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STAFF REPORT: MATERIAL AMENDMENT

Application No.: 5-03-013-A10

Applicants: Villa San Clemente, LLC

Agents: Mark McGuire, Esq.

Project Location: 315 & 395 West Avenida Vista Hermosa (AVH) and adjacent to the central canyon, San Clemente (Orange County) (APNs 691-422-05, 691-422-06, 691-422-07, 691-422-08 and 691-422-09)

ORIGINAL PROJECT DESCRIPTION: Residential and commercial development, public park, trails and open space and associated infrastructure including roads and utilities on the 201.38-acre portion of the Marblehead property within the coastal zone. Included are a property subdivision and construction of 313 single family homes on 44.24 acres, 141,506 square feet of commercial space in ten commercial buildings on 22.3 acres, 15.43 acres of public parks; 95.04 acres of public and private open space and pedestrian and bicycle trails; 12.43 acres of private streets; 10.91 acres of public streets; more specifically described in Section II.A. of this staff report. The application also requests follow-up approval for emergency bluff stabilization grading that occurred in the early 1990s.

DESCRIPTION OF PROPOSED AMENDMENT: Request to amend Special Condition 24 of the underlying permit to allow non-conforming uses (medical offices and an urgent care facility) on the ground floor of the commercial buildings to be constructed on parcels No. 691-422-05, 691-422-06, and 691-422-07 (Lots 319 - 321). This amendment would also increase the square footage of Building 9 (315 W. AVH) from 5,000 square feet to 6,600 square feet; construct approximately 4-ft. wide public trail segments (approximately 400 ft. and 585 ft. in length, respectively) on both sides of the central canyon (APNs: 691-422-08 and 691-422-09) to the southeast of Lots 319 - 321; construct an 1,100-sq. ft. ADA-compliant raised overlook (public vista area) with landscaping for enhanced views of the canyon habitat and ocean views; and install a water station.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The Coastal Act places a priority on both providing public access and public recreation opportunities. The subject amendment proposes to:

- (i) amend Special Condition 24 to allow nonconforming uses (medical offices and an urgent care facility) on the ground floor of commercial buildings (Buildings 9 – 11) to be constructed on parcels No. 691-422-05, 691-422-06, and 691-422-07 (or Lots 319 – 321);
- (ii) increase the square footage of Building 9 (315 W. AVH) from 5,000 square feet to 6,600 square feet;
- (iii) construct approximately 4-foot-wide public trail segments (approximately 400 feet and 585 feet in length, respectively) on both sides of the central canyon to the southeast of Lots 319 – 321;
- (iv) construct an 1,100-sq. ft. ADA-compliant raised overlook (public vista area) with landscaping for enhanced views of the canyon habitat and ocean views; and
- (v) install a water station (bottle filler and pet bowl).

To ensure that public access and public recreation opportunities are preserved and protected, staff recommends that the Commission approve the proposed amendment, with conditions which 1) permits a one-time relief to allow the requested medical office and urgent care facility uses on the ground floor of the buildings to be constructed on parcels 691-422-05, 691-422-06, and 691-422-07; 2) requires the applicant to record a public access deed restriction, restricting the use and enjoyment of parcel Nos. 691-422-08 and 691-422-09, and providing public access, recreational uses, and public amenities in perpetuity; and 3) requires the applicant to record a deed restriction against the property, referencing all of the special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. In addition, Section II.A of this staff report carries forward the requirements of the underlying conditions of the permit (5-03-013).

The standard of review is the Chapter 3 policies of the Coastal Act.

PROCEDURAL NOTE – Coastal Development Permit Amendments:

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The amendment request involves changes to the previously authorized project. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

Section 13166 of the Commission Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen the intent of the previously approved permit. The proposed amendment would not lessen the intended effect of 5-03-013, as amended, because the project would mitigate for potential impacts to visitor-serving uses. Therefore, the Executive Director accepted the amendment request for filing.

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EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plans](#)

I. MOTION AND RESOLUTION

Motion: I move that the Commission **approve** Coastal Development Permit Amendment No. 5-03-013-A10 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves the coastal development permit amendment for the proposed development and adopts the findings set forth below on grounds that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment 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 amended 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 amended development on the environment.

II. CHANGES TO CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number 5-03-013-A10. All of the Commission's adopted standard and special conditions, and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions, continue to apply in their most recently approved form unless explicitly changed in this action. Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-03-013, as amended, remain in effect. New standard and special condition language is shown in underline.

STANDARD CONDITIONS

2. **Expiration.** If development has not commenced, the permit amendment 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 amendment must be made prior to the expiration date.

SPECIAL CONDITIONS

24. Inland Commercial Site Restrictions

- A. Non-visitor serving uses shall be prohibited on the main pedestrian level of all commercial buildings located on designated commercial lots in Tract 8817 [Lots 315 to 327 depicted on PFM 8817], or portions thereof, within the coastal zone, excluding Lots 319-321, upon which a one-time relief shall allow the non-visitor serving uses proposed in, and subject to, Permit Amendment No. 5-03-013-A10.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide written evidence of a reciprocal/shared parking agreement which ensures that all proposed and future uses in the commercial center shall have use of all parking spaces within commercial lots 315 to 327 (depicted on PFM 8817).
- C. As proposed by the applicant, the general public shall be allowed to park within the parking spaces within commercial lots 315 to 327 (depicted on PFM 8817) at the same times and under the same conditions as the visitors to the shopping center. Parking validation from the commercial center shall not be required to park within the commercial parking area.
- D. If the regional commercial center is constructed in sub-phases, prior to the occupation of any portion of each sub-phase, the permittee shall demonstrate to the Executive Director that sufficient parking to support that sub-phase, in combination with demand and available parking associated with any prior sub-phase, has been provided on-site. At minimum, such demonstration shall consist of a parking analysis prepared by qualified personnel and evidence of approval of the proposed quantity of parking from the City of San Clemente.
- E. Structures (enclosed) and appurtenant buildings on commercial lots adjoining canyons within Lots 321 to 323 (depicted on PFM 8817) shall be setback a minimum of 20 feet from the slope edge created as a result of grading approved under Coastal Development Permit 5-03-013. Slope edge shall be defined as the upper termination of a canyon slope. In cases where the top edge of the canyon is rounded away from the face of the canyon slope as a result of grading approved by this permit or erosional processes related to the presence of the slope, the slope line or edge shall be defined as that point nearest the canyon slope beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon slope. In a case where there is a steplike feature at the top of the canyon slope, the landward edge of the topmost riser shall be taken to be the slope edge.
- F. The heights of commercial structures and appurtenances shall be as identified in the final plans approved by the Executive Director. Future development shall conform with these heights unless such heights are changed by an amendment to this permit, unless the Executive Director determines that no amendment is required.

38. Final Revised Plans.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for review and approval of the Executive Director two (2) full sized sets of final detailed plans with dimensions, approved by

the City of San Clemente, which shall substantially conform with the project plans received by the Commission's South Coast District Office on August 9, 2021.

- B. The applicants shall undertake development in accordance with the approved 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 the coastal development permit unless the Executive Director determines that no amendment is legally required.

39. Public Access Deed Restriction

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the applicant's proposal, the permittee shall execute and record a document(s) in a form and content acceptable to the Executive Director, restricting the use and enjoyment of the parcels (APNs: 691-422-07, 691-422-08 and 691-422-09), and providing public access, recreational uses, and public amenities in perpetuity as shown on [Exhibit 2](#).

