

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E Ocean Blvd., Suite 300
Long Beach, CA 90802-4302
(562) 590-5071



W22c

Filed: 12/09/19
180th Day: 06/06/20
Staff: MA-LB
Staff Report: 04/23/20
Hearing Date: 05/13/20

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-19-1178

Applicant: Katherine and Melton Bacon

Agent: Gaines and Stacey LLP

Location: 1880 N. El Camino Real, Unit 32, San Clemente, Orange County

Project Description: Removal of an existing 1,440-sq. ft., 13.5-ft. high mobile home and placement of a new 1,625-sq. ft., one story, 16-ft. high manufactured home, patio, and 78-sq. ft. storage shed on a beachfront mobile home space. Two parking spaces are provided.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The project site is a mobile home space (Unit 32) located within a 90-space mobile home park known as Capistrano Shores Mobile Home Park ("Park") located between the first public road and the sea, seaward of the Orange County Transportation Authority ("OCTA") railroad tracks in San Clemente. The Park is a legal non-conforming use on a stretch of beach developed with a single row of 90 mobile/manufactured homes parallel to the shoreline on a lot zoned "OS2 Privately Owned Open Space" (intended for open space – no formal easement) and designated Open Space in the City of San Clemente Land Use Plan (LUP). A pre-Coastal Act rock revetment and bulkhead protects the mobile home park property from direct wave attack. No improvements are proposed to the existing and revetment as part of this application.

The primary issues raised by significant improvements to or replacement of a mobile home within the Park concern consistency with the visual resource and hazards policies of the Coastal Act. The issue before the Commission with regards to visual resources is the appropriateness of approving the proposed project given the importance of preserving scenic resources and public views. In this particular case, consistency with the pattern of development in this area (a low-scale mobile home park) would maintain the scenic coastal vistas available from El Camino Real (“ECR”) and adjacent surrounding public recreational areas including the Poche Beach upcoast, North Beach area of San Clemente downcoast and the inland areas including the public recreational trails and open space system on the uplands associated with the Marblehead development immediately inland of the oceanfront Park and ECR.

The general pattern of existing development within the Park consists of approximately 13- to 14-foot tall development located on a perched beach directly seaward of ECR and the Commission-approved public trails along the coastal bluffs at the Marblehead Coastal Site (CDP No. 5-03-013). The applicant is proposing to replace an existing approximately 13-foot high, one-story mobile home unit with a new 16-foot high, one-story mobile/manufactured home. The height of the unit is being increased by approximately three feet. However, the proposed increased height will not result in significant obstruction of major coastal views from the nearby public areas (e.g. public trails and recreational areas) and is consistent with past Commission permit action for development in the Park. The Commission has previously required mobile homes in the Park that are in closer proximity to public vantage areas to not exceed a maximum roof height of 16 feet as measured from the frontage road, Senda de la Playa, to ensure that public coastal views over the units are protected. The proposed project can, therefore, be found consistent with Section 30251 of the Coastal Act, which requires that the visual qualities of coastal areas shall be considered and protected as a resource of public importance and that new development shall be sited and designed to protect views to and along the ocean and coastal scenic areas.

The issue concerning hazards is the potential expectation that the existing revetment will be augmented in the future as necessary to protect such new 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. Revetments generally have additional impacts to public access and recreation, shoreline sand supply, and shoreline/scenic views. Therefore, staff recommends a special condition that requires the applicant to acknowledge both: (1) that it has no future automatic right to a shoreline protective device; and (2) that the existing revetment may require future work, but that the Commission retains the power to prohibit any alteration that is inconsistent with the lawful application of the Coastal Act, considering the Coastal Act’s policies and goals.¹

¹ This was articulated in an Orange County Superior Court case involving a similar development proposal for a similarly-situated mobile home owner in the Capistrano Shores Mobile Home Park. (See Capistrano Shores Property LLC v. Cal. Coastal Com., Case No. 30-2015-00785032-CU-WM-CJC.)

