



## STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: October 16, 2019

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**SUBMITTED BY:** City Attorney

**SUBJECT:** **Transfer of a 4 by 325-foot (1,300-square foot) portion of Senda de la Playa to the Capistrano Shores Mobilehome Park.** A request to forward a recommendation to the City Council (1) that the transfer is of the common benefit, (2) that the transfer conforms to the City's General Plan, (3) that the transfer is categorically exempt from environmental review under CEQA as a Class 5 project and to direct staff to file a Notice of Exemption, as well as (4) to direct staff to execute and record the grant deed effectuating the transfer.

### **BACKGROUND**

***Capistrano Shores Settlement.*** This proposed transfer of property stems from a settlement agreement in *Capistrano Shores, Inc. on behalf of itself and its members v. City of San Clemente* (Orange County Superior Court Case No. 30-2014-007099897-CU-EI-CXC) approved at by City Council on August 20, 2019. Capistrano Shores, Inc. owns the Capistrano Shores Mobilehome Park located at 1880 N El Camino Real in San Clemente. The lawsuit concerned a number of issues relating to the City's General Plan, Zoning Code, and Coastal Land Use Plan. As part of the settlement, the City agreed to transfer to Capistrano Shores a 4 by 325-foot stretch of Senda de la Playa.

***Senda de la Playa.*** Senda de la Playa is a small street south of Avenida Estacion and between the railroad tracks and Capistrano Shores Mobilehome Park. The City currently holds title to the street in fee. The street is 20 feet wide and 400 feet long (8,000 square feet) and runs from north to south. To its north, the street intersects with Avenida Estacion at an existing at-grade railroad crossing. To its south, the street dead-ends. At the east side of the street there is a stretch of land currently and primarily used for residential parking. At the west side of the street are nine manufactured homes and the Capistrano Shores management building. Currently, eight manufactured homes' structures and one manufactured home's frontage encroach onto the Senda de la Playa. The encroachment is no greater than 4 feet into and 325 feet across the street (1,300 square feet).

***Property for Transfer.*** The property proposed for transfer to Capistrano Shores is the current 4 by 325-foot (1,300-square foot) encroachment onto Senda de la Playa mentioned above.

***Process for Transfer.*** The transfer of property in this case follows the process required by Government Codes sections 37350, 37351 (common benefit transfer), and 65402 (general plan conformity). Sections 37350 and 37351 authorize the City to dispose of property when "for the common benefit." Section 65402 requires that the Planning Commission prepare a

report for the City Council as to whether the transfer conforms to the City's General Plan. The City Council then votes on whether to approve the transfer. No public notice or hearing is required. The City's approval of the transfer must also comply with CEQA.

## **DISCUSSION**

As explained above, this item concerns the transfer to Capistrano Shores of a 4 by 325-foot stretch of Senda de la Playa. Generally, Staff finds that the current encroachment and proposed transfer in no way limits public access, creates circulation problems, nor presents safety issues. Specifically, staff recommends that Planning Commission make the findings:

***Common Benefit Finding (Gov. Code, § 37350).*** Staff recommends that the Planning Commission find that the transfer of this portion of this portion of the street is for the common benefit for the following reasons:

1. The transfer clarifies ownership of a small portion the street in a way that recognizes the existence of established manufactured homes.
2. The transfer resolves an existing encroachment issue without in any way compromising or impacting public access to or use of the street.
3. The transfer helps settle an 18-year lawsuit against the City.

***General Plan Conformity (Gov. Code, § 65402).*** Staff recommends that the Planning Commission find that the transfer conforms to the City's General Plan for the following reasons.

1. The General Plan Land Use Map (LU-1A) shows this portion of the street is designated as Private Open Space (OS2), as are the mobilehome lots immediately adjacent. Accordingly, there transfer will not change or be inconsistent with the designated land use for the site.
2. The transfer in no way alters or impacts the City's circulation or mobility plans. Senda de la Playa is not identified on the General Plan Roadway System Map (figure M-1) as an arterial, secondary, collector or other major roadway. Even if the street were identified on the map, transfer of the 4 by 325-foot portion of the street in no way compromises the use of the street.
3. After the transfer, the remaining 6,700 square feet of the public street will remain in compliance with the General Plan's mobility policies, including necessary transportation infrastructure to accommodate vehicles and pedestrians (policy M-1.02) as well as enhancement of neighboring uses (policy M-1.18). In this case, the remaining public street will provide more than adequate space for vehicles and pedestrians alike as well as continue to provide public access from the adjacent manufactured homes.