1. Public Access Areas. The deed restriction shall reflect that the permittee shall provide public access for recreational uses consistent with the terms and conditions of this coastal development permit amendment in the following locations (as generally shown in [Exhibit 2](#)):

- a. Trails – approximately 4-ft. wide trail segments extending approximately 400 ft. and 585 ft. in length, respectively; and
b. ADA-Compliant Overlook (vista area) – vista area on Lot 321 and adjacent to the central canyon.

2. Development and Use Restrictions. No development, as defined in Section 30106 of the Coastal Act, shall occur within any of the public access areas described in subsection A.1 of this condition, and as described and depicted in [Exhibit 2](#) of this staff report, except for the following development authorized by this coastal development permit amendment:

Grading and construction necessary to complete the public access amenities; water station, drought-tolerant non-invasive vegetation; installation of public access; and maintenance and repair of approved development within the restricted area(s) approved by this coastal development permit.

- B. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated public access area(s) prepared by a licensed surveyor based on an on-site inspection of the public access area(s). The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

40. Deed Restriction. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (5-03-013-A10), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that,

pursuant to this permit, as amended, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. This deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition 34 of Coastal Development Permit 5-03-013 (approved on June 11, 2003) which deed restriction is recorded as Instrument No. 2006000184556 (dated March 21, 2006) in the official records of Orange County.

III. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND DESCRIPTION

1. Project Site

The Marblehead site is a 247.88-acre property (201.38 acres in the coastal zone) located between El Camino Real (a.k.a. Pacific Coast Highway) to the southwest, Avenida Pico to the southeast, the Interstate 5 freeway to the northeast, and the Colony Cove residential subdivision to the northwest (**Exhibit 1**). The site is roughly square and consists of an upland bluff top mesa which is incised by one large canyon (Marblehead Canyon) and several smaller canyons and drainages. The southwestern boundary of the project site (along El Camino Real) consists of 70- to 100-foot-high coastal bluffs that are intersected by the mouths of the on-site canyons and drainages. The bluffs are separated from the beach by El Camino Real, the train tracks, and a private gated mobile home park (Capistrano Shores); therefore, the bluffs do not provide direct access to the beach, nor is the previously graded coastal bluff presently subject to marine processes. The closest beach access is at North Beach, which is across the street and south of the bluffs. North Beach is a popular beach area that contains public beach parking and a Metrolink train station. The project site is the last large privately owned area of land in the coastal zone in the City of San Clemente, and among the largest privately owned lands in coastal Orange County.¹

In 2003, the Commission approved Coastal Development Permit 5-03-013, with conditions, for a comprehensive residential and commercial development, public park, trails and open space and associated infrastructure including roads and utilities on the 247.88-acre Marblehead site in the City of San Clemente, Orange County. Subsequent amendments (see site history below) have modified the project. While the project subject to the underlying permit is an integrated development, about 201.38 acres are located within the coastal zone, therefore, only the portion of the development in the coastal zone required a coastal development permit. The project, as amended, includes a property subdivision and

¹ Bolsa Chica in Huntington Beach and Banning Ranch in the Newport Beach area are larger at approximately 308 and 412 acres, respectively.

construction of up to 308 single family residences on 44.24 acres; 77,576 square feet of commercial space in several commercial buildings on 22.3 acres; 15.43 acres of public parks; 95.04 acres of public and private open space and pedestrian and bicycle trails; 12.43 acres of private streets; and 10.91 acres of public streets.

The proposed amendment (-A10) specifically affects the buildings on parcel Nos. 691-422-05, 691-422-06, and 691-422-07 (with the corresponding addresses: 315 & 395 West Avenida Vista Hermosa (AVH), San Clemente), and a portion of the adjacent central canyon all landward of West AVH (Parcel Nos. 691-422-08 and 691-422-09) as shown on [Exhibit 1 & 2](#).

2. Description of Proposed Amendment -A10:

The applicant is requesting an amendment (-A10) to CDP No. 5-03-013 to:

- (i) amend Special Condition 24 to allow nonconforming uses (medical offices and an urgent care facility) on the ground floor of commercial buildings (Buildings 9 – 11)² to be constructed on parcels No. 691-422-05, 691-422-06, and 691-422-07 (or Lots 319 – 321),
- (ii) increase the square footage of Building 9 (315 W. AVH) from 5,000 square feet to 6,600 square feet,
- (iii) construct approximately 4-foot-wide public trail segments (approximately 400 feet and 585 feet in length, respectively) on both sides of the central canyon to the southeast of Lots 319 – 321;
- (iv) construct an 1,100-sq. ft. ADA-compliant raised overlook (public vista area) with landscaping for enhanced views of the canyon habitat and ocean views; and
- (v) install a water station (bottle filler and pet bowl).

B. BACKGROUND/SITE HISTORY

On April 9, 2003, the Commission approved Coastal Development Permit (CDP) No. 5-03-013, requested by MT No. I LLC, subject to standard and special conditions, for development consisting of residential and commercial development, public park, trails and open space and associated infrastructure including roads and utilities on the 201.8-acre portion of the Marblehead property within the coastal zone. Included are a property subdivision and construction of 313 single-family homes on 44.24 acres, 141,506 square feet of commercial space in ten commercial buildings on 22.3 acres, 15.43 acres of public parks; 95.04 acres of public and private open space and pedestrian and bicycle trails; 12.43 acres of private streets; and 10.91 acres of public streets. Follow up approval for emergency bluff stabilization grading that occurred in the early 1990s was also granted. The approval was subject to 34 special conditions.

On February 17, 2005, the Commission approved CDP Amendment No. 5-03-013-A1, subject to conditions, for reconfiguration of commercial and residential lots within the previously approved subdivision; increase grading by 263,400 cubic yards including changing the foundation design of the previously approved Avenida Vista Hermosa bridge to eliminate loffelstein walls; extend sub drain; increase height of 'courtyard' residential

² Buildings 10 & 11 were combined pursuant to CDP Amendment No. 5-03-013-A9 into a 17,340 square-foot, 45-foot-high building. Building 9, as previously approved, would have been a 5,000-square-foot and 45-foot high.

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units from 24 to 30 feet; within the coastal zone, reduce square footage of commercial development from 141,506 square feet to 77,576 square feet and increase parking from 1,732 spaces to 2,276 spaces; widen Via Socorro and Los Molinos streets; widen proposed Sports Park access road and increase parking from 60 to 158 spaces; expand streetscape plant palette to include nonnative plant species; minor changes to stormdrain system; add a public park restroom; minor realignments and improvements to public trail connectivity; and eliminate deadline for dedication of nine open space lots.

On September 14, 2005, the successor-in-interest to MT No. 1 LLC, SunCal Marblehead LLC, submitted Application No. 5-03-013-A2, which was rejected by the Executive Director on October 14, 2005.

On November 18, 2005, the Commission approved CDP Amendment No. 5-03-013-A3, requested by SunCal Marblehead LLC, subject to conditions, to provide funding to partially offset the Commission's costs for its consideration of the permit application and condition compliance. This funding was to provide additional temporary personnel so that a team of permanent Commission staff could expedite the review of prior to issuance documents for the permit. Condition compliance was completed, and the permit was issued on March 27, 2006. Development commenced immediately following permit issuance.