The applicant, a mobile home owner in the Park, owns the mobile/manufactured home but does not own the land under the new manufactured home. Capistrano Shores, Inc. is a non-profit mutual benefit corporation in which each mobile home owner, such as the applicant, holds a 1/90 "membership" interest which allows the use of each unit space for mobile home purposes. Typically the recordation of a deed restriction is required to notify future owners or occupants of the new mobile/manufactured home of the permit requirements. However, the mobile home owner does not own the land on which its unit lies and, therefore, cannot record a deed restriction against that real property; in addition, the property owner (Capistrano Shores, Inc.) has indicated that it will not agree to record a deed restriction for the applicant. Therefore, an amendment to the occupancy agreement between the landowner and the applicant is necessary to ensure that future owners or occupants are aware of the permit requirements. The occupancy agreement amendment would not apply to the entire parcel of land upon which Unit 32 exists, but would apply specifically to Unit 32, with the intention of providing future manufactured home owners notice of the special conditions imposed on this permit for the installation/construction of the new manufactured home. An amendment to the mobile home owner's occupancy agreement must be executed by the applicant for Unit 32, and must indicate that, pursuant to the permit for Unit 32 subject to this staff report, the California Coastal Commission has authorized development on Unit 32, subject to terms and conditions that restrict the use and enjoyment of this space 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 Response to Erosion/No Automatic Right to Protective Shoreline Construction; 3) Future Improvements; 4) Permit Compliance; 5) Construction Best Management Practices; 6) Landscaping; 7) Bird Strike Prevention; 8) Proof of Legal Ability to Comply with Conditions; and 9) Occupancy Agreement.**

Commission staff recommends **approval** of the coastal development permit as conditioned.

Note: Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	5
II. STANDARD CONDITIONS.....	5
III. SPECIAL CONDITIONS	6
IV. FINDINGS AND DECLARATIONS	9
A. Project Description and Background	9
B. Visual Resources.....	11
C. Hazards	14
D. Public Access	19
E. Marine Resources and Water Quality.....	21
F. Local Coastal Program	23
G. California Environmental Quality Act (CEQA)	24
APPENDIX A- SUBSTANTIVE FILE DOCUMENTS	24

EXHIBITS

[Exhibit 1 – Project Site](#)

[Exhibit 2 – Plans and Elevations](#)

[Exhibit 3 – Visual Analysis](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit No. 5-19-1178 for the proposed project 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. 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 would substantially lessen any significant adverse impacts of the development on the environment.

II. 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 applicant 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 of 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 applicant 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 the applicant's mobile/manufactured home space (Unit 32) 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 Response to Erosion/No Automatic Right to Protective Shoreline Construction.**

No repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device protecting the mobile home park (Capistrano Shores Mobile Home Park) owned by Capistrano Shores Inc., is authorized by this coastal development permit (the "Permit").

By acceptance of this permit, the applicant, on behalf of itself and all successors and assigns to the applicant's mobile home space (Unit 32), acknowledges that (a) Unit 32 and any structures within that space may become threatened in the future (by floods, wave uprush, tsunami, sea level rise, etc.) and (b) the revetment and bulkhead owned by Capistrano Shores, Inc., that currently protect the entire park, may not continue to provide the protection that they currently provide unless they can be repaired, maintained, enhanced, or reinforced in the future. However, the applicant, on behalf of itself and all successors and assigns, further acknowledges that expansions or alterations thereof require a Coastal Development Permit, which the Commission may deny if future requests for such expansions or alterations are inconsistent with the lawful application of the Coastal Act as articulated in the ruling of the Orange County Superior Court in Capistrano Shores Property LLC v. California Coastal Commission, Case No. 30-2015-00785032-CU-WM-CJC.

By acceptance of this permit, the applicant further acknowledges and agrees on behalf of itself and all successors and assigns that it shall remove the development authorized by this Permit (including the residence, foundations, patio covers, etc.) if any government agency has issued a permanent and final order that the structure is not to 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 become dislodged or dislocated onto 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.

3. **Approved Development - Permit Compliance.** The permittee shall undertake development in accordance with the approved final plans/proposal, subject to all the requirements of all conditions herein, for the installation of a new mobile/manufactured home with a height of no greater than 16 feet (as measured from the frontage private road, Senda de La Playa) and a variable pitched roof. Any proposed change or deviation from the approved plans shall be submitted to the Executive Director to determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
4. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-19-1178. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-19-1178. Accordingly, any future improvements to the mobile home or the space pursued under this Coastal Development Permit No. 5-19-1178, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-19-1178 from the Commission or shall require a new, additional coastal development permit from the Commission or from the applicable certified local government.
5. **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.
- (8) 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.