***Class 5 CEQA Exemption (State CEQA Guidelines, § 15305).*** Staff has reviewed the proposed transfer of the portion of Senda de la Playa and determined that it is the

proposed offer of dedication is categorically exempt from environmental review under State CEQA Guidelines section 15305 (Class 5, Minor Alterations in Land Use Limitations) for the following reasons:

1. The transfer represents a minor adjustment of the line between the private and public use of the street, but in a manner entirely consistent with existing conditions.
2. The existing mobilehomes already encroach upon the public street and in no way impact the access to or use of the street. Accordingly, Staff recommends that it be directed to file a Notice of Exemption for the transfer.

**Grant Deed.** Should the City Council approve the transfer, the transfer will be executed by way of a grant deed that includes a legal description and depiction of the property. The draft grant deed is included as Attachment A to the draft resolution, and the legal description and depictions are attached as Exhibits A and B, respectively, to the draft grant deed

Please note that the neither the Planning Commission nor City Council are required to recommend or approve this transfer of property, but only to consider it. If the transfer is approved, the approval would resolve all outstanding issues in the lawsuit.

## **RECOMMENDATION**

Based on the information in the staff report and subject to the required Findings and Conditions of Approval, staff recommends the Planning Commission:

Adopt Resolution PC 19-037 regarding transfer to Capistrano Shores of the 4 by 325-foot stretch of Senda de la Playa to:

1. Recommend that the City Council find that the transfer is of the common benefit per Government Code section 37350;
2. Recommend that the City Council find that the transfer conforms to the City's General Plan per Government Code section 65402;
3. Recommend that the City Council find that the transfer is categorically exempt from environmental review under Class 5 (Minor Alterations in Land Use Limitations) per State CEQA Guidelines section 15303, and recommend that the City Council direct Staff to file an Notice of Exemption for the transfer; and
4. Recommend that the City Council direct staff to execute and record the grand deed effectuating the transfer.

### ***Attachments:***

1. Draft Resolution PC 19-037

2. Attachment A to the Resolution: Draft Grant Deed
3. Exhibit A to the Grant Deed: Description of the Property
4. Exhibit B to the Grant Deed: Depiction of the Property

# ATTACHMENT 1

## RESOLUTION NO. PC 19-037

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, REGARDING THE TRANSFER OF A 4 BY 325-FOOT (1,300-SQUARE FOOT) PORTION OF SENDA DE LA PLAYA TO THE CAPISTRANO SHORES MOBILEHOME PARK, RECOMMENDING THE CITY COUNCIL DETERMINE THAT THE TRANSFER IS OF THE COMMON BENEFIT, DETERMINE THAT THE TRANSFER CONFORMS TO THE CITY'S GENERAL PLAN, DETERMINE THAT THE TRANSFER IS CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW UNDER CEQA AS A CLASS 5 PROJECT, DIRECT STAFF TO FILE A NOTICE OF EXEMPTION, AND DIRECT STAFF TO EXECUTE AND RECORD THE GRANT DEED EFFECTUATING THE TRANSFER.

WHEREAS, the City entered into a settlement agreement in *Capistrano Shores, Inc. on behalf of itself and its members v. City of San Clemente* (Orange County Superior Court Case No. 30-2014-007099897-CU-EI-CXC) approved at by City Council on August 20, 2019;

WHEREAS, Capistrano Shores, Inc. owns the Capistrano Shores Mobilehome Park located at 1880 N El Camino Real in San Clemente;

WHEREAS, the lawsuit concerned a number of issues relating to the City's General Plan, Zoning Code, and Coastal Land Use Plan, and as part of the settlement, the City agreed to transfer to Capistrano Shores a 4 by 325-foot stretch of Senda de la Playa;

WHEREAS, the City currently holds title to Senda de la Playa in fee;

WHEREAS, Senda de la Playa is a small street south of Avenida Estacion and between the railroad tracks and Capistrano Shores Mobilehome Park. The street is 20 feet wide and 400 feet long (8,000 square feet) and runs from north to south. To its north, the street intersects with Avenida Estacion at an existing at-grade railroad crossing. To its south, the street dead-ends. At the east side of the street there is a stretch of land currently and primarily used for residential parking;

WHEREAS, at the west side of the street are nine manufactured homes and the Capistrano Shores management building. Currently, eight manufactured homes' structures and one manufactured home's frontage encroach onto the Senda de la Playa. The encroachment is no greater than 4 feet into and 325 feet across the street (1,300 square feet);

WHEREAS, on October 16, 2019, the Planning Commission considered evidence presented by City staff and heard other interested parties and made a recommendation to the City Council as fully set forth herein; and

WHEREAS, per Government Code section 37350, the Planning Commission found that transfer the above portion of Senda de la Playa to the Capistrano Shores Mobilehome Park as a common benefit to the City;

WHEREAS, per Government Code section 65402, the Planning Commission, at its regular meeting on October 16, 2019, determined that the transfer of the portion of Senda de la Playa conformed to the General Plan;

WHEREAS, per the California Environmental Quality Act, the City staff recommended and the Planning Commission determined that the transfer is categorically exempt from further environmental review under the Class 5 (Minor Alterations to Land Use Limitations) categorical exemption;

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, The Planning Commission of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Planning Commission hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Planning Commission as fully set forth in this resolution.