On September 24, 2007, immaterial amendment 5-03-013-A4 was issued to allow for custom homes to be constructed on 69 of the 313 residential lots within the Marblehead Coastal project site (Lot Nos. 78 to 146 within Tract No. 8817). The previously granted CDP approved specific "production home" plans for each of the 69 lots proposed for a "custom home" designation. In place of the specific architectural plans, the applicant requested approval of Custom Lot Design Guidelines. The Custom Lot Design Guidelines set forth the parameters for construction of individually-designed homes, and also set forth parameters for the possible merging of residential lots (three lots into two lots, or two lots into one lot only). Lot mergers were approved for residential Lots 78 to 132. Any additional lot mergers would be subject to review and approval by the Executive Director of the Coastal Commission; the Custom Lot Design Guidelines also set forth the parameters for any home that is proposed on merged lots. Special development standards were established for lots 140, 145, 146, 147, 167 and 168. New production home plans were approved for lots 147, 167 and 168 to comply with the revised development standards. Finally, the native grassland planting on the westernmost boundary of the project site (near Colony Cove) was approved to be augmented with two native shrubs from the already approved plant list to soften the visual effect of two retaining walls.

On April 10, 2008, the Commission approved CDP Amendment No. 5-03-013-A5, requested by SunCal Marblehead LLC, subject to conditions, to remove five residential units from the approved plan, merge those five lots into a single lot, and construct an approximately 12,931-square-foot, approximately 26-foot high (above graded pad), private community recreation center with a multipurpose meeting room, service area, exercise room, lounge/library, manager's office, restrooms, spa center complete with men's and women's lounges, steam/sauna rooms, locker facilities, and spa rooms, exterior pool with pool deck, and parking garage. This amendment also authorized re-alignment of segments of two public trails, and the removal of approximately 2,306 linear feet of approved fencing along public trails.

In 2013, the Commission issued immaterial amendment 5-03-013-A6, allowing changes to Special Conditions 2.B and 7.A related to construction/development phasing.

In 2015, the Commission issued immaterial amendment 5-03-013-A7, requested by LV Marblehead LLC (the successor-in-interest to SunCal Marblehead LLC), to eliminate the custom lot program for 69 lots and revert to a production home program; allow the relocation and redesign of the private community recreation center; remove approximately 2,300 linear feet of fencing; small alignment adjustment of the trail in Lot M; and some changes to development at lots 207-211.

In 2017, the Commission issued immaterial amendment 5-03-013-A8 to reduce the reporting frequency of California gnatcatcher monitoring results during breeding season from weekly to biweekly.

On October 12, 2021, immaterial amendment 5-03-013-A9 was issued to Villa San Clemente LLC (the successor-in-interest to LV Marblehead LLC) to allow for modifications to two approved buildings in the commercial center and the adjacent parking. The two buildings were allowed to be combined into a single building, and the total square footage would increase by approximately 1,860 square feet. The number of parking spaces increased by three spaces (from 117 to 120).

The standard of review is the Chapter 3 policies of the Coastal Act.

C. PUBLIC ACCESS & RECREATION

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 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act states, in relevant part:

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

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

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Section 30223 of the Coastal Act states:

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

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. The Coastal Act places a priority on both providing public access and public recreation opportunities.

As discussed in the Commission's findings for approval, adopted on June 11, 2003 and incorporated here by reference, the Marblehead Coastal project is an integrated development, with approximately 200 acres located within the coastal zone, and another portion of the project located outside of the coastal zone. Consequently, some buildings in the commercial center are in the coastal zone and others are not. Only the portion of the development located within the coastal zone requires a coastal development permit. However, the applicant owns and operates the commercial center in an integrated fashion. For instance, just outside of the coastal zone is a 125-room hotel, movie theatre, several restaurants, and several hundred thousand square feet of retail space.

The applicant states that when the original project was approved in 2003, the initial concept was to have the commercial center's "core area" (i.e., the area on the east side of the central canyon just inland of the coastal zone) consist almost entirely of retail space (company "outlet" stores), except for the planned movie theatres. Restaurants were to be located primarily on the perimeter building sites within the center (including Lots 319 – 321), most of which would lie within the coastal zone.

The applicant, however, asserts that the economic climate for "brick and mortar" retail space has declined dramatically since 2003. In response to the reduced demand for retail space, the applicant indicated that the commercial center's core area has only been partially constructed thus far, and a portion of the completed square footage within the core area has been rented to restaurant uses and not retail space. Therefore, the applicant is proposing to amend Special Condition 24 of the underlying permit (5-03-013) to allow nonconforming uses (medical offices and an urgent care facility) on the ground floor of buildings to be constructed on Lots 319, 320, and 321 given the reduced demand for retail

and restaurants. The applicant asserts there is a current need for additional medical service space (medical offices and an urgent care center) in San Clemente.

However, among other specifications, **Special Condition 24** prohibits non-visitor serving uses on the main pedestrian level of all commercial buildings on the subject lots. Medical offices and urgent care facilities are non-visitor serving uses. Lots 319-321 are approximately 0.5 miles from the sandy beach. To mitigate for the proposed request to reduce visitor-serving uses on the main pedestrian level of the commercial buildings at Lots 319-321, the applicant is proposing public amenities on the subject parcels such as trail segments on both sides of the central canyon (located to the southeast of Lots 319 – 321 and on the inland side of West Avenida Vista Hermosa); an 1,100-sq. ft. ADA compliant raised overlook (vista area); and a water station at the overlook. The proposed trail segments and overlook will provide coastal visitors with the opportunity to recreate at the site and enjoy ocean views and natural open space. No changes to parking are proposed.

To ensure that protections are in place in the event that market demand for brick-and-mortar visitor-serving uses returns as originally anticipated or increases in the future, the Commission imposes **Special Condition 24** with a modification limiting the allowance of non-visitor serving uses on the main pedestrian level of the commercial buildings in Lots 319 – 321 only as a one-time relief. The applicant is not requesting the one-time relief; however, such a limitation is necessary to allow for reassessment in the future. The future change of use of these commercial buildings would require authorization through a separate coastal development permit amendment or would need to comply with the restrictions of Special Condition 24 as it was originally approved.

The Commission imposes **Special Condition 38**, which requires that the applicant submit final revised plans with detailed dimensions of the proposed development/improvement.

Pursuant to the requirements of the special conditions of the underlying permit, offers to dedicate trails in the public trail system and a deed restriction have already been recorded. The Commission finds it necessary to require **Special Condition 39** to ensure that a public access deed restriction is also recorded for the new public amenities, including trail segments, overlook (vista area), and water station in a manner consistent with the approved project and in a form and content that is acceptable to the Executive Director. Additionally, to assure that future owners of the property are aware of this public access deed restriction and the changes to Special Condition 24, **Special Condition 40** requires recordation of a deed restriction against the property identifying the terms and conditions of this amended permit.

The proposed trail segments and the overlook would need to be managed consistent with **Special Condition 15** of the underlying permit, which specifies requirements for public access and recreation improvements.

The amended project would not impact public coastal access directly to the ocean and sandy beach. As such, the development will not create adverse impacts, either individually or cumulatively, on public access to the shoreline, and will not block public access from the first public road to the shore. Adequate access exists nearby. Therefore, as conditioned,

the proposed project is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

D. BIOLOGICAL RESOURCES

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.

