

CAPISTRANO BAY DISTRICT
AGENDA REPORT
APRIL MEETING
July 28, 2025

Shoreline Committee

ITEM 7a

Miller CDP Application Status

At the last Committee meeting of July 15th the request was made to continue holding on further processing until the Committee's consultant, Susan McCabe, has had an opportunity to provide her assessment of the direction this effort is headed. The assessment was submitted to the Committee on July 20th. The Committee has looked over the submittal and would like the consultant to provide a more concise report specifically addressing the Miller test case strategy.

ITEM 7b

South Orange County Beach Coalition

As was reported last month, the City of Dana Point is hesitant at this time to participate in the coalition effort. In a meeting with the City Manager in early July, it was reported that a meeting with the County Coalition staff and all coalition stakeholders has been scheduled for August 28th. This meeting will be to discuss the progress so far and to provide a more clear direction for the coalition and to discuss stakeholder expectations and anticipated expenses.

ITEM 7c

Response to Recent CCC Letter

The Committee received a response letter from the Coastal Commission on July 10th. This letter was in response to the Committee letter of May 23rd. At the Committee's direction, Stan Lamport was asked to provide an explanatory memo to attach to the CCC letter when sending it out to property owners. This memo is intended to summarize and clarify the meaning and intent of the Commission's remarks and criticisms and to avoid misinterpretations by property owners.

Both the CCC letter and the explanatory memo were sent out to property owners on July 25th.



SHORELINE COMMITTEE

CAPISTRANO BAY COMMUNITY

CBRAassociation@gmail.com

949-433-8329

Members

B. Fox

B. Nassour

K. Stark

R. Watson

F. Lurner

M. Seidensticker

July 23, 2025

Re: Recent Letter from Coastal Commission

Dear Property Owners:

Attached is a July 9, 2025 Coastal Commission letter the Shoreline Committee received in response to the Committee's May 23, 2025 letter. The Coastal Commission's latest letter does not demand a response from the Shoreline Committee as the Coastal Commission's prior letters had. Accordingly, the Shoreline Committee is not planning to respond to the letter at this time.

The Shoreline Committee's May 23, 2025 letter informed the Coastal Commission that the City of Dana Point, which has jurisdiction over the vast majority of alleged violations, is acting to resolve those violations in conjunction with implementation of Orange County's South Coast Resiliency Strategic Plan ("Strategic Plan"). On June 12, 2025, the City of Dana Point sent an email to the Commission confirming that the City is working with the Committee to resolve the alleged violations through the Strategic Plan. The City email informed the Commission that working through the Strategic Plan (i) offers a program to restore the beach elevation and, in so doing, allows the City to work with Beach Road owners to remove the violations as part of a City enforcement process", and (ii) allows the City to resolve violations without expending City resources "to process permits for adaptation measures for somewhere in the neighborhood of 100 homes."

The Committee is continuing efforts to focus the Coastal Commission on the implementation of the Strategic Plan instead of pursuing enforcement. However, the Coastal Commission's letter states that Commission staff will be considering its enforcement options, and, to that end, "Commission enforcement staff will continue to pursue individual enforcement actions for Beach Road properties with unpermitted shoreline armoring within the Commission's jurisdiction."

As the Committee explained at the town hall and its May 6, 2025 correspondence to Beach Road property owners, under the Coastal Act, the Coastal Commission only has the ability to pursue violations located seaward of the mean high tide line and violations of conditions in permits issued by the Coastal Commission. The City of Dana Point has jurisdiction over all other violations (meaning unpermitted improvements located landward of the mean high tide line that do not violate conditions in a permit issued by the Coastal Commission).

It is incumbent on each property owner to maintain their improvements above the mean high tide line. The summer survey was recently performed. We encourage you to reach out to Don Russell to confirm the location of your improvements relative to the mean high tide line.

Owners whose properties are subject to permits issued by the Coastal Commission that prohibit structure protection may want to evaluate options to respond to the Coastal Commission if the Commission contacts you.

The Coastal Commission's letter holds open the option that the Coastal Commission might try to assume the City's enforcement jurisdiction if the City does not act in a timely manner regarding the alleged violations. The Committee anticipated this prospect and is continuing to work with the City to avoid that outcome.