6. Landscaping – Drought-Tolerant, Non-Invasive Plants.

- A. Vegetated landscaped areas shall only consist of native plants or non-native drought-tolerant plants, which are non-invasive. 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.water.ca.gov/wateruseefficiency/docs/wucols00.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).
- B. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

7. Bird Strike Prevention.

- A. Ocean front deck railing systems, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless they contain UV-reflective glazing that is visible to birds or appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliqués used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliqués. All materials and appliqués shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the

Executive Director.

- B. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Occupancy Agreement.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the landowner and the applicant have executed an Amendment to the Occupancy Agreement for the applicant's mobile home space (Unit 32), (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 Unit 32, subject to terms and conditions that restrict the use and enjoyment of the manufactured home and related accessory structures located on Unit 32; 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 Unit 32. 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 Unit 32 of the mobile home park so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on Unit 32. Notwithstanding the foregoing, the landowner and lessee may, at their discretion, extend, assign, or execute a new Occupancy Agreement, providing that the Occupancy Agreement Amendment provision required under this Permit Condition may not be deleted, altered or amended without prior written approval of the Executive Director of the Coastal Commission or by approval of an amendment to this coastal development permit by the Commission, if legally required.

9. 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 DESCRIPTION AND BACKGROUND

The applicant is proposing the removal/demolition of a 1,440-square-foot, 13.5-foot high one-story mobile home, and the installation of a 1,625-square-foot, 16-foot high, one-story manufactured home with an above-ground concrete block pier foundation, as well

as a 78-square-foot shed along the side yard, a patio on the seaward side, fencing (including a six-foot high glass fence with applied or etched grid), drainage improvements, and minimal landscaping. The proposed oceanfront patio will be adjacent to an approximately 10-foot wide perched beach inland of a timber bulkhead and rock revetment that exists roughly along the seaward limits of the applicant's mobile home space (Unit 32). Drainage will be diverted into a percolation pit and to the street's main storm drain system. Project plans are included as [Exhibit 2](#). The applicants are not proposing any work to the existing bulkhead and rock revetment. The Park provides two parking spaces per unit space.

The project site (Unit 32) is located between the first public road and the sea and is seaward of the Orange County Transportation Authority (OCTA) railroad tracks. The address is 1880 North El Camino Real, Unit 32, San Clemente, in the Capistrano Shores Mobile Home Park ("Park") ([Exhibit 1](#)). The Park is an existing 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 zoned "OS2 Privately Owned Open Space" (intended for open space – no formal easement) and designated Open Space in the City of San Clemente Land Use Plan (LUP).

The subject site is fronted by a narrow perched beach inland of an older timber bulkhead that exists roughly along the seaward limits of the unit space. A quarry stone rock revetment exists seaward of the bulkhead and between the proposed development and the Pacific Ocean. The pre-Coastal Act timber bulkhead and rock revetment exists along the entire length of the Capistrano Shores Mobile Home Park and protects the Park from direct wave attack. The applicant has provided a Coastal Hazard and Wave Runup Study prepared by GeoSoils Inc. for the site and the proposed development.

The applicant owns the existing and proposed mobile/manufactured home but does not own the land under the existing unit (where the proposed unit would be placed) or the land upon which the landowner has built the bulkhead/revetment. The 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 the applicant the use of a unit space for mobile home purposes. The applicant, as a "member" of the corporation, is only responsible for repair/maintenance of its own mobile/manufactured home, ancillary development, and the landscaping on its unit. The corporation provides for all necessary repairs, maintenance, and replacements to the rest of the mobile home park common areas, including the bulkhead and rock revetment.

Vertical public access to this beach is not available along the length of the Park. The nearest vertical public access is available at the North Beach access point to the south of the Park and to the north at the Poche Beach access point. In addition, lateral access along the beach in front of the mobile home park, which includes the bulkhead and rock revetment, is only accessible during low tide. During high tide, the waves crash 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 beach area seaward of the Unit Space property lines extends 30 feet from the bulkhead to the ordinary high tide line.

