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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CAPISTRANO SHORES PROPERTY,)
LLC, a California limited liability)
company,)

Petitioner,)

v.)

CALIFORNIA COASTAL)
COMMISSION, and DOES 1 through 30,)
inclusive,)

Respondents.)
_____)

CASE NO. _____

VERIFIED PETITION FOR WRIT OF
MANDATE ; DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF

(CCP §1094.5, §1060)

NOW COMES CAPISTRANO SHORES PROPERTY, LLC, a California limited
liability company, Petitioner, who petition for a Writ of Mandate and a declaratory judgment
against the CALIFORNIA COASTAL COMMISSION, Respondent, and who alleges as follows:

PARTIES

1. Petitioner CAPISTRANO SHORES PROPERTY, LLC is a limited liability company
organized under the laws of the State of California with membership in the LLC held by a single
family ("Petitioner.").

2. Respondent CALIFORNIA COASTAL COMMISSION is an agency of the State of

1 California charged with the administration of the Coastal Act of 1976, Public Resources Code
2 §§30,000 et seq., and is hereinafter referred to as “Respondent“ or “Coastal Commission”.

3 3. Petitioner is unaware of the true names and identities of those persons named herein as
4 DOES 1 through 30, inclusive, and upon ascertaining said true names and identities, will amend
5 this Petition to set them forth.

6 GENERAL ALLEGATIONS

7 4. Petitioner is a member of Capistrano Shores, Inc., a California nonprofit mutual
8 benefit corporation (“CSI”). Petitioner’s membership in CSI entitles Petitioner to maintain a
9 mobile home in Space No. 12 in the Capistrano Shores Mobile Home Park located at 1880 N. El
10 Camino Real, San Clemente, California (the “Mobile Home Park.”).

11 5. CSI is the owner of the Mobile Home Park comprised of the land and common area
12 improvements and facilities, and the lessor of Space No. 12 to Petitioner.

13 6. The Mobile Home Park was constructed in 1960 and consists of a total of 90 spaces,
14 and common area facilities and amenities.

15 7. The Mobile Home Park is located between the right of way of the Southern Pacific
16 Rail Line (now owned by the Orange County Transit Authority) and the Pacific Ocean. Between
17 each mobile home space in the Mobile Home Park, including Space No. 12, and the Pacific
18 Ocean there is a seawall originally constructed at or near the time of construction of the Mobile
19 Home Park in 1960. The purpose of the seawall is to protect the mobile homes and the Mobile
20 Home Park from damage during extraordinary ocean events and to prevent the erosion of the
21 soils on which the mobile homes and Mobile Home Park are placed.

22 8. Manufactured homes, mobilehomes, and mobilehome parks located within California
23 are subject to the Manufactured Housing Act (California Health and Safety Code §§ 18000 et
24 seq.)(“MHA”) and the Mobilehome Parks Act (California Health and Safety Code §§ 18200 et
25 seq.)(“MPA”). The MHA regulates the manufactured home or mobilehome structure itself,
26 while the MPA regulates mobilehome park design, construction, operation, and permitting.
27 Pursuant to the MPA and MHA, regulations for mobilehomes and mobilehome parks are
28 promulgated by the California Department of Housing and Community Development (“HCD”)

1 and codified in Title 25 of the California Code of Regulations ("Title 25").

2 9. In its regulation and enforcement function under the MHA, MPA and Title 25, HCD
3 is responsible for the state's compliance with federal legislation concerning manufactured homes
4 and mobilehomes, specifically the National Manufactured Housing Construction and Safety
5 Standards Act of 1974, ("NMHCSSA") codified by Congress at 42 U.S.C. §§ 5401 et seq.
6 Manufactured housing construction is regulated by the federal Department of Housing and Urban
7 Development ("HUD").

8 10. As required under the MHA and HUD, the replacement mobile home is HUD
9 certified and the placement and related installation requirements met or exceeded the MPA
10 standards.

11 11. The contractual relationship between Petitioner and CSI is memorialized in an
12 Occupancy Agreement dated December 5, 2007. Under the terms of said Occupancy Agreement,
13 Petitioner has the right to the use of Space No. 12 for the placement of a mobile home approved
14 in accordance with HUD/HCD regulations. The ocean side boundary of Space No. 12 is located
15 at the landward side of the seawall.

16 12. Pursuant to the Occupancy Agreement and under the Mobilehome Parks Act
17 (California Health and Safety Code §§ 18200 et seq.) and Title 25, Chapter 2 (25 Cal. Code of
18 Regulations §§ 1000 et seq.) CSI has the obligation to maintain the seawall, the entry road and
19 driveways, the common areas, and the utilities which serve the mobile homes within the Mobile
20 Home Park, including, but not limited to Space No. 12.

21 13. On or about May 27, 2008, the Executive Director of the Coastal Commission issued
22 a waiver of permit requirements pursuant to Public Resource Code §30624.7 for the replacement
23 of one mobile home with a substantially similar mobile home in Space No. 74 at the Mobile
24 Home Park making all of the findings required by Public Resources Code §30624.7. A true and
25 correct copy of said Waiver No. 5-08-106 is attached hereto as Exhibit 1 and incorporated herein
26 as though fully set forth.

27 14. On or about June 24, 2008, the Executive Director of the Coastal Commission issued
28 a waiver of permit requirements pursuant to Public Resources Code §30624.7 for the

1 replacement of one mobile home with a substantially similar mobile home in Space No. 37 at the
2 Mobile Home Park making all of the findings required by Public Resources Code §30624.7. A
3 true and correct copy of said Waiver No. 5-08-106 is attached hereto as Exhibit 1 and
4 incorporated herein as though fully set forth.

5 15. The mobile home which was located in Space No. 12 was constructed in 1977 and
6 became uninhabitable in 2013 due to age and electrical and plumbing deficiencies. The
7 uninhabitable 1977 mobile home measured 24 feet in width, 60 feet in length and 16 feet in
8 height at the peak of its roof. Petitioner attempted repairs to the 1977 mobile home but Petitioner
9 determined that it was preferable to replace the 1977 mobile home than to repair it.

10 16. On or about July 10, 2014, Petitioner purchased a new mobile home, Silvercrest
11 Model 1461H ("Model 1461H"), for the purpose of placing the Model 1461H in Space No. 12.
12 The Model 1461H measures 24 feet in width, 52 feet in length, and 16 feet in height at the peak
13 of its roof. The price of the Model 1461H was \$117,354.00.

14 17. On or about August 26, 2014, Petitioner filed with the Coastal Commission a
15 request for waiver of coastal development permit pursuant to Public Resources Code §30624.7
16 which authorizes the Executive Director of the Coastal Commission to waive the permit
17 requirements for de minimis projects which are defined as those projects which involve no
18 potential for any adverse effect, either individually or cumulatively, on coastal resources and that
19 will be consistent with the policies of Chapter 3 (Public Resources Code §§30200, et seq.).

20 18. On or about September 26, 2014, the Executive Director denied the request for
21 waiver and required that Petitioner submit additional information and filing fee to support an
22 application for a coastal development permit.

23 19. On or about October 23, 2014, Petitioner submitted the additional information and
24 filing fee to the Coastal Commission.

25 20. On or about October 23, 2014, the Coastal Commission accepted Petitioner's
26 Application No. 5-14-1582 for a coastal development permit to change the old mobile home for
27 the Model 1461H.

28 21. On or about December 18, 2014, the Coastal Commission scheduled Application No.

1 5-14-1582 for hearing on January 8, 2015 at Santa Monica, California, and issued a Staff Report
2 and Recommendation. However, the public notice which was issued by the Coastal Commission
3 stated that the hearing would take place on January 9, 2015. Therefore the Coastal Commission
4 postponed the hearing on Petitioner's Application No. 5-14-1582 to an unspecified date.

5 22. On January 26, 2015, Petitioner filed written objections to certain of the Special
6 Conditions contained in the Staff Report and Recommendation. Petitioner requested a meeting
7 with the Staff of the Coastal Commission to discuss the objections. Petitioner received no
8 response to the January 26, 2015 letter.

9 23. On February 12, February 17, and March 13, 2015 Petitioner requested in writing to
10 meet with the Coastal Commission staff to discuss Petitioner's January 26, 2015 objections to
11 certain Special Conditions. Petitioner received no response to any of these written requests until
12 March 26, 2015. On March 26, 2015, a member of the Coastal Commission staff telephoned
13 Petitioner's attorney and indicated that the Coastal Commission staff would be willing to talk
14 about Petitioner's objections if the Petitioner would waive the time within which the Coastal
15 Commission was required to reach a decision. Since more than seven months had elapsed
16 between Petitioner's request for waiver, and as the January 2015 Coastal Commission hearing
17 was postponed due to Respondent's error in giving notice, and as three months had elapsed since
18 Petitioner's January 26, 2015 letter without response by Coastal Commission staff, Petitioner
19 declined to waive the time.

20 24. On or about April 2, 2015, the Coastal Commission scheduled Application No. 5-14-
21 1582 for hearing on April 15, 2015 in San Rafael, California.

22 25. On or about April 2, 2015, the Coastal Commission staff issued its Staff Report and
23 Recommendation which contained the same Special Conditions to which the Petitioner had
24 objected in writing on January 26, 2015, and added one additional Special Condition. A true and
25 correct copy of the April 2, 2015 Staff Report and Recommendation is attached hereto as Exhibit
26 C and incorporated herein as though fully set forth.

27 26. On April 13, 2015, Petitioner filed further written objections to Special Condition
28 No. 3 and Special Conditions Nos. 6 and 7 contained in the April 2, 2015 Staff Report and

1 Recommendation.

2 27. On April 13, 2015, CSI through its attorney filed written objections to Special
3 Conditions No. 3, 6, and 7 contained in the April 2, 2015 Staff Report because CSI was not a
4 party to Application No. 5-14-1582 and said conditions would encumber the Mobile Home Park,
5 the property of a non-applicant.

6 28. On April 13, 2015, the Coastal Commission staff issued an Addendum to its April
7 2, 2015 Staff Report and Recommendation. In the Addendum, the Coastal Commission staff
8 accepted Petitioner's objections to Special Condition No. 6. A true and correct copy of the April
9 13, 2015 Addendum to the Staff Report and Recommendation is attached hereto as Exhibit D. As
10 a result of the modification to the Staff Recommendation on Special Condition No. 6, Petitioner
11 withdrew its objections to Special Condition No. 7, leaving only the Petitioner's objections to
12 Special Condition No. 3.

13 29. On April 15, 2015, the Coastal Commission held a public hearing on Petitioner's
14 Application No. 5-14-1582. Petitioner presented its objections to Special Condition No. 3. No
15 other persons testified at the hearing. At the conclusion of the hearing, the Coastal Commission
16 rejected Petitioner's objections to Special Condition No. 3 and adopted its Staff Report and
17 Recommendation as findings and conditions with no changes to Special Condition No. 3.

18 30. Petitioner has exhausted all administrative remedies available to the Petitioner.

19 31. Petitioner has no speedy or adequate remedy in the ordinary course of the law.

20 FIRST CAUSE OF ACTION

21 (Writ of Mandate under CCP §1094.5 against all Respondents)

22 32. Petitioner incorporates the allegations contained in Paragraphs 1 through 31 as
23 though fully set forth herein.

24 33. Public Resources Code §30235 provides as follows:

25 Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls,
26 and other such construction that alters natural shoreline processes shall be
27 permitted when required to serve coastal-dependent uses or to protect existing
28 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.

1 34. Special Condition No. 3 imposed by the Coastal Commission on CDP No. 5-14-
2 1582 reads in part as follows:

3 By acceptance of this Permit, the applicant waives, on behalf of himself and all
4 successors and assignees of Unit Space #12, any rights to new shoreline protection
5 that may exist under Public Resources Code Section 30235 to protect the
6 proposed new mobile home on Unit Space #12.