Let us know if you have any questions.

Thank you,



Bill Nassour
Shoreline Committee

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071

**SENT VIA EMAIL**

July 9, 2025

ITEM 9a

Shoreline Committee
c/o Stanley Lamport
Cox, Castle & Nicholson LLP
2029 Century Park East, Suite 2100
Los Angeles, CA 90067

Re: Beach Road – Shoreline Committee May 23, 2025 Letter

Dear Mr. Lamport:

This letter is written as a follow up to your May 23, 2025, response to Commission staff's April 23, 2025, letter to the Capistrano Bay Community Shoreline Committee ("the Committee"). From the outset, Commission staff is disappointed to hear that the Committee declines to explore a coastal hazards adaptation plan for the Capistrano Bay Community that would produce general concepts and potential community-wide solutions specifically tailored to the Capistrano Beach area. Please know Commission staff's request for the subject coastal hazards adaptation plan was intended to help initiate a substantive discussion between the Committee and our staff from a planning perspective of solutions to address the current and long-term coastal hazards conditions that affect the Capistrano Bay Community. Your letter also makes several comments regarding the Commission's jurisdiction to address Coastal Act violations along Beach Road, the effects of widespread unpermitted shoreline armoring on beach erosion at Capistrano Beach, and the South O.C. Regional Coastal Resiliency Strategic Plan ("the Strategic Plan"). Commission staff's positions on these statements will be addressed separately below.

Jurisdiction

First, your letter states that the City of Dana Point ("the City"), which administers the Local Coastal Program ("LCP") governing the Capistrano Bay Community properties, excepting on Public Trust lands, has jurisdiction over the vast majority of alleged violations at issue. However, for multiple reasons that will be discussed further below, the Commission has jurisdiction, or potential jurisdiction, over many of the unpermitted shoreline armoring violations along Beach Road.

Commission staff acknowledges that some of the alleged violations referenced in staff's December 10, 2024, letter may be located within the City's permitting and enforcement jurisdiction pursuant to its certified LCP. That said, development at many of the properties listed amongst the alleged violations is governed by a Commission issued coastal development permit ("CDP"), and, in addition, many properties with unpermitted shoreline armoring devices are likely located within public trust lands during at least some points

throughout the year.¹ As you know, the Commission's enforcement authority includes, but is not limited to, violations within the Commission's retained jurisdiction, and, additionally, violations of terms and conditions of a Commission issued CDP, regardless of whether the locality in which the Commission issued CDP is located subsequently receives a certified LCP from the Commission. To that end, please review Commission staff's December 10, 2024, letter for a non-exhaustive list of Beach Road properties that were developed pursuant to a Commission issued CDP, along with specific properties that have Commission imposed special conditions requiring recorded deed restrictions forfeiting future rights to shoreline armoring, public access easements, or both. As such, the Commission has and will continue to exercise its enforcement authority over violations located within our retained jurisdiction and violations of CDPs issued by the Commission, even if the properties themselves are now located within the City's jurisdiction pursuant to its certified LCP.

Your letter also states that it is not necessary for the Committee to prepare the requested adaptation plan because the City, who you claim has jurisdiction over most of the alleged violations, is acting to resolve these violations in conjunction with the implementation of the Strategic Plan. Further, you state the City is actively participating in Beach Road community discussions and efforts aimed at identifying and implementing short and long-term solutions in connection with the Strategic Plan.

Please be aware that Commission and City staff have been in discussions about widespread unpermitted shoreline armoring along Beach Road for years, and we have regularly collaborated on enforcement with respect to this armoring. As you may know, on December 23, 2019, the City's then Community Development Manager and Commission enforcement staff sent a joint letter to many Beach Road property owners with alleged unpermitted shoreline armoring informing them of their violations of the Coastal Act and the City's Municipal Code.² This joint letter specifically requested "cooperation in ceasing any individual efforts to install unpermitted protective devices and instead work with the District to develop a comprehensive solution with the approval of the City and the CCC." Additionally, the joint letter concluded with:

Your property is currently in violation of state and local law. Should you choose to ignore these provisions and the previous letter sent by the CCC, the City and CCC shall enforce the State government code and City code to the fullest extent. [emphasis added]

¹ Please see Coastal Act Section 13577(f), which states:

Public Trust lands shall be defined as all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other purposes. Public Trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time.