According to the cross-sections of the rock revetment provided in the Coastal Hazard and Wave Runup Study prepared by GeoSoils, the rock revetment begins immediately adjacent to the wood bulkhead and extends approximately 20 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.

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 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.

Since the City of San Clemente does not have a fully-certified LCP, the standard of review is the Chapter 3 policies of the Coastal Act. While the certified San Clemente Land Use Plan (LUP) is not the standard of review, the LUP policies provide guidance.

B. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

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 certified San Clemente Land Use Plan echoes the priorities expressed in the Coastal Act for preservation of scenic and visual qualities of coastal areas:

Policy VII.3 states, in relevant part:

The Scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be site and designed:

- a. To protect public views to and along the ocean and scenic coastal area.
- b. To minimize the alteration of coastal bluffs and canyons.
- c. Where feasible, to restore and enhance visual quality in visually degraded areas.

Policy XII states:

Maintain the visual quality, aesthetic qualities and scenic public views in the Coastal Zone.

Policy XII.4 states:

Preserve the aesthetic resources of the City, including coastal bluffs, visually significant ridgelines, and coastal canyons, and significant public views.

Policy XIV.8 states:

Maintain a healthy coastline, preventing degradation of the community's visual and environmental resources.

Policy XII.9 states:

Promote the preservation of significant public view corridors to the ocean.

In past Commission actions pertaining to development in the Park, the Commission has found that development in the Park must be sited and designed to protect views of the coast from public vantage points (e.g. public trails and public recreational areas) and to be visually compatible with the heights of the rest of the exclusively single-story homes in the low scaled mobile home park. The prevailing height of development in the Park is approximately 13-14 feet. In addition, it is through the coastal development permit process that the Commission ensures that proposed development is consistent with the Coastal Act, including that the development does not adversely impact views to and along the coast.

The beach in front of the Park is narrow and varies from a few feet to 70 feet wide depending on the season. During low tide, this beach is used by sunbathers and beach strollers, and is a popular surfing location. However, high tide extends to the existing rock revetment, which makes public access difficult or impossible during high tide. When public access is available, looking inland from this beach, views of the coastal bluffs at the Marblehead Coastal site are already obstructed by the existing one-story mobile homes at the Park. Therefore, the applicant's proposed structures will not result in further degradation of views of the coastal bluffs from the beach.

The proposed development is located immediately seaward from the public trails along the coastal bluffs inland of the first public road, at the Marblehead coastal site ([Exhibit 3](#)). The Marblehead is a 247-acre, large-scale, mixed-use development (CDP No. 5-03-013) approved by the Coastal Commission in 2003. That CDP included extensive public trails to and along the bluffs with view areas, public parks, preservation of coastal canyons and bluffs and riparian areas. Because of the close proximity to the trails, any redevelopment of the Park has the potential to significantly impact public views from the trails.

As previously stated, the standard of review is the Chapter 3 policies of the Coastal Act. Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The applicant is proposing to replace a one-story mobile home with a 16-foot high, 1,493-square-foot mobile/manufactured home at the applicant's mobile home space (Unit 32),

resulting in an increase in bulk and height. Unit 32 is located at the southern portion of the center of the Park. Unit 32 is visible from the beach, from El Camino Real, and from along the public trails that extend along the coastal bluffs at the Marblehead Coastal site. The viewshed from the public trails provides views of major scenic resources including ocean white water and blue water, ocean horizon, shoreline and coastline, beach, headlands, the San Clemente Pier, and coastal bluffs.

The proposal will result in a mobile home height increase of three feet and an increase in floor area of 185 square feet. The proposed three-foot increase in development height from 13 feet to 16 feet, however, is consistent with the permitted height for residential structures within the Park located in closer proximity to public areas that provide public coastal views. Through past permit action (e.g. CDP Nos. 5-11-033, 5-16-0265, 5-16-0624, 5-18-0325), the Commission has concluded that a development height of 16 feet for unit spaces located even closer in proximity to public vantage areas would not have a significant adverse impact on the ocean viewshed from public areas. Based on staff's visual analysis, 16 feet would not have a significant adverse visual impact on coastal views from the intersection and trails along Marblehead.