There are several plant communities that are found on the Marblehead site (or were found on the site and have since been removed as part of the restoration effort) including coastal bluff scrub, sagebrush scrub, southern willow scrub, coyote bush scrub, saltbush scrub, and other mixed scrubs, annual grassland, native needlegrass grasslands, and mixed grasslands, alkali marsh, freshwater marsh, mulefat scrub, non-native Aleppo Pine woodland, and disturbed ruderal habitat. In addition to these habitat areas, one sensitive non-wetland plant species was identified, Blochman's dudleya. Many types of wildlife are present at the Marblehead site. Of particular interest with this amendment are the bird species known to be present at the site and/or are associated with habitat types present on the site.

Environmentally sensitive habitat areas are defined in Section 30107.5 of the Coastal Act:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

As discussed in the Commission's findings for approval, adopted on June 11, 2003 and incorporated here by reference, there is ESHA on the Marblehead site. The final ESHA determination made by the Commission is depicted in Exhibit 19d of the 2003 findings and is incorporated herein by reference. At time of the 2003 approval, it was determined that there is ESHA at bottom of the central canyon, including the portion of the central canyon adjacent to the project site subject to this amendment.

The proposed amendment does not include elements that could have different impacts compared with the prior authorization. The applicant is proposing to construct approximately 4-foot-wide public trail segments (approximately 400 feet and 585 feet in length, respectively) on both sides of the central canyon to the southeast of subject Lots 319, 320, and 321. The proposed trail segments will not have impacts to existing ESHA. Under the 2003 authorization, the previously authorized public trail network included alignments that wind around the drainages and along the bluff edge providing trail users the opportunity to view and study the habitat areas and enjoy expansive ocean views. The recreational and educational experience available to trail users is significantly enhanced by

circulation through the habitat areas. In that case, the Commission found that the public trails, with their nature study component, could be viewed as resource dependent uses.

The applicant is also proposing a landscaped public overlook area on Lot 321 and proposing to increase the square footage of Building 9 (315 W. AVH/Lot 321) by 1,100 square feet. However, these improvements will occur on an already graded lot located more than 100 feet from ESHA at the bottom of the central canyon, which was prepared for development authorized by the prior authorization related to the underlying permit. Therefore, these improvements are also not anticipated to impact existing ESHA.

The applicant has sited and designed the proposed project to avoid direct impacts to ESHA. In addition, to avoid adverse impacts to habitat associated with landscaping, the Commission previously imposed **Special Condition 11**, which continues to require that non-invasive plant species be installed, among other specifications. As conditioned, the Commission finds the development consistent with Sections 30240 of the Coastal Act.

E. ARCHAEOLOGICAL RESOURCES

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

To ensure the protection of potential archaeological resources, existing **Special Condition 26** establishes requirements and procedures regarding the possible discovery of archeological resources during grading. Special Condition 26 remains in effect and applies equally to this amendment. Therefore, the amended project can be found consistent with Section 30244.

F. 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.

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected and, where feasible, be restored and enhanced. Section 30251 also requires that alterations to natural land forms be minimized. The project site is approximately 0.5 miles from the sandy public beach. The project amendment request includes increasing the square footage of a building by 1,100 but no change in the maximum height of the building is proposed. In addition, the proposed expansion of the

building will occur on already graded land. In addition, the project amendment proposes public trail segments on both sides of the central canyon and an 1,100-square-foot ADA compliant raised public overlook (vista area) for enhanced views of the canyon habitat and ocean views.

Therefore, the amended project can be found consistent with Section 30251.

G. WATER QUALITY

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.

In order to avoid adverse water quality impacts associated with construction, the Commission previously imposed **Special Conditions 8, 9, and 16** that require the applicant to avoid impacts to wetlands and sensitive upland habitat; install temporary barriers between construction areas and sensitive habitats; to avoid grading and construction within dedicated open space areas, to re-vegetate disturbed areas; to store and dispose of construction materials, equipment, debris and waste in a manner which protects water quality; to prohibit construction activity during certain periods to minimize impacts upon sensitive wildlife; to use best management practices (BMPs) and good housekeeping practices (GHPs) to contain construction materials, chemicals, debris and sediment on the project site; and require that the applicant prepare erosion, sediment and runoff control plans and grading plans. These requirements are equally necessary for the proposed project, as amended, and Special Conditions 8, 9, and 16 of the underlying permit continue to remain in effect.

Among other specifications, **Special Condition 16** required that post-construction structural BMPs be designed to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, one-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. These requirements are equally necessary for the proposed project, as amended, and continue to remain in effect.

As conditioned, the Commission finds the amended project is consistent with Section 30231 of the Coastal Act as it pertains to the protection of water quality using best management practices.

H. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit for development in an area with no certified Local Coastal Program

only if the project will not prejudice the ability of the local government to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan (LUP) 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 (IP) portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted an IP on June 3, 1999, but withdrew the submittal on October 5, 2000. In 2018, the City certified an LUP amendment for a comprehensive update of the LUP. The City is currently also working on resubmittal of an IP. There is no certified LCP at this time. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that conforms with Chapter 3 policies of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts 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 to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

The City of San Clemente is the lead agency for purposes of CEQA. As noted on the City's staff report dated April 23, 2020, the City determined that the proposed development was categorically exempt from CEQA requirements pursuant to CEQA Guidelines Sections 15301(Class 1: Existing Facilities) and 15303 (Class 3: New Construction of Small Structures).

The project as conditioned incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

5-03-013-A10 (Villa San Clemente, LLC)

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

- Coastal Development Permit No. 5-03-013
- CDP Amendment Nos. 5-03-013-A1, 5-03-013-A3, 5-03-013-A4, 5-03-013-A5, 5-03-013-A6, 5-03-013-A7, 5-03-013-A8, & 5-03-013-A9
- CDP Amendment Request No. 5-03-013-A2 (rejected)

APPENDIX B: STANDARD AND SPECIAL CONDITIONS PURSUANT TO CDP NO. 5- 13-013 THROUGH CDP AMENDMENT NO. 5-13-013-A10

NOTE: This Appendix B provides a list of all standard and special conditions imposed pursuant to Coastal Development Permit 5-13-013, as approved by the Commission in its original action and modified and/or supplemented by CDP Amendment Nos. 5-13-013-A1 through 5-13-013-A10. Any additions, pursuant to amendment -A10, from the previously approved standard and special conditions are shown underlined. Thus, this Appendix B provides an aggregate list of all currently applicable adopted standard and special conditions.

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 permittees 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 amendment 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 amendment 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

1. Open Space, Habitat, Parks, and Public Access Requirements

A. Open Space Restriction – Habitat Restoration Areas

No development, as defined in Section 30106 of the Coastal Act shall occur within the land identified as the habitat restoration areas in the final habitat management plan approved by the Executive Director (as generally, but not fully depicted in Exhibit 18 attached to the findings adopted on June 11, 2003 in support of approval of the original permit) generally comprised of a portion of the El Camino Real right-of-way and Lots C, D, F, J, K, L, M, P, Q, R, and the portion of NN (inside Coastal Zone) on pending final Tract Map No. 8817 submitted by the applicant and approved by the Executive Director pursuant to Special Condition 5.F. on March 3, 2006 (hereinafter referred to in these Special Conditions as 'PFM 8817'), and as described and depicted in an exhibit [Exhibits C.1.A & C.1.A.1] attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for the following: habitat restoration and other development necessary to implement the final habitat management plan; fuel modification within

those areas identified in the final fuel management plan; installation of utilities (only as approved by this permit); construction of water quality management structures (only as approved by this permit), grading (only as approved by this permit), public access trails and associated appurtenances (only as approved by this permit), re-construction of existing drains (only as approved by this permit), maintenance and repair activities pursuant to an in conjunction with the management and maintenance program detailed in Special Condition 4.A.