7 35. Under the terms of Public Resources Code §30235, Petitioner has the right to
8 improvements to the existing shoreline protection to protect the Model 1461H from dangers of
9 erosion from the effects of the ocean on the shore.

10 36. Under the terms of Special Condition No. 3, Petitioner is forced to give up the right
11 to protection for the mobile home in order to obtain a permit to place the mobile home in the
12 mobile home park. If Petitioner does not agree to Special Condition No. 3, it must leave its
13 Space 12 without use.

14 37. The findings in support of the imposition of Special Condition No. 3 are found on
15 Pages 9 to 11 of the April 2, 2015 Staff Report and Recommendation (Exhibit A hereto), and on
16 pages 3 and 4 of the April 13, 2015 Addendum (Exhibit B hereto). These findings include the
17 following:

18 Because the proposed development involves the placement of a new structure and
19 ancillary structures on the beach, those new structures are not entitled to shoreline
20 protection under Section 30235 of the Coastal Act; the proposed mobile home is
21 not anticipated to need additional shoreline protection beyond what would be
22 necessary to protect other existing structures in the park. Future expansion of the
23 existing shoreline protection to address such threats could conflict with Coastal
24 Act requirements regarding public access and recreation, shoreline sand supply,
25 and protection of views to and along the shoreline. Therefore, Special Condition
26 #3 requires the applicant to waive on behalf of itself and all successors and
27 assigns, any rights to new shoreline protection that may exist under Public
28 Resources Code Section 30235 to protect the proposed placement of a new mobile
home and ancillary structures in Unit Space #12.

38. Although Special Condition 3 and the findings on Page 11 make it appear that the
waiver would apply only to a future expansion of the existing shoreline protection, the findings
on Page 13 make clear that the Coastal Commission intends that the term in Special Condition 3
to waive “any rights to shoreline protection” apply to future requests for repair, maintenance, or
expansion of shoreline protection.

39. The Coastal Commission acted in excess of its jurisdiction. No coastal development

1 permit for the replacement of one mobile home approved by HCD with another mobile home
2 approved by HCD. The exclusive jurisdiction over the design and placement of mobile homes
3 within existing mobile home parks is vested in HCD under the Manufactured Housing Act
4 (Health & Safety Code §18000, et seq.) and the Mobilehome Parks Act (Health & Safety Code
5 §18300, et seq.). Alternatively, the Coastal Commission acted in excess of its jurisdiction by
6 requiring waiver of an express provision of the Coastal Act, or effectively reading text into the
7 Coastal Act.

8 40. The Coastal Commission committed a prejudicial abuse of discretion in imposing
9 Special Condition No. 3 because the findings do not support the imposition of Special Condition
10 No. 3, as follows:

11 a. The findings do not support the decision to impose Special Condition
12 No. 3 in that no waiver is required by the terms of Public Resources Code §30235.

13 b. The findings do not support the decision to impose Special Condition No. 3 in that
14 Public Resources Code §30235 applies to a structure in danger of erosion and extends to the
15 owner of such structure a right to protect such structure with shoreline protection. Having
16 extended coach protection by statute, the Coastal Commission can make no findings which
17 would justify forcing Petitioner to choose between making no use of his occupancy right or
18 abandoning the explicit protection extended by the statute.

19 c. The findings do not support the decision to impose Special Condition
20 No. 3 in that the finding that new structures are not entitled to shoreline protection under Section
21 30235 of the Coastal Act is a misstatement of the law.

22 d. The findings do not support the decision to impose Special Condition
23 No. 3 in that the finding that “new structures are not entitled to shoreline protection under
24 Section 30235 of the Coastal Act” is inconsistent with the findings that a waiver is required by
25 Petitioner of “any rights to new shoreline protection that may exist under Public Resources Code
26 Section 30235 to protect the proposed placement of a new mobile home”.

27 e. The findings do not support the decision to impose Special Condition
28 No. 3 in that there is no finding that the proposed placement of a new mobile home in Space 12

1 will require any substantial alteration to natural landforms along bluffs or cliffs.

2 41. The Coastal Commission committed a prejudicial abuse of discretion in imposing
3 Special Condition No. 3 because the findings made to support Special Condition No. 3 are not
4 supported by substantial evidence, as follows:

5 a. The findings in support of the imposition of Special Condition No. 3 are not
6 supported by substantial evidence in that there is no substantial evidence to support the finding
7 that “new structures are not entitled to shoreline protection under Section 30235 of the Coastal
8 Act”.

9 b. The findings in support of the imposition of Special Condition No. 3 are not
10 supported by substantial evidence in that there is no substantial evidence to support the finding
11 that there will be a future expansion of the existing shoreline protection.

12 c. The findings in support of the imposition of Special Condition No. 3 are not
13 supported by substantial evidence in that there is not substantial evidence to support the finding
14 that any future expansion of the existing shoreline protection will affect public access and
15 recreation.

16 d. The findings in support of the imposition of Special Condition No. 3 are not
17 supported by substantial evidence in that there is no substantial evidence to support the finding
18 that any future expansion of the existing shoreline protection will affect shoreline sand supply.

19 e. The findings in support of the imposition of Special Condition No. 3 are not
20 supported by substantial evidence in that there is no substantial evidence to support the finding
21 that any future expansion of existing shoreline protection will affect views to and along the
22 shoreline.

23 f. The findings in support of the imposition of Special Condition No. 3, that the
24 Coastal Commission is only able to find the proposed development consistent with Section
25 30253 and 30235 of the Coastal Act by imposing Special Condition No. 3, are not supported by
26 substantial evidence in that the Executive Director of the Coastal Commission issued waivers of
27 permit requirements under Public Resources Code §30624.7, with no conditions whatsoever
28 under Public Resources Code §30624.7 for substantially identical mobile home replacement in

1 Space 37 and Space 74 of the Park. To issue a waiver of permit requirements under Public
2 Resources Code §30624.7, the Executive Director was required to find that the replacement of
3 the mobile home in Space 37 and the replacement of the mobile home in Space 74 were
4 consistent with all policies of Chapter 3 of the Coastal Act, including but not limited to Public
5 Resources Code §30253 and §30235 with no special conditions whatsoever.

6 42. The issue in controversy between the parties, does not relate to any condition of the
7 proposed replacement mobile home or the placement of the mobile home on Space No. 12 at
8 this time. Rather, the issue in controversy relates to some event that might or might not happen
9 at some unknown date in the future and the demand by the Coastal Commission that Petitioner
10 waive the right to take have the mobile home in Space No. 12 protected from erosion.

11 43. Petitioner requests this court issue a writ of mandate directed to Respondent
12 Coastal Commission ordering it to set aside its decision of April 15, 2015 on Coastal
13 Development Permit No. 5-14-1582, and to make a new decision approving Permit No. 5-14-
14 1582 without that portion of Special Condition No. 3 which requires that the Petitioner waive
15 any right to a shoreline protective device as may be provided by Public Resources Code §30235
16 or any other provision of law.

17 44. Petitioner has for the last seven months been deprived of a residence at Space No.
18 12 because Petitioner has been unable to replace the uninhabitable mobile home with a habitable
19 mobile home and will continue to be unable to place the habitable mobile home on Space No.
20 12 without the intervention of the court to issue a stay of enforcement of Special Condition No.
21 3 until trial.

22 45. A decision in favor of Petitioner in this Action will have significant public benefit to
23 other owners in the Mobile Home Park. Petitioner will be entitled to recover its attorney's fees
24 against Respondent under Code of Civil Procedure §1021.5.

25 46. The decision of the Respondent at issue in this matter was arbitrary and capricious.
26 Petitioner will be entitle to recover its attorneys fees against Respondent under Code of Civil
27 Procedure §800.

28 SECOND CAUSE OF ACTION

(Declaratory Judgment, Injunction; CCP §1060 against all Respondents)

47. Petitioners refer to and reallege the allegations contained in Paragraphs 1 through 46 though fully set forth herein.

48. In submitting its request for waiver on or about August 26, 2014, Petitioner reserved the right to challenge the jurisdiction of the Coastal Commission to require a coastal development permit for the replacement of one HUD approved mobile home with another HUD approved mobile home.

49. In submitting its Application No. 5-14-1582, on or about October 23, 2014, Petitioner reserved the right to challenge the jurisdiction of the Coastal Commission to require a coastal development permit for the replacement of one HUD approved mobile home with another HUD approved mobile home.

50. In filing its objections on or about January 26, 2015, Petitioner reserved the right to challenge the jurisdiction of the Coastal Commission to require a coastal development permit for the replacement of one HUD approved mobile home with another HUD approved mobile home.

51. In filing its objections on or about April 13, 2015, Petitioner challenged the jurisdiction of the Coastal Commission to require a coastal development permit for the replacement of one HUD approved mobile home with another HUD approved mobile home.

52. There is a controversy between Petitioner and the Coastal Commission as to whether the Coastal Commission has any jurisdiction over the replacement of mobile homes within existing mobile home parks or whether exclusive jurisdiction lies with HCD.

53. The Petitioner contends that the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974, (42 U.S.C. §§ 5401 et seq.) (“NMHCSSA”) are assigned from HUD to HCD pursuant to 42 U.S.C. §5422, including the exclusive jurisdiction to permit the design of mobile homes in the State of California. In turn, California’s Manufactured Housing Act (Health & Safety Code §18000, et seq.) and the Mobilehome Parks Act (Health & Safety Code §18300, et seq.) give exclusive jurisdiction to HCD to permit placement of any mobile home within an existing mobile home park, and that the Coastal

1 Commission has no jurisdiction to require a coastal development permit for the replacement of
2 one mobile home in an existing mobile home park approved by HUD with a different mobile
3 home approved by HUD.

4 54. The Coastal Commission contends that it has jurisdiction to require that a coastal
5 development permit be obtained from the Coastal Commission (or a local government under a
6 certified Local Coastal Program) for the replacement of one mobile home approved by HUD
7 with a different mobile home approved by HUD in an existing mobile home park.

8 55. The Petitioner further contends that the specific provisions of the federal statutes
9 (NMHCSSA) and state statutes (MHA and MPA) control over the general provisions of the
10 Coastal Act and further contend that recognizing the validity of the federal NMHCSSA and state
11 MHA and MPA Acts jurisdiction will provide meaning to all three of those Acts and the Coastal
12 Act without which the NMHCSSA, MHA and MPA provisions lose or have no meaning.

13 56. The Coastal Commission contends it has superior jurisdiction over the federal
14 statutes (NMHCSSA) and state statutes (MHP and MPA) pursuant to the provisions of the
15 Public Resources Code.

16 57. It is necessary for the Superior Court to render a declaratory judgment which sets
17 forth what the law of the State of California is with regard to the permit jurisdiction of HUD,
18 HCD and the permit jurisdiction of the Coastal Commission over the replacement of one mobile
19 home approved by HUD with a different mobile home approved by HUD in an existing mobile
20 home park.

21 58. Petitioner requests this court order declaratory judgment that the exclusive
22 jurisdiction to permit the design and placement of any mobile home within an existing mobile
23 home park is vested in HUD and HCD, respectively, and that the Coastal Commission has no
24 jurisdiction to require a coastal development permit for the replacement, in a permitted
25 mobilehome park, of one mobile home approved by HUD and/or HCD with a different mobile
26 home approved by HUD and/or HCD.

27 59. Petitioner has suffered general and specific damages related to the delay in the
28 ability to place the replacement mobile home on Space 12 related to the loss of use of Space 12,

1 loss of use of the replacement mobile home, the costs of unnecessary and excessive
2 requirements all in a sum to be shown at the time of trial, but the Petitioner is informed and
3 believes said sum shall be in excess of \$100,000.00.

4 60. Some damages cannot be quantified. But by issuing the injunction requested
5 above the quantifiable damages shall be mitigated and then unquantifiable damages will cease to
6 be incurred.