Additionally, at the proposed height and design, the proposed mobile/manufactured home will still preserve the relatively low-scale line of mobile homes in the Park, which allows views of the shoreline and scenic coastal areas from many public vantage areas, such as from the public City trails and public children recreational areas at the Marblehead coastal site, as well as from the public view corridor on the public right-of-way at the Avenida Pico and El Camino Real (ECR) intersection. The mobile homes in the Park are designed with pitched roofs varying from a low and flat angle of approximately 10 to 22 degrees. The existing pitched roofs add to the character of the Park and provide open space above and between the homes, which allows for enhanced coastal views from the public trails, parks, and ECR. Allowing homes to a maximum height of 16 feet with a flat roof would adversely impact the community character and adversely impact coastal views. However, the proposed mobile home subject to this application is designed with a maximum height of 16 feet and a pitched roof, consistent with the community character of the Park. Therefore, it would not significantly adversely impact coastal views.

The proposed mobile/manufactured home also meets the structural and deck stringline requirements, and minimizes the bulk of the structures that can be seen from the public areas such as the public trails along the Marblehead bluffs.

Staff is recommending that the Commission approve the proposed development as proposed. The Commission finds the proposed unit at Unit 32 is sited in a manner that would minimize its visibility from public areas and will not have a significant adverse impact on visual resources. Therefore, the Commission finds the proposed mobile home at Unit 32 is consistent with Section 30251 of the Coastal Act, as well as the relevant policies of the City's Local Coastal Land Use Plan.

The applicant is also requesting approval of ancillary development, such as drainage improvements, minimal landscaping, a shed, fencing, and patio areas. These

components of the proposed projects will not be more visible than the existing mobile home and existing ancillary development in the side yards, will not increase the height of the original building, and the siting of these proposed hardscape improvements meet the LUP structural and first-floor deck stringline policy for new infill construction on a beachfront property and all other City standards as they extend no farther seaward than the original structures. These components of the proposal will avoid cumulative adverse impacts on visual resources.

Special Condition 3 is imposed to ensure that all development occurs in compliance to the proposal, subject to all the requirements of all conditions herein, for the installation of a new mobile/manufactured home with a height of no greater than 16 feet and a variable pitched roof. In addition, pursuant to sections 13250(b) and 13252(a)-(b) of the Commission's regulations, the Commission imposes **Special Condition 4** requiring a CDP amendment or new CDP for any future improvements or repair and maintenance to the development approved under the subject permit and/or any new development to adequately protect public visual resources. As conditioned, the Commission finds the proposed project will not have a significant adverse impact on visual resources and is consistent with Section 30251 of the Coastal Act, as well as the relevant policies of the City's certified Land Use Plan.

C. 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.

Section 30235 of the Coastal Act states in relevant part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

The certified San Clemente Land Use Plan (LUP) also contains policies to address hazard areas. Policy VII.5 of the LUP reflects Section 30253 of the Coastal Act verbatim.

LUP Policy XV.4 states in relevant part:

Designate lands for protection of significant environmental resources and protection of life and property from environmental hazards...

Revetment/Bulkhead – Existing Conditions

The applicant has provided a Coastal Hazard and Wave Runup Study prepared by GeoSoils, Inc. for the project site. The study states that the shore protection for the site 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 10-foot wide perched beach that runs the length of the mobile home park. The revetment is composed of meta-volcanic quarry stones that range in size from less than ½ ton to approximately 11 tons, with an average size of approximately 5 tons. According to the GeoSoils report, which used the National Geodetic Vertical Datum 1929 (NGVD 29), the top of the revetment varies from +13.7-ft. NGVD29 to +14.7-ft. NGVD29 with an average elevation of about +14 ft. 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 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 (Study) conducted by GeoSoils, Inc., written in 2019, ascertains that mobile homes are typically constructed of lighter material with a shorter design life of less than 50 years if situated on the oceanfront (as compared to non-mobile homes). In addition, the study states that the mobile homes are unique in that the structures are “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 SLR [Sea Level Rise], and plus 4 feet of SLR...the maximum CCC SLR prediction for the year 2050 (31 years from now) is 2 feet and the maximum CCC SLR for the year 2082 (63 years from now) is about 4 feet.”