² Please see Exhibit 1 for reference.

Later, in September 2020, the City sent a letter to the Capistrano Bay District regarding several Beach Road properties with unpermitted shoreline armoring.³ This letter, in part, stated:

The City is sending this letter to simply remind property owners that any placement or construction on an ocean protection device or the movement of natural resources (sand or cobble) in the coastal zone requires a Coastal Development Permit (CDP) from the CCC. . .

Due to the District's close proximity to the mean high-tide line, any emergency and/or permanent ocean protection applications will be processed by the CCC directly. The City does not have jurisdiction for these required permits. The installation of ocean protective devices without the approval of a CDP is a violation of the Coastal Act (Coastal Act Section 30600). Property owners in violation of State [law] who continue to ignore these provisions maybe [sic] subject to enforcement actions, as determined by the CCC.
[emphasis added]

We are encouraging your cooperation in obtaining a CDP from the CCC to install protective devices and work with the District and the CCC to develop a comprehensive solution for all property owners along Beach Road. The City seeks to shepherd a solution that works for all parties and will provide guidance and aid to support collaboration between the District, all property owners and the CCC. If you have any questions, feel free to contact me (bwisneski@danapoint.org), or Senior Planner John Ciampa (jciampa@danapoint.org).

More recently, in a May 1, 2023, email to Commission staff, the City again confirmed that it has not approved any CDPs for shoreline armoring devices such as rock revetments, sand blocks, and the moving of sand along the beach in front of Beach Road properties.

On June 12, 2025, City Planning Manager Johnathan Ciampa, who was cc'd on the City's September 2020 letter referenced above, sent Commission enforcement staff a follow-up email repeating many of the comments made in your May 23, 2025, letter, and stating that the City is working with the Beach Road community group to remove violations as part of the City's enforcement process. While Commission staff is pleased that the City and Capistrano Bay Community are in discussions regarding this issue generally, please know that any agreement between the City and Capistrano Bay Community does not relieve individual Beach Road property owners with unpermitted shoreline armoring devices on their properties within the Commission's jurisdiction, or that violate Commission-issued CDPs, from liability for Coastal Act violations without Commission approval. For violations outside of the Commission's jurisdiction, Commission staff will continue to coordinate enforcement efforts with the City, as has been regularly done in the past. That said, Commission staff expects the City to address any violations within their jurisdiction in a timely manner, and, if not, Commission staff is prepared to assume complete enforcement authority under the City's LCP and Coastal Act Sections 30809 and 30810. Commission staff would also like to note that the City's apparent proposed resolution referenced in the

³ Please see Exhibit 2 for reference.

City's June 12, 2025, email to remove any unpermitted development along Beach Road in conjunction with a beach nourishment program at Capistrano Beach through implementation of the Strategic Plan appears at a minimum to be years away from now, and Commission staff is extremely skeptical that it will result in a timely resolution of this matter. However, Commission staff is happy to review and discuss any additional information about the City's resolution proposal of a beach nourishment program with the City and/or Committee to determine whether this potential solution, along with removal of unpermitted shoreline armoring devices, could ultimately resolve the numerous violations at properties along Beach Road, as this potential solution would ultimately require Commission authorization.