7 WHEREFORE, Petitioner prays judgment as follows:

8 A. First Cause of Action for a Writ of Mandate:

9 1. For a writ of mandate directed to Respondent California Coastal Commission
10 ordering Respondent to set aside its decision of April 15, 2015 on Coastal Development
11 Permit No. 5-14-1582, and to make a new decision approving Permit No. 5-14-1582
12 without that portion of Special Condition Nos. 3 which requires that the Petitioner waive
13 any right to a shoreline protective device as may be provided by Public Resources Code
14 §30235 or any other provision of law, and ordering Respondent to do such other matters
15 as may be proved during the course of this action.

16 2. For an order requiring Respondent California Coastal Commission to hold a hearing
17 within thirty (30) days of service of the Writ of Mandate to carry out the terms of this
18 Court's Writ of Mandate.

19 3. For such other and further relief as may be requested and approved during the course
20 of this action.

21 B. Second Cause of Action for Declaratory Relief.

22 1. For a declaratory judgment that the exclusive jurisdiction to permit the design and
23 placement of any mobile home within an existing mobile home park is vested in HUD and HCD
24 respectively, and that the Coastal Commission has no jurisdiction to require a coastal
25 development permit for the replacement of one mobile home approved by HUD and/or HCD
26 with a different mobile home approved by HUD and/or HCD or such similar order and
27 judgment which the Court deems appropriate to resolve the controversy.

28 2. For a Preliminary and Permanent Injunction, as applicable, enjoining the Coastal

1 Commission from requiring a Coastal Development Permit for the design and placement of a
2 replacement mobile home in an existing mobile home park.

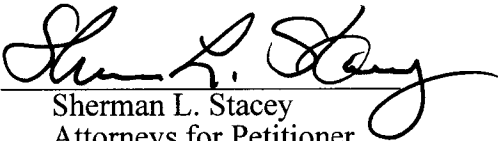
3 3. For general and specific damages due to loss of use of the Space, costs and expenses
4 related to purchase and storage of replacement mobile home costs incurred related to the
5 improper processing requirements in excess of \$100, 000 but in the exact sum as shall be shown
6 at the time of trial.

7 C. All Causes of Action.

- 8 1. For reasonable attorneys fees.
9 2. For costs of suit herein.
10 3. For such other and further relief as the Court deems proper.

11 GAINES & STACEY, LLP

12
13 Dated: April 28, 2015

14 By 
15 Sherman L. Stacey
16 Attorneys for Petitioner
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VERIFICATION

COUNTY OF ORANGE

STATE OF CALIFORNIA

I am the Managing Member of CAPISTRANO SHORES PROPERTY, LLC, a California limited liability company, Petitioner in the within action. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF (CCP §1094.5; §1060) and know its contents. The matters stated in the foregoing document are true except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28 day of April, 2015, at Laguna Beach, California.



ERIC WILLS

Exhibit A

May-30-08 02:40pm From: California Coastal

+8825006094

T-319 P.002/003 F-888

STATE OF CALIFORNIA - THE RESOURCE AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceanside, Suite 1000
Long Beach, CA 90802-4302
(562) 590-6071



May 27, 2008

David Neish
101 Columbia Suite 185
Aliso Viejo, CA 92658

**SUBJECT: Waiver of Coastal Development Permit Requirement/De Minimis
Developments-Section 30624.7 of the Coastal Act**

Based on your project plans and information provided in your permit application for the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit pursuant to Section 13238.1, Title 14, California Code of Regulations. If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and, any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.

WAIVER#: 5-08-108**APPLICANT: Renetta Caya****LOCATION: 1880 N El Camino Real Unit #74, San Clemente (Orange County)**

PROPOSED DEVELOPMENT: Removal of an existing 1,022 sq. ft. double wide mobile home and installation of a new 1,122 sq. ft., 12' tall mobile home on a 2,605 sq. ft. space; hardscape improvements including a concrete paving patio, 8' high masonry block walls at the northerly property line, 48" wall along the beach setback, a patio cover, outdoor built in bar and bbq grill, storage shed and planters. The drainage system is designed to retain concentrated and surface sheet flow within the site. Runoff water will sheet flow toward surface area drains directed to an underground drainage system for on-site infiltration. Landscaping consists of drought tolerant non-invasive plants.

RATIONALE: The subject mobile home is situated on leased land in the Capistrano Shores Mobile Home Park between the first public road and the sea and seaward of the OCTA railroad tracks. The mobile home park is a non-conforming use on a stretch of beach developed with 90 mobile homes parallel to the shoreline on a lot designated OS2 Privately Owned Open Space (intended for open space - no formal easement) in the City of San Clemente Land Use Plan (LUP). A rock revetment protects the 90 mobile home units at this site from direct wave attack. Public coastal access is available approximately half a mile south from the site at the North Beach access point. All proposed development is landward of the rock revetment. The proposed development consisting of removal and replacement of a mobile home at space # 74, hardscape and landscape improvements, meets the LUP structural and deck stringline policy for new infill construction on a beachfront and all other City standards and will therefore not result in adverse impacts to coastal access, coastal resources, public recreation or coastal views. The proposed project provides four parking spaces, exceeding the Commission's 2 spaces per residential unit requirement. Although inconsistent with the land use designation in the City's certified LUP, the proposed development is consistent with past Commission actions in the area and Chapter 3 policies of the Coastal Act. Additionally, the proposed development will not prejudice the City's ability to prepare a Certified Local Coastal Program.

This waiver will not become effective until reported to the Commission at their June 11-13, 2008 meeting and the site of the proposed development has been appropriately noticed, pursuant to 13054(b) of the California Code of Regulations. The enclosed Notice Card shall remain posted at the site until the waiver has been validated and no less than seven days prior to the Commission hearing. If four (4) Commissioners object to this waiver of permit requirements, a coastal development permit will be required.

PETER DOUGLAS
Executive Director
cc: Commissioners/File

by: _____
KARL SCHWING
Supervisor Regulation and Planning

EXHIBIT A

Exhibit B

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



June 24, 2008

David Neish
101 Columbia Suite 185
Aliso Viejo, CA 92656

SUBJECT: Waiver of Coastal Development Permit Requirement/De Minimis
Developments-Section 30624.7 of the Coastal Act

Based on your project plans and information provided in your permit application for the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit pursuant to Section 13238.1, Title 14, California Code of Regulations. If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and, any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.

WAIVER#: 5-08-069 **APPLICANT:** Pearson Family Trust

LOCATION: 1880 N El Camino Real Unit #37, San Clemente (Orange County)

PROPOSED DEVELOPMENT: Removal of existing 1,525 sq. ft. 1978 double wide mobile home and installation of new 1,626 sq. ft., 15' 7" high, one-story mobile home on a 3,120 sq. ft. space, cantilevered wood deck, outdoor fireplace, decomposed aggregate walkways and flagstone pavers patios. Drainage is designed for onsite infiltration of concentrated and surface water runoff. Landscaping consists of drought tolerant non-invasive plants such as sages and succulent plants. The project includes a drip irrigation system for planter areas.

RATIONALE: The subject mobile home is situated on leased land in the Capistrano Shores Mobile Home Park between the first public road and the sea and seaward of the OCTA railroad tracks. The mobile home park is a non-conforming use on a stretch of beach developed with 90 mobile homes parallel to the shoreline on a lot designated OS2 Privately Owned Open Space (intended for open space – no formal easement) in the City of San Clemente certified Land Use Plan (LUP). A rock revetment protects the 90 mobile home units at this site from direct wave attack. Public coastal access is available approximately half a mile south from the site at the North Beach access point. All proposed development is landward of the rock revetment. The proposed development consisting of removal and replacement of a mobile home at space #34, hardscape and landscape improvements, does not strictly adhere to the LUP structural and deck stringline policy for new infill construction on a beachfront. Although the proposed new mobile home will be located seaward of both of its adjacent units (Units 36 and #38), it will have a 16' setback from the rock revetment which is the average setback of the majority of the living units in the vicinity located downcoast and upcoast of the site. In addition, the proposed hardscape areas are located at least 11 feet landward of subject sites' seaward boundary and the rock revetment, thus, providing space for access to and maintenance of the revetment as may be necessary (with appropriate approvals). The proposal is consistent all other City standards. The proposal will therefore not result in adverse impacts to coastal access, coastal resources, public recreation or coastal views. The proposed project provides four parking spaces, exceeding the Commission's 2 spaces per residential unit requirement. Although inconsistent with the land use designation in the City's certified LUP, the proposed development will not change the use of the site or substantially extend the life of the existing mobile home park (e.g. the proposed unit is mobile and can be removed if the land use changes), the proposed development is consistent with past Commission actions in the area and Chapter 3 policies of the Coastal Act. Additionally, the proposed development will not prejudice the City's ability to prepare a Certified Local Coastal Program.

This waiver will not become effective until reported to the Commission at their July 9-11, 2008 meeting and the site of the proposed development has been appropriately noticed, pursuant to 13054(b) of the California Code of Regulations. The enclosed Notice Card shall remain posted at the site until the waiver has been validated and no less than seven days prior to the Commission hearing. If four (4) Commissioners object to this waiver of permit requirements, a coastal development permit will be required.

by: 

PETER DOUGLAS
Executive Director

KARL SCHWING
Supervisor Regulation and Planning

cc: Commissioners/File

EXHIBIT B

Exhibit C

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W13c

Filed:	10/23/14
180th Day:	4/21/15
Staff:	L. Roman-LB
Staff Report:	4/2/15
Hearing Date:	4/15/15

STAFF REPORT: REGULAR CALENDAR

Application No.:	5-14-1582
Applicants:	Capistrano Shores Property, LLC
Project Location:	Capistrano Shores Mobile Home Park 1880 N. El Camino Real, Space #12 San Clemente, Orange County
Project Description:	Removal/demolition of an existing 1,440 sq. ft., 16 ft. high single-story mobile/manufactured home structure and installation of a new 1,248 sq. ft., 16-ft. high single story mobile/manufactured home structure, 85 sq. ft. storage shed, slab on grade concrete patio, 18" high wood seatwall, 6-ft. tall glass fence, and minor landscaping on an oceanfront mobile home space.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes to install a new mobile home in Unit Space #12 in the Capistrano Shores Mobile Home Park located between the first public road and the sea and seaward of the Orange County Transportation Authority (OCTA) railroad tracks in San Clemente. The mobile home park is a legal non-conforming use on a stretch of beach developed with a single row of 90 mobile homes parallel to the shoreline on a lot designated OS2 Privately Owned Open Space (intended for open space – no formal easement) in the City of San Clemente Land Use Plan

(LUP). A rock revetment protects the 90 mobile home units at this site from direct wave attack. No improvements are proposed to the existing bulkhead or revetment. The primary issue raised by significant improvements to or replacement of the existing mobile homes within the park is the potential expectation that the exiting revetment may be augmented in the future to protect such development. Any seaward encroachment of the revetment would directly impact existing lateral public access along the shoreline and encroach onto State tidelands or lands subject to the public trust. Therefore, Commission staff is recommending approval of the installation of a new mobile home in Unit Space #12 with a condition requiring acknowledgement and agreement that Unit Space #12 may be subject to hazards from flooding, wave uprush, sea level rise, and erosion and a requirement that the applicant waive any rights to shoreline protection for the proposed new mobile home.

Mobile home owners in the Capistrano Shores Mobile Home Park own the mobile home structures, but do not hold fee title to the land. Capistrano Shores, Inc. is a non-profit mutual benefit corporation in which each mobile home owner, such as the subject applicant, holds a 1/90 “membership” interest which allows the use of the Unit Space for mobile home purposes. As such, any recommended deed restriction would not apply to the entire parcel of land within which Unit Space #12 exists, but would apply specifically to Unit Space #12, with the intention to provide future owners of the proposed new mobile home on Unit Space #12 notice of the special conditions of this CDP for the installation of the new mobile home. The deed restriction must be recorded by Capistrano Shores, Inc. which holds the fee title to the entire mobile home park, including Unit Space #12. The staff recommended deed restriction indicates that, pursuant to this permit, the California Coastal Commission has authorized development on Unit Space #12, subject to terms and conditions that restrict the use and enjoyment of Unit Space #12 only; the conditions imposed would not apply to the mobile home park as a whole or to other units within the mobile home park.