Using the two above-mentioned SLR estimates, the study took into account ocean water depths and elevations, wave heights, the height of the revetment, the height of the timber bulkhead, the calculated overtopping rate of the revetment under both scenarios, and concluded that “the development is reasonably safe from coastal hazards associated with wave runup even under the most onerous SLR conditions in the next 80 years. In the event the water does reach the mobile home and associated improvements, the water velocity will [be] insufficient to cause significant damage.” The Study continues:

“Under the extreme, worst case (80 year) oceanographic conditions, the revetment can be overtopped at a rate of about 2.3 ft³/s-ft. This is less than one foot of water coming over the top of the revetment for each wave (18 second period). The area between the top of the revetment and the structure will partially dissipate the overtopping waters.”

Moreover, the Study continues:

“Wave runup and overtopping may impact the site over the design life. The elevation of the mobile home above the site grade and top of the shore protection, along with flood resistant foundation type, will protect the development from flooding, inundation, or damage. The presence of the shore protection will prevent shoreline erosion from impacting the development...The project will not impact coastal resources considering sea level rise. The mobile home can be moved or raised if coastal hazard impacts become too great.”

Staff concurs with the Study that a 40- to 50-year time period is a reasonable upper limit for measuring sea level rise impacts, and this time period is appropriate for a mobile home development, as the expected life of a mobile home structure can reasonably be estimated at 50 years. In addition, a mobile home unit can be relocated in the event of a threat. For purposes of mobile home replacements, the Commission’s staff coastal engineer concurs that an upper limit of a 40- to 50-year time period to measure sea level rise impacts 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 mobile homes [at Capistrano Shores Mobile Home Park] are reasonably safe from the short term erosion hazards. It is unlikely that additional shore protection will be necessary to protect the [subject] mobile home over the economic life of the structure.”

The Study found that the proposed mobile home is reasonably safe from flooding over its economic life. The analyses show that the site has the potential to be flooded on occasion from waves breaking on the revetment, overtopping the bulkhead and reaching the mobile home unit. 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 mobile home park property from the main wave attack.

Furthermore, the entire Park is located within the tsunami inundation zone according to the California Emergency Management Agency (CalEMA). **Special Condition 1** places the applicants and subsequent owners on notice (through an amendment to the occupancy agreements per **Special Condition 8**) that this is a high hazard area and that by acceptance of CDP No. 5-19-1178, 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.

Under CDP No. 5-19-1178, the applicant does not propose any changes or improvements to the existing bulkhead/revetment along the portion that protects the mobile home park. Any repair or maintenance, enhancement, reinforcement or other activity to the existing bulkhead/revetment is the responsibility of Capistrano Shores Inc. The applicant is only responsible for repair/maintenance to the mobile home, landscape, and ancillary structures (i.e. decks, patios, and garden walls) on Unit 32. In the future, Capistrano Shores Inc. would be the applicant for a CDP for any modifications to the existing bulkhead/revetment that may be necessary to protect existing structures. Although the bulkhead/revetment that currently protects the mobile home park may require repair, maintenance, enhancement, or reinforcement in the future, **Special Condition 2** requires that the applicant acknowledge that it does not own the existing shoreline protective device and the shoreline protective device is not on Unit 32, and that the Commission retains full power and discretion to prohibit any expansions or alterations thereof that would be inconsistent with the lawful application of the Coastal Act, considering the Coastal Act's policies and goals.

Regarding the latter point, a recent Orange County Superior Court opinion issued in 2016, Capistrano Shores Property LLC v, Cal. Coastal Com., Case No. 30-2015-00785032-CU-WM-CJC (the "Court Opinion") provided guidance on the Commission's ability to condition a similarly-situated project proposal in the Park with respect to shoreline protection, taking into consideration future coastal hazards. **Special Condition 2** has been drafted in conformance with, and in reference to, that Court Opinion. Although the Court Opinion involved the owner of Unit 12 in the Park and therefore is not binding on the current applicant as a matter of law, the erosion and flooding hazards at issue are identical for similarly-situated mobile home owners proposing similar development projects in the same Park. Therefore, in drafting Special Condition 2 for the current project proposal, staff deemed it reasonable to rely on and reference the Court Opinion.