Regional and Capistrano Beach Sand Deficit

Second, your letter implies that widespread unpermitted shoreline armoring along Beach Road has not been a contributing factor to sand beach erosion at Capistrano Beach, and much of the alleged unpermitted shoreline armoring is existing development that has been exposed recently by fluctuating sand levels. Specifically, you state "[c]urrent conditions on Capistrano Beach are a result of what has occurred since 2013 . . . [m]any of the conditions the Coastal Commission may be considering to be unpermitted development are existing features that were exposed when the beach elevation dropped" and references the Strategic Plan's finding that "South Orange County coastline is experiencing chronic, protracted regionwide beach erosion due to a significant regional sediment deficit largely attributable to lack of sand reaching the beach from the San Juan Creek, which has historically been the main source of sediment nourishing this region's beaches." Commission staff acknowledges that the issue of beach erosion in South Orange County is regional in nature, and previous development that has influenced the delivery of sand from San Juan Creek could be one of the major factors in regional sediment deficit. Other factors could include climactic changes affecting precipitation patterns (i.e., more frequent and prolonged droughts) or wave conditions as well as widespread armoring of South Orange County that has prevented erosion of bluffs and sandy backshores and therefore contributions to sand supply. Further, long-term erosion and shoreline recession is a natural process common even in areas not significantly influenced by watershed alterations – it is rare to find littoral systems in perfect equilibrium (i.e., no net loss or gain of sand in the system). Using satellite data such as the satellite-derived shoreline positions available through the CoastSat tool, a long-term erosion trend can be observed for the entirety of the satellite record extending to the mid-1980s with clear seasonal and interannual variability. However, as was explained in detail in Commission staff's December 10, 2024, letter, the current conditions at Capistrano Beach have nonetheless been amplified by widespread implementation of unpermitted shoreline armoring by Beach Road property owners throughout the approximately 1.5-mile-long beach front, which will continue to negatively affect coastal resources and sand supply at Capistrano Beach, regardless of whether they are the primary source of beach erosion in this location, which will be explained in further detail again below.

Commission staff also acknowledges that some shoreline armoring along Beach Road may have been implemented prior to 2013 and the passage of the Coastal Act in 1976, which could have been exposed when the adjacent sand beach narrowed. However, Commission staff considered this possibility when identifying unpermitted armoring and

found that publicly available historical Google Earth imagery clearly demonstrates numerous installations of new shoreline armoring devices in the form of rock revetments, sand cubes, sand berms, and sandbags, as well as the unpermitted expansion of shoreline armoring devices installed prior to the Coastal Act, all of which constitute “new development” and require a CDP pursuant to the Coastal Act and the City’s LCP. In fact, Commission staff has confirmed the installation of several additional newer unpermitted shoreline armoring devices as recently as 2024, and we have worked with the City to begin addressing these Coastal Act violations or addressed them directly.

Again, please be reminded that shoreline armoring devices can result in several adverse effects on the dynamic shoreline system, beach access and recreation, and public rights and/or interests at Capistrano Beach. First, changes in the shoreline profile, particularly changes in the slope of the profile that result from a reduced beach berm width, alter the usable area. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on the beach, especially where there are recorded public access easements. The second effect on coastal resources is through a progressive loss of sand as shore material is not available to nourish the near-shore sand bar. The lack of an effective bar deepens the nearshore profile and can allow higher wave energy on the shoreline whereby materials may be swept up by the larger waves and carried far offshore where they are no longer available to nourish the beach. This affects public access again through a loss of area between the mean high-water line and the actual water. Third, shoreline armoring devices such as revetments and bulkheads can cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches or primarily private beaches associated with recorded public interests. This effect may not become clear until such devices are constructed individually along a shoreline, and they reach beach areas available for recreation. In addition, if a seasonally eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach could also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the shoreline armoring device is only acted upon during severe storm events, beach scour will be accelerated because there is less beach area to dissipate the wave’s energy, and more wave energy will be reflected off the face of the shoreline armoring device. In summary, regardless of the cause of regional beach erosion, shoreline armoring exacerbates the impact to sand supply and public beaches. However, it should be noted that this inquiry into the primary source of recent sand supply deficits at Capistrano Beach and surrounding areas is not legally relevant as to whether Beach Road property owners seeking to install shoreline armoring must do so pursuant to the Coastal Act and City LCP’s CDP process, and, ultimately, whether installing such development without the benefit of a CDP results in a violation of the Coastal Act and the City’s LCP.