Additionally, the proposed development has been conditioned to assure the proposed project is consistent with the resource protection policies of the Coastal Act. The conditions are:

1) Assumption of Risk; 2) Future Improvements; 3) Future Response to Erosion/No Future Shoreline Protective Device; 4) Construction Best Management Practices; 5) Landscaping; 6) Deed Restriction; and 7) Proof of Legal Ability to Comply with Conditions.

Commission staff recommends **approval** of coastal development permit application 5-14-1582, as conditioned.

TABLE OF CONTENTS

I.	MOTION AND RESOLUTION	Page 4
II.	STANDARD CONDITIONS	Page 4
III.	SPECIAL CONDITIONS	Page 5
IV.	FINDINGS AND DECLARATIONS	
A.	PROJECT LOCATION AND DESCRIPTION	Page 7
B.	HAZARDS	Page 9
C.	PUBLIC ACCESS	Page 13
D.	SCENIC AND VISUAL RESOURCES	Page 14
E.	WATER QUALITY	Page 15
F.	LOCAL COASTAL PROGRAM	Page 16
G.	CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	Page 16

APPENDICES

Appendix A – Substantive File Documents

LIST OF EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Aerial Photo of Mobile Home Park

Exhibit 3 – Aerial Photo of Site

Exhibit 4 – Plan of Existing Seawall

Exhibit 5 – Public Access

Exhibit 6 – Site Plan

Exhibit 7 – Elevations

Exhibit 8 – Floor Plan

Exhibit 9 – Special Condition “Termination or Reauthorization” for Coastal Development No. 5-09-180(Hitchcock)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-14-1582 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 ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will 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

1. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that Unit Space #12 may be subject to hazards from flooding and wave uprush, tsunami, sea level rise, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards.
2. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-14-1582 and conditioned herein. Any non-exempt future improvements or development shall be submitted for Commission review and shall not commence unless Commission approval is granted. New development, unless exempt, shall require an amendment to this permit from the Coastal Commission.
3. **Future Response to Erosion/No Future Shoreline Protective Device.** No repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device, is authorized by this coastal development permit. By acceptance of this Permit, the applicant waives, on behalf of himself and all successors and assigns of Unit Space #12, any rights to shoreline protection that may exist under Public Resources Code Section 30235 to protect the proposed new mobile home on Unit Space #12.

By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns to Unit Space #12, that the applicant and all successors and assigns shall remove the development authorized by this permit, including the residence, foundations, patio covers, if any government agency has issued a permanent order that the structure not be occupied due to the threat of or actual damage or destruction to the premises resulting from waves, erosion, storm conditions, sea level rise, or other natural hazards in the future. In the event that portions of the development fall to the beach before they are removed, the applicant or successor shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. **Construction Best Management Practices.** The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion;
- (2) Staging and storage of construction machinery and storage of debris shall not take place on any sandy beach areas or areas containing any native vegetation;
- (3) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (4) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (5) Concrete trucks and tools used for construction of the approved development shall be rinsed off-site;
- (6) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (7) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project.

5. **Landscaping – Native, Drought Tolerant, Non-Invasive Plants.** All areas affected by construction activities not occupied by structural development shall be re-vegetated for erosion control purposes.

Vegetated landscaped areas shall consist of non-invasive and drought-tolerant plants. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use

plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

6. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit (i.e. the parcel(s) of land within which Unit Space #12 is located) a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on Unit Space #12, subject to terms and conditions that restrict the use and enjoyment of Unit Space #12; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of Unit Space #12. The deed restriction shall include a legal description of the entire parcel of land within which Unit Space #12 is located and a metes and bounds description of Unit Space #12 governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of Unit Space #12 of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
7. **Proof of Legal Ability to Comply with Conditions.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall demonstrate its legal ability or authority to comply with all the terms and conditions of this coastal development permit by submitting information indicating approval from the record title property owner that authorizes the applicant to proceed with the approved development and permits the applicant to comply with the terms and conditions of this coastal development permit.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project is located between the first public road and the sea and seaward of the Orange County Transportation Authority (OCTA) railroad tracks at Unit Space #12 in the Capistrano Shores Mobile Home Park at 1880 N. El Camino Real in the City of San Clemente, Orange County (**Exhibits 1, 2, & 3**). The mobile home park is an existing non-conforming use on a stretch of beach developed with a single row of 90 mobile homes parallel to the shoreline on a lot designated OS2 Privately Owned Open Space (intended for open space – no formal easement) in the City of San Clemente Land Use Plan (LUP).

On the seaward side of Unit Space #12, the subject site is fronted by a narrow perched beach inland of an older timber bulkhead that exists roughly along the seaward limits of Unit Space #12. A quarry stone rock revetment exists seaward of the bulkhead and between the proposed development and the Pacific Ocean (**Exhibit 4**). The pre-Coastal Act timber bulkhead and rock revetment protects the row of 90 mobile home units along the entire length of the Capistrano Shores Mobile Home Park, including the subject site, from direct wave attack. The applicant

provided a Coastal Hazard and Wave Runup Study prepared by GeoSoils Inc. of the site and the proposed development.

Vertical public access to this beach is not available at the site or anywhere else along the length of the Capistrano Shores Mobile Home Park. The nearest vertical public access is available approximately half a mile south at the North Beach access point (**Exhibit 5**) and to the north at the Poche Beach access point. In addition, lateral access along the beach in front of the mobile home park and bulkhead/rock revetment is only accessible during low tide; during high tide the waves crash up against the rock revetment. Pursuant to the grant deed property description of the parcels owned by Capistrano Shores, Inc. comprising Capistrano Shores Mobile Home Park, property ownership of the common area seaward of the Unit Space property lines extends from the bulkhead to the ordinary high tide line. Seaward of the bulkhead is an approximately 30-foot wide beach area owned in common by the entire mobile home park up to the ordinary high tide line (per the legal property description). According to the cross-section of the rock revetment provided in the Coastal Hazard and Wave Runup Study prepared by GeoSoils (Exhibit 4, page 4 of 4), the rock revetment begins immediately adjacent to the wood bulkhead and extends approximately 25-feet out seaward but still inland of the ordinary high tide line. A large portion of the rock revetment remains buried depending on varying sand level elevations throughout the year.

Detailed Project Description

The applicant proposes to remove an existing 1,440 sq. ft., 16-ft. high single-story mobile/manufactured home structure and install a new 1,248 sq. ft., 16-ft. high mobile home with an above-ground concrete block pier foundation, slab on grade concrete patio along the side yards and rear yard (oceanfront) with an 18-inch high wood seat wall, and a 6-ft. high fence with a solid half wall and tempered glass on the upper half, an 85 sq. ft. storage shed along the side yard, drainage improvements, and minimal landscaping. The proposed oceanfront concrete patio will extend 8'-10" from the mobile home parallel to a narrow 6-foot wide perched beach inland of a timber bulkhead/rock revetment that exists roughly along the seaward limits of Unit Space #12. Project plans are included as **Exhibit 6-8**.

The proposed siting of the new mobile home and hardscape improvements meet the LUP structural and deck stringline policy for new infill construction on a beachfront and all other City standards as it extends no farther seaward than the existing units on either side. The applicant is not proposing any work to the existing bulkhead/rock revetment. Each unit in the mobile home park provides two parking spaces per unit.

The applicant would own the proposed new mobile home but does not hold fee title to the land at Unit Space #12 or to the bulkhead/rock revetment. The Capistrano Shores Mobile Home Park is owned by Capistrano Shores, Inc., a non-profit mutual benefit corporation in which the applicant holds a 1/90 "membership" interest which allows him the use of the Unit Space #12 for mobile home purposes. The applicant, as "member" of the corporation is only responsible for repair/maintenance of his own mobile home and to the landscape on his unit space. The corporation provides for all necessary repairs, maintenance and replacements to the rest of the mobile home park common areas including the bulkhead/rock revetment.

Section 30106 of the Coastal Act defines “Development”, in part, as the “placement or erection of any solid material or structure...” The applicant is proposing to remove an existing structure (manufactured/ mobile home) and place, or construct, a new manufactured/mobile home on the site. Pursuant to Section 30106, the proposed project is considered “Development” and requires a coastal development permit. The Commission, through past permit action, has consistently found that replacement of existing manufactured/ mobile homes with new manufactured/ mobile homes, constitutes “Development” and requires a coastal development permit.

B. HAZARDS

Section 30253 of the Coastal Act states in relevant part:

New development shall:

(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.

Revetment/Bulkhead – Existing Conditions

The applicant provided a Coastal Hazard and Wave Runup Study prepared by GeoSoils, Inc., dated October 15, 2014. The Study states that the site’s shore protection primarily consists of a quarry stone revetment; a timber bulkhead abuts the stone revetment on its landward side, which is then back-filled with a 6-10 foot wide perched beach that runs the length of the mobile home park (**Exhibit 4**). The perched beach at Unit Space #12 is approximately 6-feet wide. The revetment is composed of meta-volcanic quarry stones that range in size from less than ½ ton to about 11 ton with an average size of about 5 tons. According to the GeoSoils report, which used the National Geodetic Vertical Datum 1929 (NGVD 29), the top of the revetment at the subject site varies from +13.7 feet NGVD29 to +15.7 feet NGVD29 with an average elevation of about +15 feet NGVD29. The visible slope of the revetment varies from 2/1 to 1.5/1 (h/v). A visual inspection of the existing revetment/bulkhead in front of Unit Space #12 conducted by GeoSoils, Inc. found the revetment in good condition and not in need of maintenance at this time.

Wave Run-Up/Overtopping Analysis

The Wave Run-Up and Coastal Hazard Study conducted by GeoSoils, Inc. identified a design life of 37 years for a mobile home structure as these are typically constructed of lighter material with a shorter design life than a regular standard construction single family residence. In addition, the Study states, that a mobile home is unique in that the structure is “mobile” and can be moved if jeopardized by coastal hazards. The Study continues:

“The design water level will be the maximum historical water level of +4.9 feet NGVD29 plus 2.0 feet of Sea Level Rise (SLR) or +6.9 feet NGVD29. The maximum SLR prediction for the year 2060 (45 years from now) is 2 feet. If the total water depth is about 7 feet, based upon a maximum scour depth at the toe of the revetment fronting the site of +0.0 feet NGVD29 and a water elevation of 6.9 feet NGVD29, then the design wave height will be about 6.1 feet. The average height of the revetment is +15 feet NGVD29 and the timber bulkhead about 1 foot above at elevation +16 feet NGVD29...The calculated overtopping rate of the revetment under the eroded beach conditions with 2 feet of future SLR is 0.42 ft.³/s-ft. This is less than 1 foot of water coming over the top of the revetment for each wave. The 10 foot wide beach and the presence of the low height bulkhead will significantly prevent wave runup from impacting the mobile home. In addition, the mobile home is proposed to be raised 18 inches above the street which is at about elevation +16.5 feet NGVD29. Due to the proposed elevation of the development above the adjacent grade, the proposed development is reasonably safe from coastal hazards and wave runup even under the most onerous SLR conditions in the next 40+ years. In the event the water does reach the replacement mobile home and associated improvements, the water velocity will be insufficient to cause significant damage.”