Given that the applicant does not have an automatic right to expand or alter the revetment in ways that are inconsistent with lawful application of the Coastal Act (and the park owner may not choose to or be able to do so), the mobile home may need to be altered or removed in the future either in response to changes to the revetment or to threats posed by shoreline hazards. Therefore, **Special Condition 2** also establishes requirements related to response to future coastal hazards, including relocation and/or removal of structures that may be threatened in the future if any government agency has issued a permanent order that the structure is not to 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, and in the event that portions of the development fall to the beach before they are removed, requiring the applicant or successor(s) to 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 shoreline location of the proposed development, pursuant to sections 13250(b) and 13252(a)-(b) of the Commission's regulations, the Commission imposes **Special Condition 4** requiring a coastal development permit amendment for any future

improvements or repair and maintenance to the development approved under the subject permits and/or any new development.

Because the applicant does not own the land under Unit 32, the applicant cannot record a deed restriction, and the property owner (Capistrano Shores, Inc.) will not agree to record a 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. An Occupancy Agreement Amendment between the land owner and the applicant will serve to notify future owners or occupants of the new mobile/manufactured home of the permit requirements, with the amendment stating that: (1) pursuant to this permit, the California Coastal Commission has authorized the placement of a mobile/manufactured home and related accessory structures, including without limitation, manufactured home foundation system and patio covers, on Unit 32, subject to terms and conditions that restrict the use and enjoyment of the manufactured home and related accessory structures located on Unit 32; and (2) the Special Conditions of this permit are restrictions on the use and enjoyment of the manufactured home and related accessory structures located on Unit 32. Thus, the Commission imposes **Special Condition 8**.

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 9**, requiring the applicant to demonstrate its legal ability or authority to comply with all the terms and conditions of the subject CDP No. 5-19-1178, prior to issuance of said 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 its CDP.

Thus, as conditioned, the permit ensures that any prospective future owners of any of the development approved on Unit 32, pursuant to the 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 32 is subject, and the Commission's immunity from liability. The amendment to the occupancy agreement will indicate that the California Coastal Commission has authorized development on Unit 32, subject to terms and

conditions that restrict the use and enjoyment of Unit 32 only and does not restrict the remainder of the land that the mobile home park occupies.

Since the scope of the development in this case is limited to Unit 32, the Commission has focused discussion on the fact that its authorization for placement of a mobile/manufactured home on that space (and ancillary development) does not necessarily mandate or support any future requests for repair, maintenance, or expansion of shoreline protection if doing so would be inconsistent with the lawful application of the Coastal Act, considering the Coastal Act's policies and goals. 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/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 coastal and recreational resources including, but not limited 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 Sections 30253 and 30235 of the Coastal Act, as well as with the relevant policies of the City's certified Land Use Plan.

D. 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, ...

The San Clemente Land Use Plan contains policies regarding public coastal access, including the following:

LUP Policy IX.14 mirrors Section 30212 of the Coastal Act.

LUP Policy IX.15 states in relevant part:

New developments lying between the first public roadway and the shoreline shall provide both physical and visual access to the coastline.

The new mobile/manufactured home will be located between the first public road and the sea directly seaward of the OCTA railroad tracks. Vertical public access is not currently available through the Capistrano Shores Mobile Home Park ("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 Park. Vertical public access is also available at the North Beach public access point to the south of the mobile home park.

Regarding shoreline setbacks, the proposed project is sufficiently setback to be consistent with that 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 or retreat efforts within the mobile home 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).

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 the project site is narrow, varying from a few feet to 70 feet wide depending on the season. High tide extends up to the existing rock revetment, which makes public access difficult to impossible. 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 depriving the beach of sand re-nourishment.

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. There is also 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 (among other coastal resource impacts), the applicant would be taking a risk by relying on an expectation to future alterations to the existing revetment which may not be approved. To adequately protect public access, recreation, and shoreline sand supply, especially in light of probable future sea level rise, **Special Condition 2** requires the applicant to acknowledge that it has no future automatic right to a shoreline protective device. It further requires the applicant to acknowledge the risk that, although the existing revetment may warrant alterations in the future to respond to coastal hazards, the Commission retains the authority to deny any future requests for such expansions or alterations that are inconsistent with the lawful application of the Coastal Act, considering the Coastal Act's policies and goals, as articulated in the Court Opinion.