The following additional development may be allowed in the areas covered by this condition (1.A.) if approved by the Coastal Commission as an amendment to this coastal development permit or a new coastal development permit: habitat restoration, construction and maintenance of passive public recreation and access facilities and appurtenances, maintenance, repair and upgrade of utilities, water quality management structures, and drains, and erosion control and repair.

The lands identified in this restriction shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

B. Open Space Restriction and Access Requirement –Residual Open Space & Park Areas--

No development, as defined in Section 30106 of the Coastal Act shall occur within the areas of the proposed open space lots identified below and as described and depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for the following development: additional habitat restoration not listed in the final habitat management plan, other development necessary to implement the final habitat management plan; fuel modification (only as identified in the final fuel management plan); landscaping (only as approved by this permit); construction of utilities (only as approved by this permit); construction of water quality management structures (only as approved by this permit); grading (only as approved by this permit); public access and recreation facilities and associated appurtenances (only as approved by this permit); public roads and parking areas (only as approved by this permit); re-construction of existing drains (only as approved by this permit), maintenance and repair activities pursuant to an in conjunction with the management and maintenance program detailed in Special Condition 4.A. This restriction shall apply to the following areas [Exhibits C.1.B. & C.1.B.1] (excepting those areas of land identified in Special Condition 1.A (if any)): all of the land within Lots A, B, E, G, H, I, O, V, X, Y, DD, EE, MM, and OO on PFM 8817.

All areas of the above identified land shall be open to the general public for recreational use except as restricted in these special conditions. Those portions of the above identified lands that are to be used for habitat restoration shall be open to entities designated to undertake habitat restoration.

The following additional development may be allowed in the areas covered by this condition (1.B.) if approved by the Coastal Commission as an amendment to this coastal development permit or a new coastal development permit: habitat

restoration; landscaping; construction and maintenance of public recreation and access facilities and appurtenances; maintenance, repair and upgrade of utilities, water quality management structures, and drains; and erosion control and repair.

The lands identified in this restriction shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

C. Public Trails and Bikeways

No development, as defined in Section 30106 of the Coastal Act, shall occur within the access corridors identified below and as described and depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for the following development: grading and construction necessary to construct the trails, bikeways and other development approved by this permit, public access and recreation facilities and appurtenances (e.g. signs, interpretive facilities, benches, shade structures, safety fencing), vegetation planting and removal, underground utilities, drainage devices, erosion control and repair, maintenance and repair activities pursuant to an in conjunction with the management and maintenance program detailed in Special Condition 4.A, provided that development that diminishes public access through any identified corridor shall be prohibited. This restriction shall apply to the following areas [Exhibits C.1.C. & C.1.C.1]: The lands for public trails and bikeways, as depicted on final plans approved by the Executive Director but generally depicted on Marblehead Coastal, Amended Tentative Tract No. 8817, Sheets 1 and 2, dated February 14, 2003 and Marblehead Coastal Amended Residential Site Plan #97-16, plot date February 14, 2003. Except as noted on the plans identified above, all pedestrian trails shall have a minimum 10 foot wide corridor with a minimum 8 foot wide improved trail. Widths of bicycle corridors and trails shall be as described on Tentative Tract 8817.

The public access trails and associated appurtenances within the above identified land shall be open to the general public for recreational use.

The following additional development if approved by the Coastal Commission as an amendment to this coastal development permit or a new coastal development permit may be allowed in the areas covered by this condition (1.C.): maintenance of development authorized by this permit, trails and bikeways, public access and recreation facilities and appurtenances, vegetation planting and removal, underground public utilities, drainage devices, and erosion control and repair. Development that diminishes public access through any identified corridor shall be prohibited.

The lands identified in this restriction shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

D. Streets, Roads and Public Parking Areas

Streets, roads and parking shall be provided as described on Tentative Tract 8817, dated February 14, 2003. All publicly and privately maintained streets, roads and

public parking areas identified in Tentative Tract 8817 shall be for public street purposes including, but not limited to, pedestrian, bicycle and vehicular access [Exhibits C.1.D. & C.1.D.1]. Parking shall be provided as described in the applicant's submittal and on Tentative Tract 8817 dated February 14, 2003, except that all streets, whether publicly or privately maintained, except proposed street segments AAA (Via Galicia), FFF (Via Bellas Artes), GGG (Via Velazquez), HHH (Via Murillo), WW (Via Cantabria), XX (portions of Via Asturias/Via Galicia), YY (portion of Via Asturias), and ZZ (Via Murcia) on PFM 8817, shall be open to the public for vehicular access and parking. All streets, roads and public parking areas shall be open for use by the general public 24 hours per day. Long term or permanent physical obstruction of streets, roads and public parking areas in Tract No. 8817 shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited, except that signage, curb painting or permits to restrict public access to certain parking areas may be implemented on proposed street segments AAA (Via Galicia), FFF (Via Bellas Artes), GGG (Via Velazquez), HHH (Via Murillo), WW (Via Cantabria), XX (portions of Via Asturias/Via Galicia), YY (portion of Via Asturias), and ZZ (Via Murcia) depicted on PFM 8817.

The lands identified in this restriction shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

- E. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, formal legal descriptions and graphic depictions of the portions of the subject property affected by this condition, as generally described above and shown on Exhibit 4 attached to the findings adopted on June 11, 2003 in support of approval of the original permit.

2. Offer to Dedicate in Fee Open Space for Parks, Public Access and Habitat Enhancement

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the permittee's proposal, the permittee shall submit to the Executive Director, for review and approval, a proposed document(s) irrevocably offering the dedication of fee title over the areas identified below to the City of San Clemente, and/or other public agency or non-profit entity acceptable to the Executive Director, for parks, public access, passive recreational use, habitat enhancement, trail, public parking and street purposes. Once the documents irrevocably offering to dedicate the areas identified below are approved, and also PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit evidence that it has executed and recorded documents in a form and content acceptable to the Executive Director completing that offer to dedicate. The land shall be offered for dedication subject to the restrictions set forth in the special conditions of this permit, and the offer to dedicate shall reflect that fact. The offer shall be recorded free of

prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The entirety of the following land shall be offered for dedication to the City, and/or other public agency or non-profit entity acceptable to the Executive Director pursuant to this condition: all of the land within Lots D, E, G, H, I, O, V, MM, and Public Streets Avenida Pico, Avenida Vista Hermosa, Avenida Costa Azul, Via Artemesia, and Via Socorro on PFM 8817, and those portions of Lot L on PFM 8817 that were identified as Lots I, J, M, O and the non-graded portion of Lot D on Amended Tentative Tract No. 8817 dated February 14, 2003.