The sea level rise amount used in the provided analysis for the proposed project is a low estimate for the coming 100 year time period. However, as the proposed project is a mobile home, it may represent a reasonable upper limit for sea level rise for a 40 to 50 year time period and this time period may be appropriate for a mobile home development as the expected life of a mobile home structure is lower than that of a permanent detached single-family residence and can reasonably be estimated at approximately a 50 year time life. In addition, a mobile unit can be easily relocated in the event of a threat. For purposes of a mobile home replacement, the Commission's staff coastal engineer concurs that an upper limit for sea level rise for a 40 to 50 year time period is appropriate for the anticipated economic life of a mobile home development.

Erosion and Flooding Hazards

Regarding erosion hazards on the subject site, the Coastal Hazard and Wave Runup Study states, “While the beach experiences short term erosion, there is no clear indication of a significant long term erosion trend. Because the shoreline is stabilized by the revetment and as long as the revetment is maintained, the proposed mobile homes are reasonably safe from the short term erosion hazards.”

The Study finds that the proposed mobile home is reasonably safe from flooding. The analysis shows that the site has the potential to be flooded on occasion from waves breaking on the revetment, overtopping the bulkhead and reaching the mobile house units. Such flooding is a hazard that would be expected for a location this close to the ocean even with the existing shore protection provided by the bulkhead/revetment (deemed adequate by the Study) that is protecting the units from the main wave attack.

Furthermore, the entire mobile home park, including Unit Space #12, is located within the tsunami inundation zone according to the California Emergency Management Agency (CalEMA). **Special Condition #1** places the applicant and subsequent owners on notice (through a generic deed restriction per **Special Condition #6**) that this is a high hazard area and that by acceptance of coastal development permit #5-14-1582 the applicant acknowledges the risks, such as flooding, that are associated with location in the tsunami inundation zone, and that are associated with development sited so close to the ocean. The applicant should cooperate with the local CalEMA or emergency responders in case of a large earthquake or a tsunami warning.

The applicant does not propose any changes or improvements to the existing bulkhead/revetment along the portion that protects Unit Space #12 under this coastal development permit application. Any repair or maintenance, enhancement, reinforcement or other activity to the existing bulkhead/revetment is the responsibility of Capistrano Shores Inc. which holds fee title to the land that Unit Space #12 occupies (and the other mobile home unit spaces) and all common areas in the mobile home park. The applicant is only responsible for repair/maintenance to the mobile home, landscape, ancillary structures (i.e, decks, patios, and garden walls) on Unit Space #12. The Capistrano Shores Inc. would be the applicant for the coastal development permit required for any modifications to the exiting revetment that may be necessary to protect existing structures. Because the proposed development involves the placement of a new structure and ancillary structures on the beach, those new structures are not entitled to shoreline protection under Section 30235 of the Coastal Act; the proposed mobile home is not anticipated to need additional shoreline protection beyond what would be necessary to protect other existing structures in the park. Future expansion of the existing shoreline protection to address such threats could conflict with Coastal Act requirements regarding public access and recreation, shoreline sand supply, and protection of views to and along the shoreline. Therefore, **Special Condition #3** requires the applicant to waive on behalf of itself and all successors and assigns, any rights to new shoreline protection that may exist under Public Resources Code Section 30235 to protect the proposed placement of a new mobile home and ancillary structures in Unit Space #12.

If the existing shoreline protection is modified or removed at a future date, the proposed development is a mobile unit that could be re-located and/or removed and replaced with a smaller and/or differently configured unit that provides an adequate setback from the shoreline to avoid hazards. If such relocation or replacement would not address the hazard, the mobile unit could be removed entirely. Therefore, **Special Condition #3** also establishes requirements related to response to future coastal hazards, including relocation and/or removal of structures that may be threatened in the future, and in the event that portions of the development fall to the beach before they are removed, requiring the applicant or successor remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

Because of the sensitive shoreline location of the proposed development, the Commission imposes **Special Condition #2** requiring a coastal development permit amendment for any future improvements to the development.

To ensure that any prospective future owners/occupants of Unit Space #12 are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition #6** requiring that the property owner (known at this time to be Capistrano Shores, Inc. based on information provided to the Commission by the applicant) record a generic deed restriction referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of Unit Space #12. Furthermore, Coastal Act Section 30601.5 states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Therefore, the Commission imposes **Special Condition 7** requiring the applicant to demonstrate their legal ability or authority to comply with all the terms and conditions of this coastal development permit, prior to issuance of the coastal development permit. The applicant shall submit information indicating approval from the record title property owner that authorizes the applicant to proceed with the approved development and permits the applicant to comply with the terms and conditions of this coastal development permit.

Thus, as conditioned, this permit ensures that any prospective future owners of the proposed new mobile home approved for installation on Unit Space #12 pursuant to this CDP, will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which Unit Space #12 is subject, and the Commission's immunity from liability. The deed restriction indicates that the California Coastal Commission has authorized development on Unit Space #12, subject to terms and conditions that restrict the use and enjoyment of Unit Space #12 only and does not restrict the remainder of the land that the mobile home park occupies.

In 2010, the Commission approved the replacement of two mobile homes in the Capistrano Shores Mobile Home Park under CDP 5-09-179(Hitchcock) and CDP 5-09-180(Hitchcock). At that time, Capistrano Shores, Inc., the fee title property owner, was unwilling to record the deed restrictions recommended by staff. The applicant, therefore, provided a potential alternative approach to provide future owners notice of the CDP requirements in lieu of a generic deed restriction through a "Termination, Extension or Reauthorization" special condition (**Exhibit 9**). The condition required, upon sale of the mobile home, termination of the approved permit and required any new owner to apply for a new CDP, or required removal of all authorized development approved under the permit. The Commission agreed with the applicant's proposed alternative instead of the typical Commission procedure of a recorded deed restriction. In this particular case, the applicant has not agreed to the alternative condition; therefore, **Special Condition #6** requiring the recordation of a generic deed restriction is necessary to ensure that all future owners of unit space #12 are aware of the conditions of this permit.

The generic deed restriction is the mechanism typically applied by the Commission to provide future owners notice of the Special Conditions of this permit. Capistrano Shores Inc. holds fee title to the land that Unit Space #12 occupies including the other mobile home unit spaces and all common areas in the mobile home park and is the entity assigned by the mobile home park to be responsible for any future repairs/improvements to the existing bulkhead/revetment shoreline protective device.

Since the scope of the development in this case is limited to Unit Space #12, the Commission has focused on assurance that its authorization for placement of a new mobile home on that space (and ancillary development) would not be used to support any future requests for repair, maintenance, or expansion of shoreline protection. In addition, representatives for Capistrano Shores, Inc. were previously notified that repair, maintenance or enhancement of the existing shoreline protection, if deemed necessary, should occur as part of a comprehensive plan for the entire mobile home park. The Capistrano Shores Mobile Home Park Homeowner Association submitted a coastal development permit application in February 2012 which in addition to park wide improvements, included maintenance of the existing shoreline protective device. That application has since remained incomplete, pending submittal of additional information regarding the bulkhead/rock revetment and project alternatives. Any such repairs/enhancements should occur within the mobile home park's private property and not further encroach onto the public beach. No additional shoreline protective devices should be constructed for the purpose of protecting ancillary improvements (e.g., patios, decks, fences, landscaping, etc.) located between the mobile home and the ocean. For any type of future shoreline hazard response, alternatives to the shoreline protection must be considered that will eliminate impacts to scenic visual resources, recreation, and shoreline processes. Alternatives would include but are not limited to: relocation and/or removal of all or portions of the mobile home and ancillary improvements that are threatened, and/or other remedial measures capable of protecting the mobile home without shoreline stabilization devices. Alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative is capable of protecting a mobile home that may be in danger from erosion and other coastal hazards.

Only as conditioned does the Commission find the proposed development consistent with Section 30253 and 30235 of the Coastal Act.

C. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

(a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

(2) *Adequate access exists nearby, or,*

Section 30213 of the Coastal Act states:

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

Section 30223 of the Coastal Act states:

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

As shown in **Exhibit #1**, the proposed mobile home will be located between the first public road and the sea directly seaward of the OCTA railroad tracks. Vertical public access is not available through the Capistrano Shores Mobile Home Park, therefore, no construction impacts to public access are anticipated. Lateral public access is available along the public beach seaward of the bulkhead/revetment during low tide. Vertical public access to the beach exists nearby at Poche Beach, approximately 600 yards north of the site. Public access from the southern end of the mobile home park is available at the North Beach public access point. **Exhibit #5** provides a map of the primary public coastal access points in the City.

The proposed project is sufficiently setback to be consistent with the pattern of development of the surrounding mobile homes within the Capistrano Shores Mobile Home Park. Furthermore, the setback provides an area that may accommodate any necessary future bulkhead/revetment repairs/enhancement efforts within the mobile home unit's private property thereby protecting intertidal habitat and avoiding any possible future public access impacts that may arise due to rock revetment encroachment into public beach areas (both individually and cumulatively).

As proposed, the Commission finds the development consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

D. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act states that:

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.

The above-cited policy of the Coastal Act was designed to minimize visual impacts and landform alteration and to avoid cumulative adverse impacts of development encroachment into natural areas.

Development at this location must be sited and designed to be visually compatible with the character of the area. It is also necessary to ensure that new development be sited and designed to protect views along public vantage points such as public beaches, public trails and roads. The proposed development is on a perched beach protected by a bulkhead/revetment adjacent to the public beach. The site is visible looking inland from the beach. Views of the mobile home park and white water ocean views are available from proposed public trails along the coastal bluffs inland of El Camino Real at the Marblehead Coastal site. The proposed mobile home meets the structural and deck stringlines and replaces an existing mobile home structure at the subject site, and can therefore be found compatible with the character of the mobile home park. Additionally, as designed, the 16-ft. height of the proposed single-story mobile home is compatible with the height of the rest of the permitted mobile homes in the Capistrano Shores Mobile Home Park. As sited the new structure will not adversely impact coastal views. Therefore, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.

E. WATER QUALITY

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored...

Section 30231 of the Coastal Act 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

To protect water quality during construction, the applicant proposes, and **Special Condition #4** requires the applicant to implement best management practices (BMPs) designed to avoid temporary impacts to the ocean by minimizing erosion and preventing soil and debris from entering coastal waters during construction. Furthermore, the applicant proposes drainage from the predominantly paved site to slope away from the ocean and toward the street where water runoff from the site will be directed to a dry well for onsite water infiltration and to a small strip of landscaped permeable area. The applicant proposes minor landscaping in contained planters. **Special Condition #5** requires the applicant utilize drought tolerant, non-invasive plant species in order to minimize water use and water runoff from the subject site.

As proposed and conditioned, the project will minimize possible adverse impacts on coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

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

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, 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 that the activity may have on the environment.