Section 2. CEQA Findings.

The Planning Commission finds that the proposed transfer of the portion of Senda de la Playa is categorically exempt from environmental review under State CEQA Guidelines section 15305 (Class 5, Minor Alterations in Land Use Limitations) for the following reasons:

1. The transfer represents a minor adjustment of the line between the private and public use of the street, but in a manner entirely consistent with existing conditions.
2. The existing mobilehomes already encroach upon the public street and in no way impact the access to or use of the street.

Section 3. Common Benefit Findings.

The Planning Commission finds, per Government Code section 37350, that the transfer of this portion of this portion of the street is for the common benefit for the following reasons:

1. The transfer clarifies ownership of a small portion the street in a way that recognizes the existence of established manufactured homes.
2. The transfer resolves an existing encroachment issue without in any way

compromising or impacting public access to or use of the street.

3. The transfer helps settle an 18-year lawsuit against the City.

Section 4: General Plan Conformity Findings.

The Planning Commission finds, per Government Code section 65402, that the transfer conforms to the City's General Plan for the following reasons:

1. The General Plan Land Use Map (LU-1A) shows this portion of the street is designated as Private Open Space (OS2), as are the mobilehome lots immediately adjacent. Accordingly, there transfer will not change or be inconsistent with the designated land use for the site.
2. The transfer in no way alters or impacts the City's circulation or mobility plans. Senda de la Playa is not identified on the General Plan Roadway System Map (figure M-1) as an arterial, secondary, collector or other major roadway. Even if the street were identified on the map, transfer of the 4 by 325-foot portion of the street in no way compromises the use of the street.
3. After the transfer, the remaining 6,700 square feet of the public street will remain in compliance with the General Plan's mobility policies, including necessary transportation infrastructure to accommodate vehicles and pedestrians (policy M-1.02) as well as enhancement of neighboring uses (policy M-1.18). In this case, the remaining public street will provide more than adequate space for vehicles and pedestrians alike as well as continue to provide public access from the adjacent manufactured homes.

Section 5: Planning Commission Recommendation.

Based on the entire record, including all written and oral evidence presented to the Planning Commission, and the findings made and evidence discussed in the staff report and this Resolution regarding the transfer to Capistrano Shores of the 4 by 325-foot portion of Senda de la Playa, the Planning Commission hereby recommends that the City Council:

1. Find that the transfer is categorically exempt from environmental review under Class 5 (Minor Alterations in Land Use Limitations) per State CEQA Guidelines section 15303, and direct Staff to file an Notice of Exemption for the transfer;
2. Find that the transfer is of the common benefit per Government Code section 37350;
3. Find that the transfer conforms to the City's General Plan per Government Code section 65402; and
4. Direct Staff to execute and a grant deed, in substantially the same form as provided in Attachment A, effectuating the transfer.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on October 16, 2019.

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Chair

CERTIFICATION:

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on October 16, 2019, carried by the following roll call vote:

AYES:            COMMISSIONERS:  
NOES:            COMMISSIONERS:  
ABSTAIN:        COMMISSIONERS:  
ABSENT:         COMMISSIONERS:

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Secretary of the Planning Commission



Attachment A to Resolution 19-037

Draft Grant Deed  
Exhibit A Property Description  
Exhibit B Property Depiction

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF SAN CLEMENTE  
910 Calle Negocio  
San Clemente, California 92673

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ABOVE SPACE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ -0- (Exempt recording requested—Gov. Code Section 27383)

The undersigned Grantor  
Signature of Declarant or Agent determining tax – Firm Name

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## GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, **THE CITY OF SAN CLEMENTE**, a California Municipal Corporation, herein described as the Grantor (“Grantor”), does hereby Grant to **CAPISTRANO SHORES, INC.**, a California mutual benefit corporation (“Grantee”), the following real property in the City of San Clemente, County of Orange, California which is described in Exhibit A attached hereto and depicted in Exhibit B attached hereto.

