there is a Coastal Act (and LCP) basis for imposing the conditions and that doing so does not constitute an unconstitutional taking of property without compensation. *Lindstrom v. CCC* (2019) 40 Cal.App.5th 73. Similarly, the *Lindstrom* court noted that a special condition where the property owner would be “required to remove the development authorized by the permit if the City or any other government agency with legal jurisdiction has issued a final order, after any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy due to bluff failure or erosion of the bluff, and that there are no measures that could make the structures suitable for habitation without the use of bluff or shoreline protective devices” would be appropriately narrow and not unreasonable. *Lindstrom v. CCC* (2019) 40 Cal.App.5th at pp. 111-112 (finding the Commission’s removal condition to be overbroad and unreasonable, and ordering a writ of mandate that the condition either be deleted or revised as instructed by the court). Courts have also rejected takings challenges based on the Commission’s imposition of “no future seawall” conditions in part on the basis that such conditions do “not involve any physical invasion of the [] property by the government . . . Although the bluff may eventually recede without the construction of a seawall, *that condition would be caused by forces of nature, not by governmental intrusion*.” *Lindstrom*, 40 Cal.App.5th at p.106.

Mr. Talcott also argues that the conditions “fail the nexus and proportionality requirements articulated in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).” This assertion, too, is contradicted by California precedent. To start, the tests articulated in the *Nollan* and *Dolan* cases only apply when reviewing a governmental exaction. As described by the court in the *Lindstrom* case, the unconstitutional conditions doctrine does not apply to conditions that prohibit future armoring because such a condition “does not require a conveyance of a property interest or the payment of money; it simply requires an agreement that no seawall will ever be constructed to protect the structure that the [applicant] propose[s] to build.” *Lindstrom*, 40 Cal.App.5th at p.105. Thus, such a condition does not count as an exaction.

In any case, the specific circumstances of this project and project site warrant the imposition of the Special Conditions, including, to the extent necessary, because they present a nexus to the condition, and the condition is proportionate to the impacts. As described in detail in the staff report, Capistrano Beach is in an “acutely erosional state.” The sandy beach located adjacent to this particular project site has a beach width of approximately 34 feet from the line of development to the MHTL as of January, 2024 (**Exhibit 6**), and the MHTL could reach the line of development at the site in less than 14 years (**Exhibit 4**). Further, Capistrano Beach has numerous seawalls and revetments that likely contribute to further beach erosion. The project site, as described in previous

sections, has a seawall that was constructed prior to the enactment of the Coastal Act. The LCP requires the minimization of alteration to natural landforms, such as the sandy beach, and the construction of new development that does not create undue risks from coastal processes and hazards. IP Section 9.69.070(e) requires that the permitting authority, in this case the Commission on appeal, ensure that the proposed development will minimize alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood hazards. Further, IP Section 9.31.040(d)(3) generally prohibits shoreline protection devices for new development. The section, in relevant part, prohibits:

> Seawalls, revetments, and shoreline ocean protective devices or construction that alters natural shoreline processes, unless required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and only when positioned, designed and constructed to eliminate adverse impacts on local shoreline sand supply as provided for in Section 9.27.030(f) of this Zoning Code. Seawalls, revetments, and other shoreline protective devices or construction that alters natural shoreline processes shall only be permitted as a last resort protective device for coastal areas. …

Accordingly, the project site is experiencing acute erosion, and the law requires that the proposed project be consistent with the LCP policies that minimize landform alteration. The project, as conditioned, requires the seawall to be removed once the seawall is no longer required for the protection of the adjacent structures. This is necessary to comply with the LCP which prohibits a seawall that alters natural shoreline processes and where the structure being protected is not an “existing structure” or a coastal-dependent use. The LCP requires the new residence to be built and sited in a manner that minimizes alteration to natural landforms and cannot rely on shoreline protection which alters natural landforms. Accordingly, the project is conditioned so that no seawall can be retained for the benefit of the proposed residence and a new or augmented seawall cannot be relied upon to benefit the structure in the future. This ensures that the project is consistent with the shoreline protection device policies of the LCP. Finally, the project is conditioned to require the removal of part or all of the proposed development in certain circumstances. The first two triggers require removal if the structure becomes unsafe for occupancy due to coastal hazards or if the structure can no longer be serviced by essential services. This condition is required by the LCP which mandates that new development will not result in undue risks from geologic and erosional forces, and/or flood hazards. It has been demonstrated throughout this report that the subject site is subject to all such forces and the new residence must be designed to avoid undue risk. The third trigger for removal reflects the necessity for the structure to be removed if it ever becomes located on public trust lands as a result of the migration of the MHTL. Again, due to the siting of the project and ongoing erosion, this is necessary to protect coastal resources, such as public access to the sandy beach. Therefore, Special Conditions 6 and 7 are necessary to ensure compliance with the LCP and therefore provide a sufficient nexus for the imposition of those conditions. The conditions are also proportionate to the state of Capistrano Beach, the impacts of increasing erosion on the project site, and the risk of other coastal hazards on the project site.

The Commenter's letter misstates the standard of review and urges an interpretation of the Coastal Act that is in direct contradiction to California precedent.