The City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City, the project is categorically exempt pursuant to CEQA Guidelines section 15302 as a Class 2 Item (replacement of an existing structure). In order to ensure compliance with Coastal Act requirements, the Commission adopts additional mitigation measures including: special conditions related to compliance with construction-related best management practices (BMPs), drainage, landscaping, shoreline protection, future development, assumption of risk, waiver of liability and indemnity. As conditioned, the proposed project is consistent with the public access, water quality and visual resource protection policies of the Coastal Act and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to

mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

1. City of San Clemente LUP
2. *Wave Runup and Coastal Hazard Study and shore Protection Observation, 1880 N. El , Unit 12, San Clemente, California, Coastal Development Permit Application No. 5-14-1582*, by GeoSoils Inc., dated October 15, 2014
3. CDP 5-09-179(Hitchcock) and CDP 5-09-180(Hitchcock)

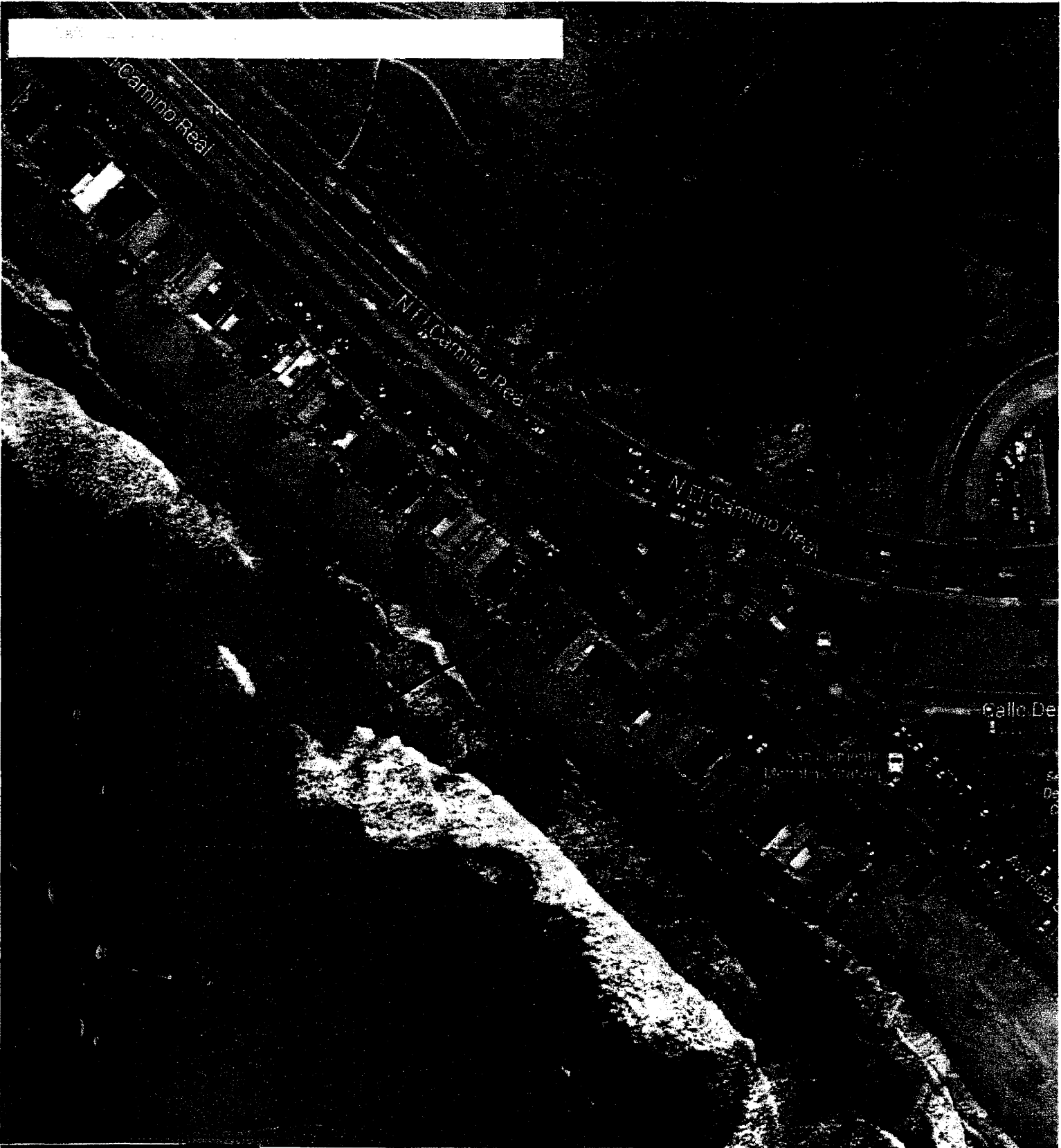


EXHIBIT NO. 2
Application Number 5-14-1582
Aerial photo of Mobile Home Park
California Coastal Commission

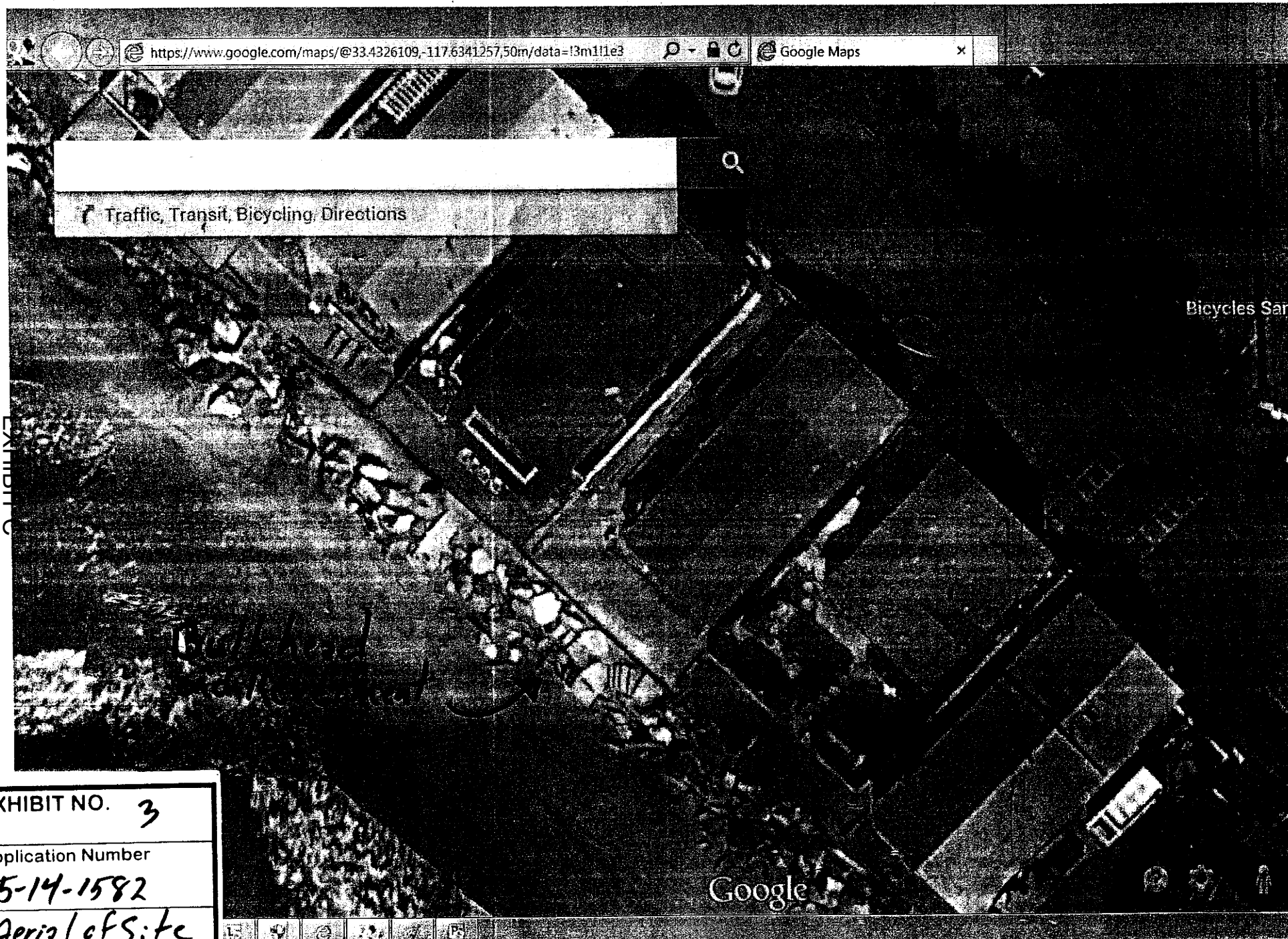


EXHIBIT NO. 3

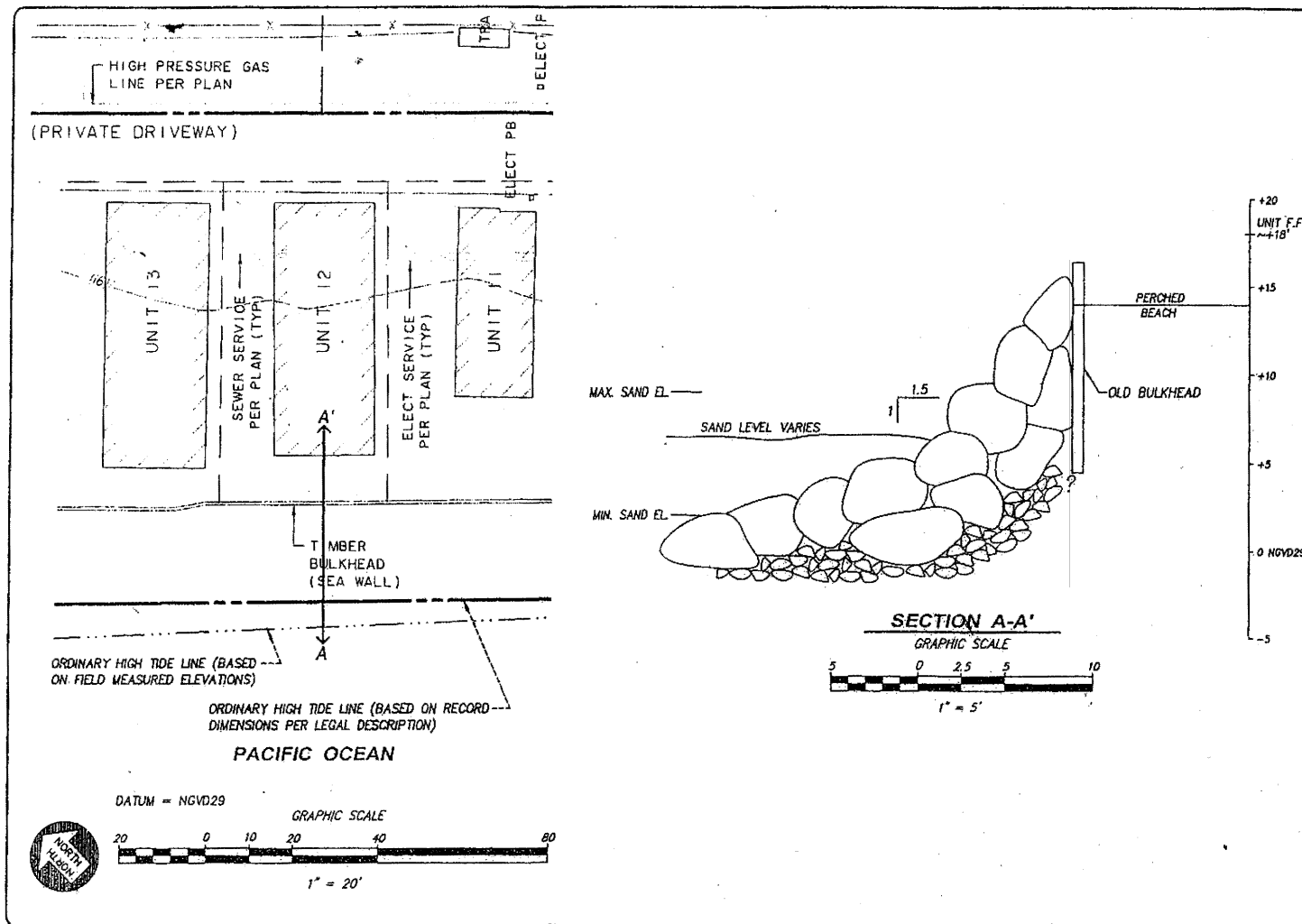
Application Number

5-14-1582

Aerial of Site

California Coastal Commission

EXHIBIT NO.	4
Application Number	5-14-1582
Existing Seawall	



DRAWING BY: SCHMIDT
 CHECKED BY: SCHMIDT
 DATE: 10/19/10
 PROJECT: 1750141-3975

GGI
 Geotechnical - Geologic - Coastal - Environmental
 5741 Palmer Way, Carlsbad, CA 92010
 760-438-3155