South O.C. Regional Coastal Resiliency Strategic Plan

Again, your letter states that it is not necessary for the Committee to prepare the requested adaptation plan because the City is acting to resolve these violations in conjunction with the implementation of the Strategic Plan, and the City is actively participating in Beach Road community discussions and efforts aimed at identifying and implementing short and

long-term solutions in connection with the Strategic Plan. Please know that Commission staff has been closely monitoring and working with OC Parks on the Strategic Plan and its implementation. However, please be reminded that the Strategic Plan explicitly states that implementing projects under this plan will require CDPs and/or federal consistency determinations from the Commission and will need to be implemented in accordance with the policies, regulations, or statutory standards of the Coastal Act. Further, any privately funded projects, such as new or replacement shoreline protective devices, are not a component of the Strategic Plan and would continue to be permitted separately by individual entities. Please also be aware that if/when a CDP application for any potential short-term and/or long-term shoreline erosion solutions pursuant to the Strategic Plan recommendations is submitted to the Commission, staff will be required to analyze whether any existing unpermitted development along Beach Road will negatively affect the public benefits conferred by the proposed project at Capistrano Beach, and staff's recommendation for the project will be presented accordingly.

Resolution

While Commission staff remains hopeful that the Committee and Capistrano Bay Community property owners will cooperate with Commission staff in a good faith effort to address this community wide issue through a timely global solution pursuant to the Coastal Act, the implication of your letter, in which the Committee declined to prepare requested information to facilitate discussion of a community-wide resolution with Commission staff, is that Commission staff will need to consider its enforcement options. To that end, Commission enforcement staff will continue to pursue individual enforcement actions for Beach Road properties with unpermitted shoreline armoring within the Commission's jurisdiction, and work with the City to monitor and ensure that any violations within the City's jurisdiction are resolved in a timely manner pursuant to Coastal Act Sections 30809 and 30810. From the perspective of reviewing new development (or redevelopment of existing development) on Beach Road, please also be aware that Commission staff will continue to pursue removal of shoreline armoring and recommend that residential structures be elevated above beach grade in all future CDP applications, using caisson-and-grade-beam foundations that do not rely on shoreline armoring, to ensure compliance with the coastal hazard policies of the Coastal Act and the City's LCP.

Commission staff would also like to use this correspondence to again urge the Beach Road community, through either the Committee, or through formation of another entity that has the legal authority to negotiate on behalf of individual Beach Road property owners, to prepare the requested adaptation plan discussed in Commission staff's April 23, 2025, letter. This adaptation plan will help initiate a substantive discussion between the Beach Road community and Commission staff from a planning perspective regarding solutions to address the current and long-term coastal hazards conditions that affect the Capistrano Bay Community, with the objective of protecting private property and public coastal resources in a manner that is consistent with the Coastal Act.

Thank you for your attention to this matter. Should you have any questions about the contents of this letter or Commission enforcement actions resolving Coastal Act violations within the Capistrano Bay Community going forward, please feel free to contact me at spenser.sayre@coastal.ca.gov.

Sincerely,

Spenser Sayre

Spenser Sayre, Esq.
South Coast District Enforcement

**Cc: Kate Huckelbridge, Executive Director, CCC
Lisa Haage, Chief of Enforcement, CCC
Karl Schwing, Deputy Director, CCC
Andrew Willis, Enforcement Counsel, CCC
Shannon Vaughn, District Planning Manager, CCC
Amber Dobson, District Planning Supervisor, CCC
Karen Vu, Environmental Scientist, CCC
Jeff Palm, District Planner, CCC
Johnathan Ciampa, Planning Manager, City of Dana Point
Jeff Rosaler, Director of Community Services, City of Dana Point**



CITY OF DANA POINT

COMMUNITY DEVELOPMENT DEPARTMENT

33282 Golden Lantern

Dana Point, Ca 92629

949.248.3564

www.danapoint.org

EXHIBIT 1

December 23, 2019

OWNER

Subject Property: 35____ Beach Road, Capistrano Beach, CA 92624

Dear Property Owner,

It has recently come to the California Coastal Commission's (CCC) and the City of Dana Point's (City) attention that the development of an ocean protection device has been implemented on the oceanside portion of your property on Beach Road. Any placement or construction of a seawall or any other ocean protection device in the coastal zone requires a Coastal Development Permit (CDP). The City has implemented a Local Coastal Plan in accordance with the California Coastal Act that allows CDPs to be processed at the local level, violation of the Coastal Act is therefore both a violation of California State Law (Coastal Act Section 30600) and the City of Dana Point Municipal Code ((DPMC) 6.14.002 and 9.69.020).