- B. Prior to the issuance by the City of San Clemente of the 200th certificate of occupancy of any residential unit approved by this permit, or 3 years from the date of approval of Amendment No. 6 of this coastal development permit, whichever comes first, the permittee shall submit evidence that documents have been executed and recorded completing the transfer of fee title over the following portions of land identified in part A of this condition to the City of San Clemente and/or other public agency or non-profit entity acceptable to the Executive Director: Lots E, F, N, R, KK, LL, MM, and YY on Amended Tentative Tract No. 8817 dated February 14, 2003. The remaining lots identified in part A of this condition (i.e. Lots D, I, J, M, O, P, RR, SS and TT on Amended Tentative Tract No. 8817 dated February 14, 2003) may be transferred to the City of San Clemente and/or other public agency or non-profit entity acceptable to the Executive Director at a later date within the 21 year period that the offer remains valid. If any offer expires without being accepted, such expiration shall not void the restrictions on use of the property imposed by the remaining special conditions of this permit and said restrictions shall remain in full force and effect.

3. Offer to Dedicate Trail Easements Over the Area Described in Condition 1.C

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for public pedestrian and, where noted, bicycle access and passive recreational use of the corridors described below, but excluding from the offer any portion of a trail within Lots E, F, N, R, KK, LL, MM, and YY on proposed Amended Tentative Tract No. 8817 dated February 14, 2003 submitted by the applicant that are required to be offered for dedication to the City of San Clemente and/or other public agency or non-profit entity acceptable to the Executive Director in accordance with Special Condition 2 of this permit. The recorded document(s) shall include legal descriptions of both the permittee's entire parcel(s) and the easement area. The recorded document(s) shall also reflect that development in the offered area is restricted as set forth in the Special Conditions of this permit. The offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The lands to be offered for public trails and bikeways are generally depicted on Marblehead Coastal, Amended Tentative Tract No. 8817, Sheets 1 and 2, dated

February 14, 2003 and Marblehead Coastal Amended Residential Site Plan #97-16, plot date February 14, 2003. Except as noted on the plans identified above, all pedestrian trails shall have a minimum 10 foot wide corridor with a minimum 8 foot wide improved trail. Widths of bicycle corridors and trails shall be as described on Tentative Tract 8817.

The lands identified in this dedication shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with Special Condition 4.

4. Access and Habitat Management and Maintenance

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide for the review and approval by the Executive Director a management and maintenance program for proposed parks, trails, open spaces, public facilities, associated structures and appurtenances for the foregoing and water quality management structures and associated appurtenances. The final program, which may be incorporated in whole or in part in the final habitat management plan, shall include the following:

1. IDENTIFY ALL ENTITIES RESPONSIBLE FOR OWNERSHIP, MANAGEMENT AND MAINTENANCE. In general, the owner of the land shall maintain it until such time as any easement required to be offered by this permit is accepted or a fee dedication required by this permit is complete, from which point on the easement-holder or the new holder of fee title shall maintain it. Where an easement or a fee dedication is accepted by an entity in accordance with the terms and conditions of this permit, the holder of the easement or fee title shall be responsible for management and maintenance of the facilities within the easement or land area unless the arrangements between the landowner and the fee or easement holder dictate that the landowner shall retain all or part of said management and maintenance responsibility. All management and maintenance shall occur in accordance with the approved management and maintenance program.
2. IDENTIFICATION OF MANAGEMENT AND MAINTENANCE ACTIVITIES AND ASSOCIATED FUNDING PROGRAM. The management and maintenance program shall include identification of management and maintenance activities and funding program that will provide for the actual cost of:
 - i. maintenance and periodic repair and replacement of park facilities, trails and associated appurtenances including, but not limited to, landscaping, restrooms, trail routes and surfaces, fences, benches and other facilities; and appropriate domestic pet controls and services and,
 - ii. on-going habitat protection, restoration and maintenance, including regular exotic plant removal, which shall also include on-site supervision of trail and habitat areas by qualified personnel, operation of interpretive

signs and displays, funding of public outreach programs, including resident education and docent program;

iii. maintenance of drainage systems, water quality management structures and other devices required to protect on-site habitat and ocean waters.

3. LEGAL AUTHORITY. The program shall demonstrate the legal ability of the assigned entities to undertake the development and maintain said development in accordance with the requirements of this permit.

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 required.

5. Covenants, Conditions, and Restrictions (Cc&R's), and Final Tract Maps.

A. Consistent with the applicant's proposal, the applicant shall establish covenants, conditions and restrictions (CC&R's), or an equivalent thereof, for the proposed residential lots and proposed regional commercial lots to address ownership and management of open space lots not offered for dedication to the City of San Clemente pursuant to Special Condition 2. The CC&R's shall reflect the requirements of this coastal development permit, including but not limited to the limitations on the development of the open space lots and the public access requirements thereto as proposed by the applicant and as conditioned by this permit.

B. Subject to the review and approval of the Executive Director, where feasible, the applicant shall consolidate proposed open space lots that are contiguous with one another and that are to be held by a common owner.

C. The CC&R's for the 313 proposed residential lots and all open space lots within the coastal zone not given to a public entity pursuant to Special Condition 2 above, except Lots NN and OO depicted on PFM 8817, shall indicate that: 1) all of those open space lots are to be held in common ownership of all residential lots; 2) those lots shall not be sold individually; 3) those lots shall be maintained by a common entity (e.g. master homeowner's association) in accordance with the special conditions of this permit.

D. The CC&R's (or equivalent) for the regional commercial center and Lots NN and OO depicted on PFM 8817, shall indicate that: 1) open space lots NN and OO shall be held in common ownership of all of the commercial lots; 2) the open space lots shall not be sold individually; 3) the open space lots shall be maintained by a common entity (e.g. the master residential homeowner's association identified in subpart A above or an equivalent commercial landowner's association) in accordance with the special conditions of this permit.

- E. Consistent with the applicant's proposal, as soon as a homeowner's association or similar entity comprised of the individual owners of the 313 proposed residential lots is created, the applicant shall transfer title to the lots described in paragraph C to that entity. Consistent with the applicant's proposal, as soon as a commercial landowners' association or similar entity comprised of the individual owners of the commercial lots is created, the applicant shall transfer title to the lots described in paragraph D to that entity.
- F. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and prior to recordation of any CC&R's, parcel maps or tract maps associated with the approved project, said CC & R's and Tract and parcel maps shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of insuring compliance with the standard and special conditions of this coastal development permit. The restriction on use of the land cited within the special conditions of this permit shall be identified on the Tract Maps, where appropriate, and placed in the CC & R's. Any CC & R's, parcel map conditions or notes, or tract map provisions which the Executive Director determines are not consistent with any of the Conditions of this permit shall be modified to be consistent before recordation.
- G. Simultaneous with the recording of the final tract map(s) approved by the Executive Director, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property.

6. Renumbering and Tract Map Designations

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT and accompanying relevant revised, final plans submitted to the Executive Director for review and approval, the permittee shall prepare a comparison of the proposed final lot letters and numbers, with the lot letters and numbers shown on Tentative Tract 8817 dated February 14, 2003, and described in the Commission's actions. Numerical or letter designations of all lots necessary to conform to the Commission's Conditions shall be provided for the review and approval of the Executive Director. Additional lots created in order to conform to the Commission's Conditions shall be shown on the revised tentative tract maps subject to the review and approval of the Executive Director. The language of these special conditions shall be modified as necessary so that these conditions, as well as all recorded documents, shall reflect the final lots numbers, as approved by the Executive Director. An amendment to this permit to renumber lots and their configuration and locations shall be necessary if the Executive Director determines an amendment is required.