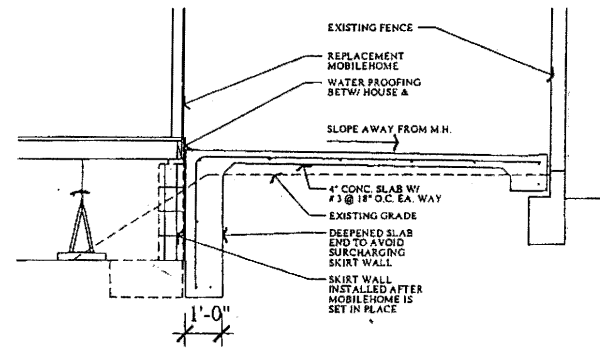
Capistrano Shores
Unit 12
 CLIENT: L.A. World, 11 Capistrano Blvd, Unit 12
 San Clemente, CA 92673

10/14/14
S1
1

RECEIVED
South Coast Region

OCT 23 2014

CALIFORNIA
COASTAL COMMISSION



SECTION THRU PATIO

EXHIBIT NO. 6

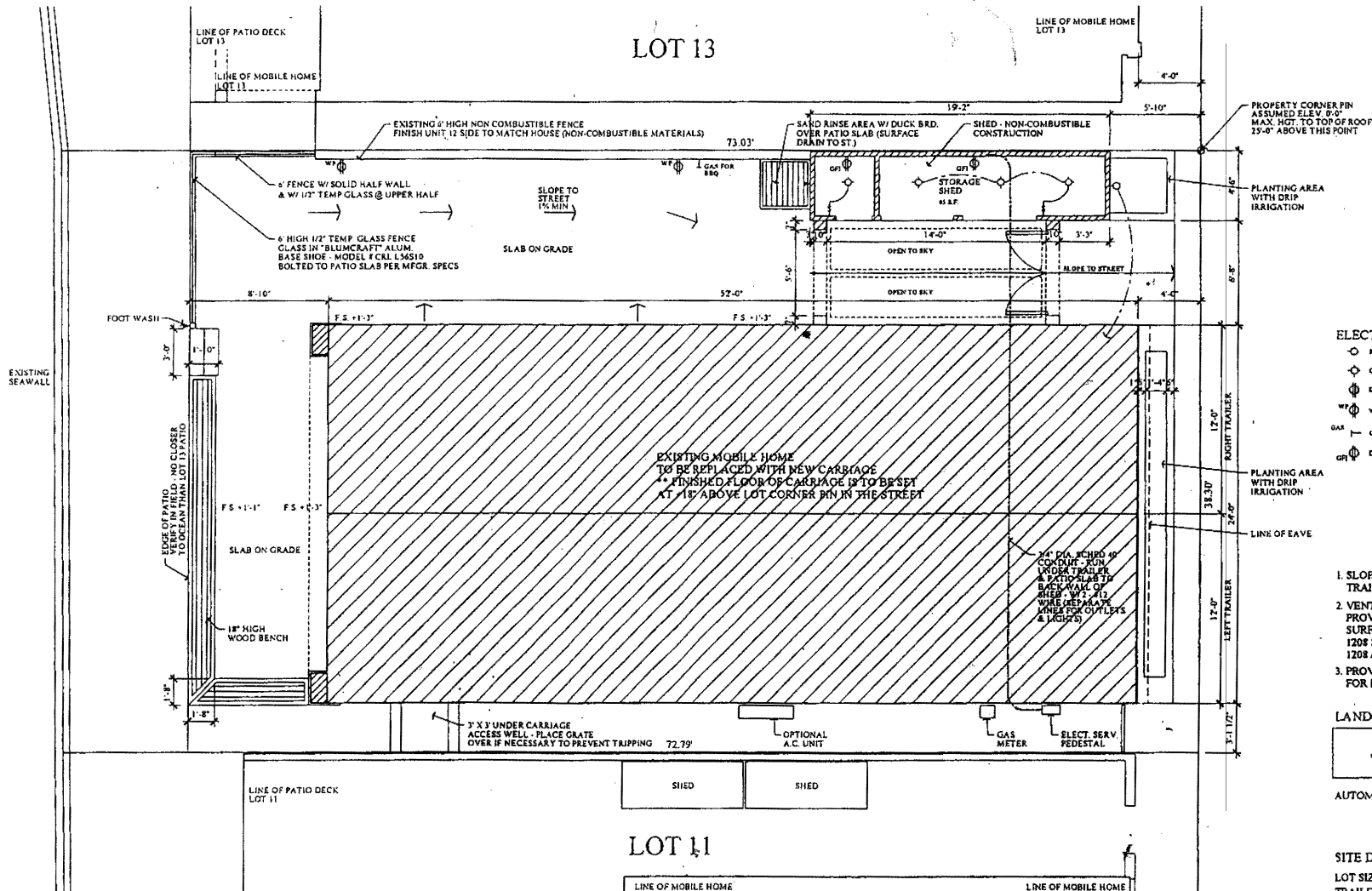
Application Number

5-14-1582

Site Plan

California Coastal Commission

EXHIBIT C

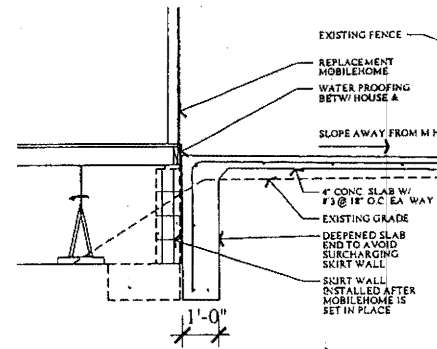


- ELECTRICAL SYMBOLS**
- SURFACE MOUNTED LIGHT FIXTURE
 - ◇ CEILING MOUNTED LIGHT FIXTURE (PENDANT)
 - ◇ DUPLEX OUTLET - AAC
 - WT ◇ WATER-PAINT OUTLET - GPCI
 - GAS T GAS SUPPLY FOR APPLIANCE
 - GFI ◇ DUPLEX OUTLET ON GFI CIRCUIT

1. SLOPE FINISH GRADE AND HARDSCAPE AWAY FROM TRAILER
2. VENTING / PRESSURE RELIEF
PROVIDE 1 SQ. IN. OF VENTING PER SQUARE FOOT OF SURFACE AREA UNDER CARRIAGE
1208 S.F. - REQUIRES 1208 SQ. IN. MIN. =
1208 / 144 SQ. IN. PER FOOT = 8.4 S.F. OF VENTING REQ'D
3. PROVIDE SCUPPERS THROUGH SKIRT WALLS TO ALLC FOR DRAINAGE IN THE EVENT OF FLOODING

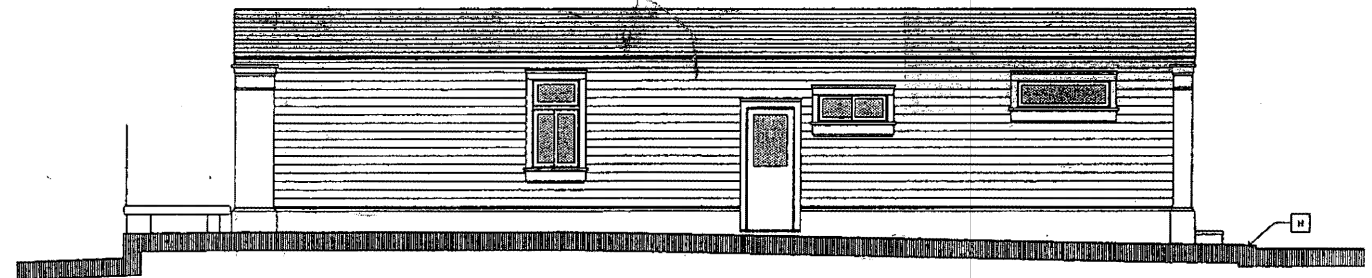
- LANDSCAPING AREA**
- DROUGHT TOLERANT SHRUBS AND GROUND COVER FROM THE COASTAL ACTS PLANT PALLETTE
- AUTOMATIC IRRIGATION ON TIMER

SITE DATA
LOT SIZE 2,791 S.F.
TRAILER FOOTPRINT 1,248 S.F.

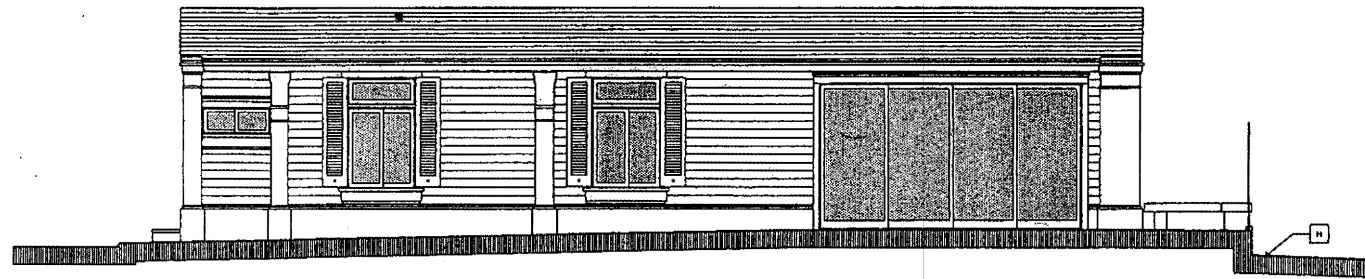


DETAIL THRU PATIO SLAB

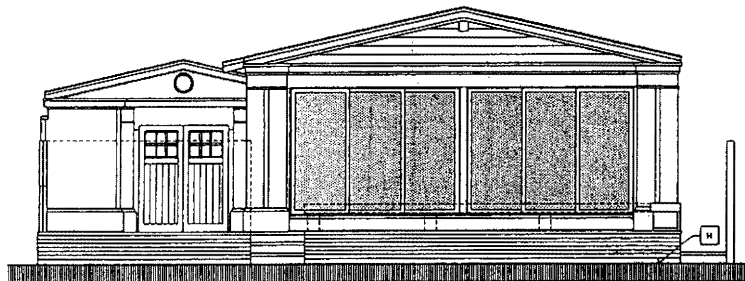
EXHIBIT NO. 7
Application Number 5-14-1582
Elevations
California Coastal Commission



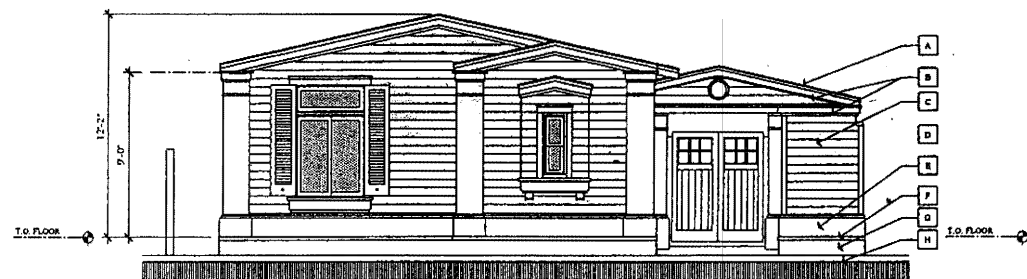
LEFT SIDE ELEVATION (SOUTH)



RIGHT SIDE ELEVATION (NORTH)