Mr. Talcott's letter asserts an interpretation of Coastal Act Sections 30235 and 30253 and concludes that Special Conditions 6 and 7 run afoul of this interpretation. As a preliminary matter, Mr. Talcott's letter fails to properly cite these two statutes, invents language for Section 30253 that is nowhere in the Coastal Act, and relies on that invented language to support his interpretation and further his argument. Mr. Talcott also insists that the Commission ignore the recently published *Casa Mira Homeowners Association v. California Coastal Commission*, 107 Cal. App. 5th 370 (2024) which confirmed the proper interpretation of the phrase "existing structures" for purposes of Section 30235, as meaning those existing as of 1977. Perhaps the most apparent error in Mr. Talcott's letter is the failure to acknowledge the appropriate standard of review, which, in this case, is the LCP rather than the Coastal Act.

As described above, the proposed project and its location require the imposition of Special Conditions 6 and 7 to be compliant with the LCP. Mr. Talcott's letter does not address the compliance with the LCP and instead offers generalized and ambiguous arguments against the underlying concepts of the special conditions.

However, there are other assertions in Mr. Talcott's letter that warrant a response. Mr. Talcott insists on interpreting Sections 30235 and 30253 in such a way that is in direct contradiction with California precedent. *Casa Mira* expressly established that "existing structures" as used in Section 30235 refers to structures existing prior to the Coastal Act's effective date on January 1, 1977. *Casa Mira Homeowners Association*, 107 Cal. App. 5th at p. 382. Accordingly, *Casa Mira* does not require the Commission to approve armoring for any structure built after 1976 pursuant to Section 30235. It is reasonable to attribute the same interpretation of "existing structures" as used in IP Section 9.31.040(d)(3) as the interpretation for "existing structures" in Section 30235, as the two are very similar in their wording. As the project does not propose the retention of a seawall to protect an "existing structure" which might otherwise be entitled to shoreline protection, Special Conditions 6 and 7 do not violate the LCP. Further, Mr. Talcott cites no legal support for his interpretation, and, instead, proposes an interpretation contradicts California precedent. Mr. Talcott's interpretation of Section 30253 also does not merit consideration. Mr. Talcott misquotes the law, claiming that Section 30253 states that "[t]he longterm erosion rate shall be considered in order to... *[m]inimize the need for... future shore protective construction*." Mr. Talcott goes on to argue that the Coastal Act only requires minimization, rather than avoidance, of the use of shoreline protection for new development, and therefore a new residential structure could still be entitled to shoreline protection even if the structure is designed to minimize risk of coastal hazards. This is a blatant misstatement of law, and the extrapolation of this misstatement of law to support such an interpretation is obvious error.

To the extent that Mr. Talcott asserts that *Casa Mira* did not discuss the constitutionality of the application of Sections 30235 and 30253, that case did clarify how they are to be interpreted. The Commission does not find that a constitutional issue exists here and finds no reason to adopt an interpretation of those statutes that contradict the court's interpretation.

Prohibiting shoreline protection does not constitute the conversion of private land for public use.

Mr. Talcott's letter also argues that prohibiting the construction of shoreline protection devices deprives property owners' protection from the migration of the MHTL and, that prohibition is a taking without just compensation. The Commission disagrees. Prohibiting the construction and reliance on shoreline protection, as required by Special Conditions 6 and 7, is not a taking of private property; on the contrary, it is ensuring that *private* parties do not take *public* land for private use, which would be contrary to background principles of property law in California, including Public Trust Doctrine principles. See *Public Trust Guiding Principles and Action Plan*, May 10, 2023 https://documents.coastal.ca.gov/assets/public-trust/Public%20Trust%20Guidance%20and%20Action%20Plan_Adopted.pdf. California courts have held that, under California law, both the public as well as shorefront private property owners have a reciprocal right to an ambulatory tideland boundary (unless the boundary has been legally fixed through certain procedures). *Lechuza Villas West v. California Coastal Com'n* (1997) 60 Cal.App.4th 218; *Strand Imp. Co. v. City of Long Beach* (1916) 173 Cal. 765.

II. ADDITIONAL CHANGES TO STAFF REPORT

In addition to adding a **Response to Comments** section as indicated in Section II of this addendum, the Commission staff report dated November 25, 2025, is also modified to make the following changes. Language to be added is shown in **bold underlined text**, and language to be deleted is identified by ~~strikethrough~~.

a) Delete subsection iv of Special Condition 7(A) in entirety.

b) Modify Special Condition 7(C) as follows:

C. BY ACCEPTANCE OF THIS PERMIT, the Permittees further agree that this development approval does not permit any of the authorized, private development to ever be located on lands subject to the Public Trust, and any development that comes to be located on such lands due to the movement of the mean high tide line must be promptly removed. In the event that the public trust boundary migrates landward such that any portion of the approved development comes to be located on land impressed with a public trust interest, based on one or more MHTL surveys prepared in compliance with State Lands Commission survey standards (including, but not limited to, a MHTL survey prepared pursuant to **Special Condition 5**), the Permittees and successors in interest shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to relocate, and/or remove the development encroaching upon the public trust, unless the Executive Director grants additional time in writing for good cause. The permit amendment application shall include a complete evaluation of all feasible alternatives to modify the residential development to ensure that it is located entirely on private property and provides ~~the~~ **any** required minimum setback from the MHTL **that is included in the LCP**. The information concerning these alternatives must be sufficiently detailed to enable

the Coastal Commission to evaluate the feasibility of each alternative for addressing shoreline protection, public access, and sensitive resource issues under the Coastal Act and the City of Dana Point certified LCP. Failure to submit a timely permit amendment application and/or remove the development in a timely manner in accordance with a Coastal Act/LCP authorization shall constitute a violation of the terms and conditions of this coastal development permit.