As conditioned, the Commission finds the development consistent with the public access and recreation policies of Chapter 3 of the Coastal Act as well as the relevant policies of the City's certified Land Use Plan.

E. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Policies XIV.1, XIV.2, XV.2 and XV.3 of the certified San Clemente Land Use Plan reflect Sections 30230, 30231, 30240(a), and 30240(b) of the Coastal Act verbatim, respectively.

LUP Policy XIV.5 states:

Maintain and enhance the City's beaches and marine resources

LUP Policy XIV.8 states:

Maintain a healthy coastline, preventing degradation of the community's visual and environmental resources

LUP Policy XV.4 states:

Balance the preservation of the City's habitat areas with new development

Water Quality & Landscaping

To protect water quality from construction related activities, the Commission imposes construction-related requirements and best management practices under **Special Condition 5** in order to minimize adverse construction-related impacts upon marine resources and for erosion control.

Drainage from the predominantly paved site slopes away from the ocean and toward the street where water runoff from the site is directed to a dry well or percolation box for onsite water infiltration. The applicant will incorporate minor landscaping in contained planters in order to minimize water use and water runoff from the subject site. **Special Condition 6** requires the applicant utilize drought-tolerant, non-invasive plant species in order to minimize water use and water runoff from the subject site.

The existing development minimizes 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 development 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.

Plexiglas or Glass Wind Screens

The proposed development includes new glass railings around the decks/patios on the seaward side of the project site. Glass railing systems, walls or wind screens are known to have adverse impacts upon a variety of bird species. Birds are known to strike these glass walls causing their death or stunning them, which exposes them to predation. The applicant is proposing a six-foot high, half-inch thick tempered glass fence with an etched or painted grid to ward off bird impacts. To ensure bird strike prevention, **Special Condition 7** requires that the applicant use a material for the glass railing that is designed to prevent creation of a bird strike hazard.

Conclusion

The Commission, therefore, finds that, as conditioned to require construction-related requirements and best management practices, non-invasive drought-tolerant landscaping, and to incorporate glass walls or windscreens that will prevent bird strikes, the development will be consistent with Sections 30230, 30231, and 30240 of the Coastal Act, as well as the relevant policies of the San Clemente Land Use Plan.

F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a CDP 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 certified Land Use Plan has specific policies addressing the protection of scenic and visual qualities of coastal areas, public recreation, and coastal access. As stated in the previous sections of this report, public coastal views from public facilities such as the trails and park along Marblehead bluffs are significant public resources and, under the LUP, are required to be protected. The proposed development will not have a significant adverse impact on the ocean viewshed from public areas, thereby minimizing negative impacts to visual resources. The project will also not have any negative effects on public recreation or coastal access.

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, as conditioned, 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 approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). In order for the Commission's program to qualify for that certification, Section 21080.5(d)(2)(A) of CEQA required that the program be designed such that it would not approve any development as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. The Commission's regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary as the functional equivalent of CEQA review. (14 CCR § 15251(c).)

As stated in the previous sections of this report, the proposed development will be sited and designed with a height that will avoid significant adverse visual impacts and will protect the public views from nearby public trails, parks and a major roadway (Avenida Pico) that leads to the public beach and El Camino Real, which is the first public road parallel to the sea.

In addition, in order to ensure compliance with resource protection policies of the Coastal Act, the proposed development is conditioned to mitigate any potential adverse impacts to coastal resources and public access. The conditions are: **1) Assumption of Risk; 2) Future Response to Erosion/No Automatic Right to Protective Shoreline Construction; 3) Future Improvements; 4) Permit Compliance; 5) Construction Best Management Practices; 6) Landscaping; 7) Bird Strike Prevention; 8) Proof of Legal Ability to Comply with Conditions; and 9) Occupancy Agreement.**

As conditioned, the proposed development is consistent with the visual resource protection, hazards, public access, and water quality 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 development, as conditioned, 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. CDP Application No. 5-19-1178
3. CDP Nos.: 5-14-1582 (Capistrano Shores Property, LLC); 5-10-180 (Barth); 5-11-033 (Christian); 5-16-0265 (Capo Surf No. 36, LLC); 5-16-0624 (Wills Revocable Living Trust); and 5-18-036 (McIntosh)