Dated: \_\_\_\_\_

CITY OF SAN CLEMENTE  
A Municipal Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# ATTACHMENT 3

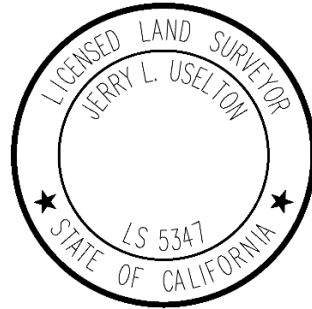
## EXHIBIT A

### LEGAL DESCRIPTION

THE WESTERLY 4.00 FEET OF THE SOUTHERLY 325.00 FEET OF THAT CERTAIN STRIP OF LAND IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DELINEATED AS "SENDA DE LA PLAYA" AS SHOWN ON MAP OF TRACT NO. 981, "THE SPANISH VILLAGE", RECORDED IN BOOK 31 PAGE 26 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

DATED THIS 5<sup>th</sup> DAY OF SEPTEMBER, 2019.

\_\_\_\_\_  
JERRY L. USELTON, L.S. 5347



# ATTACHMENT 4

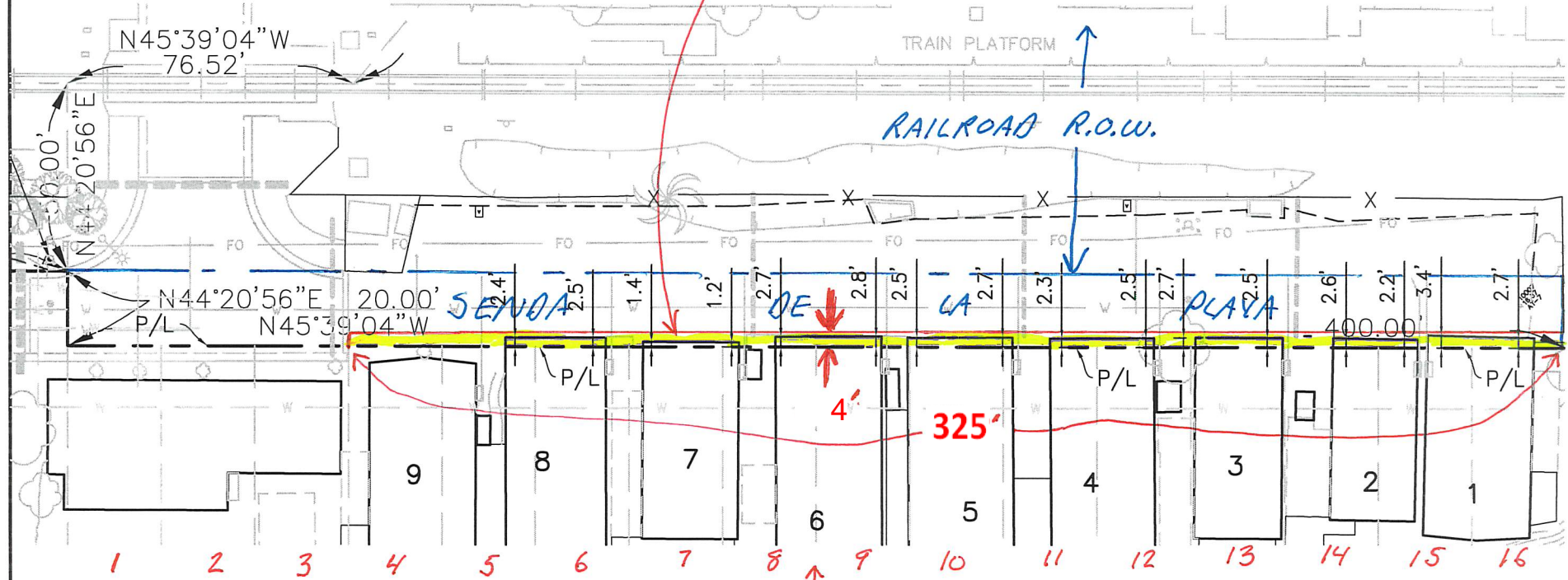
## EXHIBIT B

[see separate document for draft graphic]

PORTION TO BE VACATED

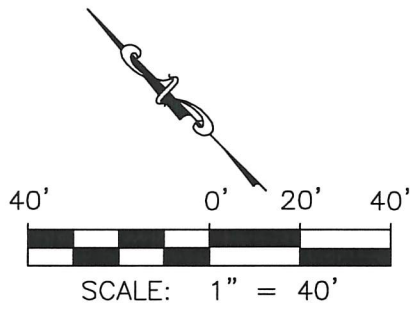
TRAIN PLATFORM

RAILROAD R.O.W.



TRACT 981  
LOT NUMBERS

TRACT 981  
LOT LINES



# ENCROACHMENT CAPISTRANO SHORES

CITY OF SAN CLEMENTE, CA  
DATE: 6/28/2016

ALL CAPACITY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_

\_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

Signature of Notary Public

(Notary Seal)