7. Construction/Development Phasing

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised, final construction phasing plan for review and approval by the Executive Director which shall conform with the following:

Prior to or concurrent with opening proposed Avenida Vista Hermosa for vehicular use by the public, the following roads, parking and trails shall be

operational and open to the public: 1) proposed public road Avenida Costa Azul depicted on PFM 8817, and the Park Access Road (Lot O depicted on PFM 8817) including accompanying public parking areas (street parking and parking lots); and 2) trails identified on the exhibit titled "First Phase Habitat, Trail and Park Phasing Plan" dated April 2, 2003 submitted by the applicant and generally described as a continuous trail along the western side of Marblehead canyon linking Avenida Vista Hermosa to El Camino Real and with linkage to continuous bluff top, bluff edge, and mid-bluff trails that connect the proposed public park adjacent to Avenida Pico to the western side of the Western Canyon. Subject to the review and approval of the Executive Director, where construction of development authorized by this permit follows opening of proposed Avenida Vista Hermosa and such construction would necessitate significant reconstruction of certain segments of the above trails, roads, and parking areas, those trail segments, roads and parking areas identified may be constructed with interim-level improvements (which shall suffice to meet the requirement at the beginning of this paragraph that they be operational and open to the public) until the required disturbance is completed, and the final trail is constructed to the standards identified in the final public access and recreation improvements plan(s) approved by the Executive Director. Subject to the review and approval of the Executive Director, trail segments constructed with interim-level improvements may be temporarily closed to facilitate construction of the development approved by this permit provided that direct alternative bypasses are made available.

Prior to the issuance by the City of San Clemente of the 50th certificate of occupancy of any residential unit approved by this permit or the occupation of the 50,001st square foot of commercial structure approved by this permit, the following shall occur: 1) at least fifty percent (50%) of the lands proposed for habitat restoration (generally those lands identified on the exhibit titled "First Phase Habitat, Trail and Park Phasing Plan" dated April 2, 2003 submitted by the applicant and generally located along the bluffs and in the canyons nearest El Camino Real) shall have been planted or seeded in accordance with the final Habitat Management Plan, however, such planting and seeding shall not take place until appropriate exotic removal and control has taken place. The remainder of the lands to be restored shall occur as soon as possible thereafter in accordance with the final habitat management plan approved by the Executive Director; 2) the proposed park area near the bluffs along El Camino Real at the termination of the Park Access Road (Lot O depicted on PFM 8817) shall be constructed with interim level improvements and open to the public; and 3) Except as identified below in this condition, the proposed park nearest Avenida Pico (Lot E depicted on PFM 8817) including facilities to support public use of the park (e.g. parking, roads, etc.) shall be constructed in accordance with the final road improvement, public access and recreation facilities and signage plans approved by the Executive Director and open to the public. In order to accommodate construction disturbance associated with the widening of Avenida Pico approved by this permit, the access from Avenida Pico to the proposed park (Lot E depicted on PFM 8817) may be constructed with interim-level improvements until the widening is completed. When widening of Avenida

Pico is completed the park access shall be constructed to the standards identified in the final public access and recreation improvements plans approved by the Executive Director. Plans for any interim level improvements shall be submitted for review and approval by the Executive Director prior to issuance of the coastal development permit.

All trails shall be fully improved in accordance with the final public access and recreation facilities plans approved by the Executive Director in accordance with the completion date identified in the applicant's Trail Phasing Plan dated February 12, 2003, except where the conditions of this permit mandate completion of such facilities upon a different time frame.

Notwithstanding the phasing identified above, prior to the occupation of any 200th residential unit approved by this permit or no later than 3 years from the date of approval of Amendment No. 6 of this coastal development permit, whichever comes first, all trails and associated appurtenances, all parks and associated facilities and appurtenances, all public roads, and the initial phase of restoration on all lands proposed for habitat restoration shall be completed in accordance with the final public access and recreation improvements plans and final habitat management plan approved by the Executive Director.

- B. The permittee shall undertake development in accordance with the approved final construction/development phasing plans. Any proposed changes to the approved final construction/development phasing 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 required.

8. General Construction Responsibilities

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a final construction-phase erosion, sediment and polluted runoff control plan that conforms with the requirements of this permit and has been approved by the City of San Clemente. The erosion, sediment and polluted runoff control plan shall include written descriptions and site plans, as necessary, to describe the non-structural and structural erosion, sediment and polluted runoff controls to be used consistent with the requirements of this permit. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Except for minor adjustments in the location of temporary erosion control measures necessary to protect trails, parks and habitat resources, no changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required. In addition, the construction-phase erosion, sediment, and polluted runoff control plan shall include the following requirements:
 - 1. Erosion, sedimentation and polluted runoff shall be minimized to the maximum extent practicable.

2. Construction materials, chemicals, debris, and sediment shall be properly contained and secured on site to prevent the unintended transport of materials, chemicals, debris, and sediment into wetlands, habitat areas, and coastal waters by wind, rain, runoff, or tracking;
3. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials and to contain sediment or contaminants associated with construction activity shall be implemented prior to the on-set of construction. BMPs selected shall be maintained in a functional condition throughout the duration of the project. A comprehensive education program designed to advise and educate construction personnel of the applicable Construction Best Management Practices enumerated in this Special Condition 8.A.3. A pre-construction meeting shall be held for all personnel to review procedural and BMP guidelines. BMPs that shall be implemented include, but are not limited to:
 - a. Erosion & Sediment Source Control.
 - i. Construction shall be sequenced to install sediment-capturing devices first, followed by runoff control measures and runoff conveyances. Land clearing activities shall only commence after the minimization and capture elements are in place;
 - ii. Clearing and grading activities shall be timed to avoid the rainy season (October 15th to April 15th), where feasible;
 - iii. Grading shall be phased to minimize the area of bare soil exposed at one time;
 - iv. Only areas essential for construction shall be cleared;
 - v. Bare soils shall be stabilized with nonvegetative BMPs within five days of clearing or inactivity in construction. If seeding or another vegetative erosion control method is used, such vegetation should become established within two weeks. Applicable stabilization BMPs may include:
 - Mulching bare soil surfaces with blankets of straw, wood chips, shredded bark or other plant residue, gravel, or synthetic material;
 - Establishing native perennial vegetative cover with seed in disturbed areas to minimize erosion;
 - Seeding with rapid-growing native annual plants can be considered for temporary stabilization of disturbed soils that will not be brought to final grade within 30 days;
 - Sod, instead of seed, for surface stabilization, in areas with steep slopes and unsuitable for seeding, such as flowways and around inlets.
 - vi. Construction entrances shall be properly graded and stabilized to prevent runoff and tracking of sediments from construction site. The entrances shall be stabilized immediately after grading and frequently maintained to prevent erosion and control dust.
 - vii. In areas prone to high winds, wind erosion controls shall be implemented to limit the movement of dust from disturbed soil surfaces. Wind erosion controls may include wind barriers that block air currents and are effective in controlling blowing soil. Materials for wind barriers may include solid board fences, snow fences, and bales

of hay. Provided that runoff is controlled, water may be sprinkled on soils for dust control.