The City has also become aware of the letter to the Capistrano Bay District (District) dated June 11, 2018 from the CCC. The letter (attached) clearly states that any structure or movement of the natural resources within the District is subject to a CDP. It further states additional remedies, resolutions and enforcement mechanisms available to the CCC if the development of the constructed berm is not removed. It also suggests that a coordinated effort to obtain a CDP for the protection of homes on Beach Road be coordinated between CCC and the District.

The City and the CCC are encouraging Beach Road property owners to work with the District in a collective effort to obtain a CDP, or other authorization, such as a consensual enforcement order, for removal of the existing unpermitted protective devices, resolution of the violations at issue, and protection of all homes in the District in a manner that is consistent with the Local Coastal Program and the Coastal Act. We are seeking your cooperation in ceasing any individual efforts to install unpermitted protective devices and instead to work with the District to develop a comprehensive solution with the approval of the City and the CCC. To that end, we ask for a dialogue to begin prior to January 20, 2020 that will develop this comprehensive solution.

Your property is currently in violation of state and local law. Should you choose to ignore these provisions and the previous letter sent by the CCC, the City and the CCC shall enforce the State government code and City code to the fullest extent.

Sincerely,

Jeff Rosaler
Community Development Manager
City of Dana Point

Andrew Willis
Enforcement Supervisor
California Coastal Commission



September 1, 2020

EXHIBIT 2

CAPISTRANO BAY DISTRICT
35000 BEACH RD
CAPISTRANO BEACH, CA 92624-1700

Re: Property located at 35000 Beach Road

Dear CAPISTRANO BAY DISTRICT ,

It has recently come to the attention of the California Coastal Commission (CCC) that several properties on Beach Road continue to construct ocean protection devices (seawalls, revetment, etc.) without the required permits from the CCC. The City recognizes that high tidal and wave action this summer, combined with escalating coastal erosion, has resulted in the critical necessity for property owners along Beach Road to implement solutions to protect their properties. The City is sending this letter to simply remind property owners that any placement or construction of an ocean protection device or the movement of natural resources (sand or cobble) in the coastal zone requires a Coastal Development Permit (CDP) from the CCC. Additionally, the installation of temporary measures to protect your property while processing a CDP for ocean protective devices requires an Emergency CDP.

On June 11, 2018, the CCC sent a Notice of Violation for an unpermitted berm built of sand and cobblestone earlier that Spring (Attachment A). That notice was issued to the Capistrano Bay District Board (District) and required that a long-term solution be developed. On December 23, 2019, the City, in coordination with CCC staff, sent out an additional letter notifying property owners that additional ocean protective devices established on private property without a permit was a violation of local and State regulations (Attachment B). Again, the District was encouraged to work with CCC staff to develop a long-term solution that would work for all parties.

Due to the District's close proximity to the mean high-tide line, any emergency and/or permanent ocean protection applications will be processed by the CCC directly. The City does not have jurisdiction for these required permits. The installation of ocean protective devices without the approval of a CDP is a violation of the Coastal Act (Coastal Act Section 30600). Property owners in violation of State who continue to ignore these provisions maybe subject to enforcement actions, as determined by the CCC.

We are encouraging your cooperation in obtaining a CDP from the CCC to install protective devices and work with the District and the CCC to develop a comprehensive solution for all property owners along Beach Road. The City seeks to shepherd a solution that works for all parties and will provide guidance and aid to support collaboration between the District, all property owners and the CCC.



If you have any questions, feel free to contact me (bwisneski@danapoint.org), or Senior Planner John Ciampa (jciampa@danapoint.org).

Sincerely,

A handwritten signature in cursive script, reading "Brenda Wisneski".

Brenda Wisneski, AICP
Community Development Director

Attachment A – CCC Notice of Violation, June 11, 2018

Attachment B – Joint Letter from CCC and City to Property Owners in Violation, December 23, 2019

cc: California Coastal Commission,
Long Beach District Office