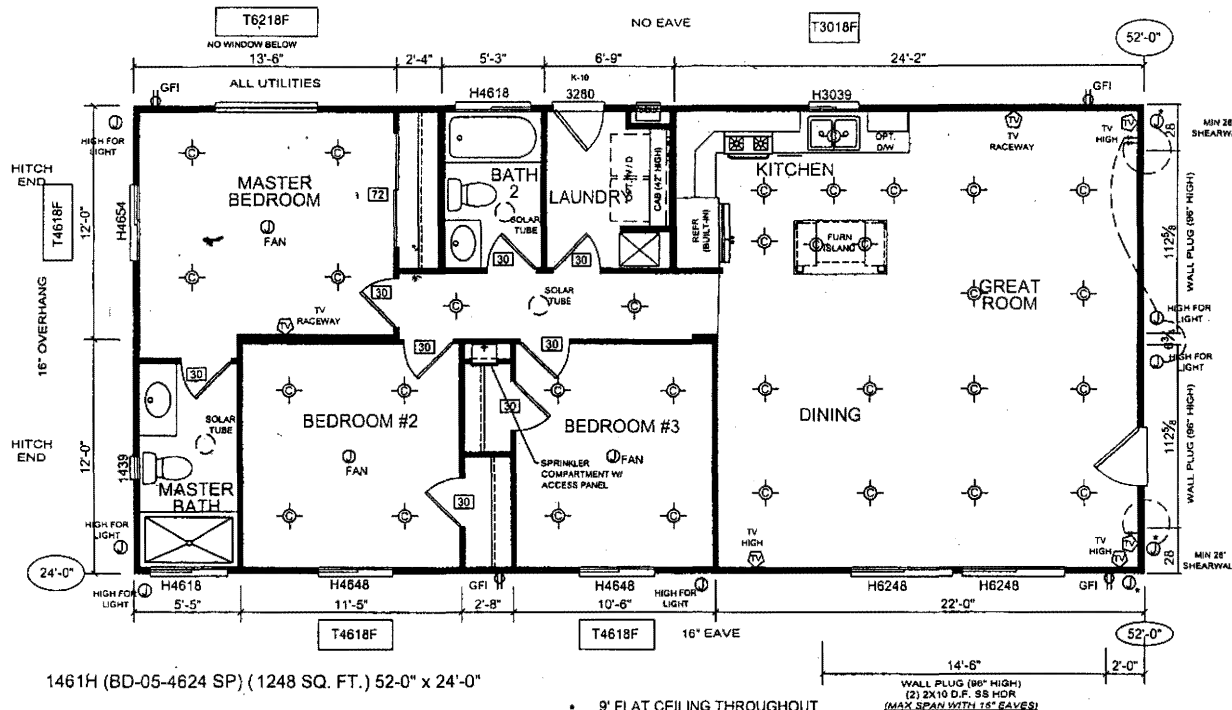
REAR ELEVATION (OCEAN)



FRONT ELEVATION (STREET) 1/4" = 1'-0"

ELEVATION KEY

- | | |
|---|-------------------------|
| A | ASPHALT ROOF |
| B | ALUM. TRIM |
| C | CEMENT-FIBER HORIZ. LA. |
| D | MILGARD "ESSENCE" FIBER |
| E | CEMENT-FIBER PANELS |
| F | PRECAST CAP |
| G | CONCRETE PLANTER |
| H | GRADE |



The development as proposed is approved by the City of San Clemente in concept. This is a preliminary approval and does not grant the recipient any development rights. When approved by the California Coastal Commission, the City will then process the plans for permits. Please check with other City departments and divisions to ensure full compliance with all City codes, standards and requirements.

City Planner

Date

CUSTOMER: WILLS
(NAVISION REVISION # 19)

SILVERCREST

CHAMPION CHAMPION HOME BUILDERS, INC.

ORONA, CA 92880

0 CONFIDENTIAL
FIGATIONS ARE ORIGINAL
DENTIAL MATERIALS OF
BUILDERS, INC.
DIA BY CHAMPION

APPROVER'S SEAL

MODIFICATIONS

1A-SEE REV LOG
2-SEE REV LOG
3-SEE REV LOG
4-SEE REV LOG
5-SEE REV LOG
5A-SEE REV LOG
6-SEE REV LOG

BMS 11-15-13
BMS 11-21-13
BMS 11-28-13
BMS 12-09-13
BMS 12-20-13
BMS 12-20-13
BMS 01-07-14

MODEL 1461H (BD-05-4624 SP)
52/24-3BR

TITLE: LITERATURE PLAN

DATE: 11-15-13

SCALE: 1/8" = 1'-0"

FILENAME:

1461H-LT101

DRAWN BY: BMS

CHECKED BY:

SHEET NO.:

LT-101

PAGE:

1 OF 1

EXHIBIT NO.

8

Application Number

5-14-1582

Floor Plan

NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

Date: June 16, 2010

Permit Application No.:5-09-180

Page 5 of 5

and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards.

7. Termination or Reauthorization

The development authorized in Coastal Development Permit No.:5-09-180 shall terminate on the legal conveyance of the applicant's or co-applicant's interest in Unit Space #81 to a third party, subject to the exception listed herein. For purposes of this Special Condition, a "third party" is any person or entity that is not the applicant (Frederick E. Hitchcock Jr.) nor a beneficiary under The Frederick E. Hitchcock Jr. 1999 Family Trust dated November 1, 1999 (the co-applicant for this permit). Prior to the conveyance to a third party, all development authorized by Coastal Development Permit No.:5-09-180 shall be removed in accordance with a plan pre-approved by the Executive Director, unless the development is reauthorized by another Coastal Development Permit. Commission approval of the third party application for reauthorization of the permit must be made prior to the date of legal conveyance to the third party. Revocation of the Trust shall be considered conveyance to a third party, for purposes of this condition.

EXHIBIT NO. 9
Application Number 5-14-1582
Special Condition From CDP#5-09-180
California Coastal Commission

EXHIBIT C

Exhibit D

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



W13c

Click here to go to
original staff report

ADDENDUM

Date: April 13, 2015

To: COMMISSIONERS & INTERESTED PERSONS

From: SOUTH COAST DISTRICT STAFF

Subject: Commission Hearing of April 15, 2015, item W13c of Commission Agenda, Coastal Development Permit application No. 5-15-1582 (Capistrano Shores Property, LLC), San Clemente, Orange County.

Modify the staff report as follows (additions are shown as underlined and deletions as ~~strikethrough~~):

1. Special Condition No. 6 should be modified as follows:

6. ~~**Deed Restriction.**~~ **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit (i.e. the parcel(s) of land within which Unit Space #12 is located) a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on Unit Space #12, subject to terms and conditions that restrict the use and enjoyment of Unit Space #12; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of Unit Space #12. The deed restriction shall include a legal description of the entire parcel of land within which Unit Space #12 is located and a metes and bounds description of Unit Space #12 governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of Unit Space #12 of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

Occupancy Agreement. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) and the applicant have executed an amendment to the Occupancy Agreement for Space #12, (1)

stating that pursuant to this permit, the California Coastal Commission has authorized the placement of a manufactured home and related accessory structures, including without limitation, manufactured home foundation system and patio covers, on Space #12, subject to terms and conditions that restrict the use and enjoyment of the manufactured home and related accessory structures located on Space #12; and (2) stating that the Special Conditions of this permit are restrictions on the use and enjoyment of the manufactured home and related accessory structures located on Space #12. The Amendment to the Occupancy Agreement shall also state that, in the event of an extinguishment or termination of the Occupancy Agreement for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the manufactured home and accessory structures located on Space #12 of the mobilehome park so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on Space #12. Notwithstanding the foregoing, the landowner and lessee may, at their discretion, extend, assign, execute a new Occupancy Agreement, providing that the Occupancy Agreement provision required under this Permit Condition may not be deleted, altered or amended without prior approval of the Executive Director of the Coastal Commission.

2. Revise staff report to replace all reference to deed restriction in Special Condition #6 with amendment to the Occupancy Agreement.

3. Add the following to Section A. Project Location and Description, page 8, after the first paragraph:

The applicant's attorney, in his March 30, 2015 and April 13, 2015 letters, argues that the Commission lacks jurisdiction because the State Department of Housing and Community Development has exclusive jurisdiction over the replacement and remodeling of mobile homes. The applicant's attorney is basing his claim on an assertion that the Mobilehome Parks Act (Health and Safety Code, sections 18200 et seq.) and the Manufactured Housing Act (Health and Safety Code, sections 18000, et seq.) supersede the Commission's authority to regulate development in mobilehome parks. The Manufactured Housing Act is not relevant here because the Commission is not, in this action, regulating building standards of mobilehomes. The Mobilehome Parks Act only supersedes "any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to" the Mobilehome Parks Act. (Health and Safety Code, section 18300.) The Mobilehome Parks Act, however, does not supersede state law, including the Coastal Act. Even though this particular site is subject to the Commission's jurisdiction, had it been subject to the City's LCP jurisdiction, application of the City's LCP would not be superseded by the Mobilehome Parks Act because LCPs are a function of state law in their implementation of the Coastal Act. (Charles A. Pratt Construction Co., Inc. v. Coastal Commission (2008) 162 Cal.App.4th 1068, 1075.) The applicant's attorney attempts to create a conflict between the Coastal Act and the Mobilehome Parks Act when there is no such conflict. The commission has jurisdiction over development in the coastal zone. The definition of development in the Coastal Act (section 30106) includes the placement or erection

of a structure on land, which is what the applicant is proposing to do on Space 12. Therefore, the Commission has jurisdiction over the proposed mobilehome project at the subject site.

4. Modify Section B, Hazards, page 12, first paragraph, as follows:

~~To ensure that any prospective future owners/occupants of Unit Space #12 are made aware of the applicability of the conditions of this permit, the Commission imposes Special Condition #6 requiring that the property owner (known at this time to be Capistrano Shores, Inc. based on information provided to the Commission by the applicant) record a generic deed restriction referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of Unit Space #12~~

The property owner and applicant argue the applicant cannot record the deed restriction because they don't own title to the land. The property owner will not agree to record the deed restriction for the applicant. The Commission finds, if the deed restriction is not recorded against the parcel, it would not change or weaken the requirement for the applicant to acknowledge the risks and agree to remove the structure if it becomes unsafe for occupancy. The purpose of the deed restriction is simply to notify future owners of the permit conditions of approval. The applicant's proposal will serve to notify future owners or occupants of the proposed mobile home of the permit requirements.

Regarding the waiver of rights to a shoreline protective device, the condition only requires that the applicant waive any rights that exist. If, as is indicated by the applicant and property owner, the applicant has no such rights, that is not a reason to remove the permit condition. Only applicable rights would be affected by the condition language. However, it is through the permit conditions and findings that the property owner and future members are also made aware of the potential limitations on future protective devices. Through these permit conditions, as the mobile homes potentially upgrade as proposed, all parties are made aware of the potential risks and limitations to protective devices that could impact public resources. Furthermore, Coastal Act Section 30601.5 states:

5. Add the following to Section C. Public Access, page 14, after third paragraph, and modify last paragraph as shown below:

The adjacent North Beach area is a heavily used public beach. North Beach is a popular regional coastal access point as it is located along a popular regional bike route along El Camino Real, it is also the trailhead to the popular San Clemente Coastal Trail, and is the site of a Metrolink/Amtrak train stop. North Beach is identified as a primary beach access point in the City with the greatest number of public parking spaces (approximately 250 off-street and 100 on-street) in the City's certified LUP. Because of the supply of public parking, popularity of the adjacent North Beach area, and the location of vertical access north of the mobile home park at Poche Beach, the public beach in front of the mobile home park is used by sunbathers, and beach strollers, and the beach is a popular surfing location.

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

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

In addition, sea level has been rising for many years. Also, there is a growing body of evidence that there has been an increase in global temperature and that acceleration in the rate of sea level rise can be expected to accompany this increase in temperature (some shoreline experts have indicated that sea level could rise 4.5 to 6 feet by the year 2100). Mean sea level affects shoreline erosion in several ways, and an increase in the average sea level will exacerbate all these conditions. On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, leading to a faster loss of the beach as the beach is squeezed between the landward migrating ocean and the fixed backshore.

Given the foregoing potential impacts to access and shoreline sand supply that a shoreline protective device would cause, staff is recommending, under **Special Condition #3**, that the applicant waive its right to shoreline protection under section 30235 of the Coastal Act because it would assure that the proposed development remains consistent with the access and recreation policies of the Coastal Act by avoiding any of the aforementioned impacts that a shoreline protective device would have on public access and recreation.

As ~~proposed~~ conditioned, the Commission finds the development consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.