- b. Runoff Control and Conveyance
 - i. Runoff above disturbed slopes shall be intercepted and conveyed to a permanent channels or stormdrains by using earth dikes, perimeter dikes or swales, or diversions. Use check dams where appropriate;
 - ii. Benches, terraces, or ditches shall be constructed at regular intervals to intercept runoff on long or steep slopes. Biodegradable fiber rolls are recommended along the face of exposed and erodible slopes to shorten slope length;
 - iii. Provide protection for runoff conveyance outlets by reducing flow velocity and dissipating flow energy;
- c. Sediment-Capturing Devices
 - i. Install stormdrain inlet protection that traps sediment before it enters the storm sewer system. Such barriers may consist of filter fabric, gravel, or sand bags. The use of straw bales is discouraged for this purpose;
 - ii. Install sediment traps/basins at outlets of diversions, channels, slope drains, or other runoff conveyances that discharge sediment-laden water. Sediment traps are usually used for drainage areas no greater than 5 acres, while the basins are appropriate for larger areas. Sediment traps/basins shall be cleaned out when 50% full (by volume). Temporary detention basin(s) shall be designed to capture runoff generated in a 10-year storm event for the area to be graded, to the extent feasible and practicable, however in no event shall such basins be designed to capture less than the runoff generated in a 2-year, 24 hour storm event with a 40 hour draw down time;;
 - iii. Use silt fences and/or vegetated filter strips to trap sediment contained in sheet flow. The maximum drainage area to the fence shall be 0.5 acre or less per 100 feet of fence. Silt fences shall not be used on slopes where flow is concentrated. Silt fences shall be inspected regularly and sediment removed when it reaches 1/3 the fence height. Vegetated filter strips shall have relatively flat slopes and be vegetated with native erosion-resistant species.
- d. Chemical Control
 - i. Properly store, handle, apply, and dispose of pesticides, petroleum products, and other construction materials;
 - ii. All construction materials with the potential to emanate harmful chemicals shall be stored securely by enclosing the material on all sides and not in contact with the bare ground surface;
 - iii. Establish fuel and vehicle maintenance staging areas located away from all upland habitat, wetlands and drainage courses, and design these areas to control runoff. Equipment shall be properly maintained and stream crossings (only in locations previously approved) shall be properly installed in order to reduce pollution of water by these sources;
 - iv. Develop and implement spill prevention and control measures.

- v. Provide sanitary facilities for construction workers.
- vi. Maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into surface waters or sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water. Where feasible, recycle washout by pumping backing into mixers for reuse. If not feasible, let water percolate through soil and dispose of settled, hardened concrete with trash.
- vii. Provide adequate disposal facilities for solid waste, including excess asphalt, produced during construction.
- viii. Develop and implement nutrient management measures. Properly time applications, and work fertilizers and liming materials into the soil to depths of 4 to 6 inches. Reduce the amount of nutrients applied by conducting soil tests to determine site nutrient needs.
- e. Debris Control
 - i. Disposal of debris and excess material. Debris and excess material shall be disposed or recycled at a legal disposal/recycling site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is required. No debris or excess material shall be dumped within any canyon, placed on the beach, or on any protected habitat or restoration areas without a coastal development permit.
 - ii. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters.
 - iii. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
 - iv. Lunchtime trash shall be properly recycled or disposed of by the end of every construction day.
- B. Grading and construction shall fully comply with the provisions of the final habitat management plan approved by the Executive Director including, but not limited to, the recommendations relative to the preservation of groundwater flow characteristics and wetlands hydrology contained within the document titled Geotechnical Review of the Proposed Grading Plan for Marblehead Coastal, Amended Tentative Tract 8817, City of San Clemente, Orange County, dated October 19, 2001, and prepared by Lawson & Associates of San Clemente (Project No. 010009-01).
- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, final engineered grading plans for all of the proposed development which shall incorporate the requirements of these special conditions. The plans shall have been reviewed and approved by the project geologist, the City engineer and the City geologist. Grading plans shall substantially conform to the preliminary plans shown on Tentative Tract Map No 8817 dated February 14, 2003, except

as required to be modified by these special conditions. The permittee shall undertake development in accordance with the approved 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 required.

9. Construction Staging Area and Fencing

- A. All construction plans and specifications for the project shall indicate that impacts to wetlands and environmentally sensitive habitats shall be avoided and that the California Coastal Commission has not authorized any impact to wetlands or other environmentally sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final construction staging and fencing plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to wetlands and other sensitive habitat consistent with this approval. The plan shall include the following requirements and elements:
1. Wetlands and any other environmentally sensitive habitats shall not be affected in any way, except as specifically authorized in this permit.
 2. Prior to commencement of construction, temporary barriers shall be placed at the limits of grading adjacent to ESHA. The barriers shall be a minimum 8 feet tall and one-inch thick in those areas adjacent to occupied gnatcatcher habitat. Solid physical barriers shall be used at the limits of grading adjacent to all other ESHA. Barriers and other work area demarcations shall be inspected by a qualified biologist to assure that such barriers and/or demarcations are installed consistent with the requirements of this permit. All temporary barriers, staking, fencing shall be removed upon completion of construction.
 3. No grading, stockpiling or earth moving with heavy equipment shall occur within ESHA, wetlands or their designated buffers, except as noted in Special Condition 17 and the final habitat management plan approved by the Executive Director.
 4. No construction materials, debris, or waste shall be placed or stored where it may enter sensitive upland habitat or wetlands, storm drain, receiving waters, or be subject to wind erosion and dispersion;
 5. Except for the allowances provided in Special Condition 17, no construction equipment shall be stored within any ESHA, wetlands or their buffers.
 6. The plan shall demonstrate that:
 - a. Construction equipment, materials or activity shall not occur outside the staging area and construction zone and corridors identified on the site plan required by this condition; and
 - b. Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands or other sensitive habitat;
 7. The plan shall include, at a minimum, the following components:
 - a. A site plan that depicts:
 - i. limits of the staging area(s)
 - ii. construction corridor(s)
 - iii. construction site

- iv. location of construction fencing and temporary job trailers with respect to existing wetlands and sensitive habitat
 - v. Compliance with 'General Construction Responsibilities' Special Condition of this coastal development permit.
- B. The permittee shall undertake development in accordance with the approved 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 required.

10. Final Habitat Management Plan

- A. The permittee shall implement and comply with the habitat protection, enhancement and loss mitigation measures in the final habitat preservation and mitigation plan (i.e. final habitat management plan) approved by the Executive Director, the primary elements of which are described within the documents titled Marblehead Coastal Project Habitat Management Plan dated November 28, 2001, as amended (most recent amendment is dated February 14, 2003), and Protection and Enhancement Plan for Upland ESHA dated February 2003 with Addendum dated February 13, 2003, which implements the preservation or creation of the following habitat within the coastal zone at the project site: preserve 10.26 acres of existing CSS habitat, create 63.85 to 64.22 acres of CSS habitat on-site (no further disturbance), plus 1.19 to 1.23 acres of CSS habitat on-site that may be subject to periodic disturbance for fuel management and utility maintenance, plus 1.38 to 1.68 acres of CSS off-site; preserve 0.62 acres of native perennial grassland and create 4.3 acres of native perennial grassland (of which 3.26 to 3.73 acres may be subject to periodic disturbance for fuel modification and utility maintenance); preserve 5.21 acres of wetland habitat; create 0.2 acres of alkali meadow wetlands within the canyons; and create 1.72 acres of wetland and 2.90 acres of wetland/mixed riparian scrub within the proposed detention basins; and which shall be modified as described below and elsewhere within these special conditions.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a revised, final habitat management plan for review and approval by the Executive Director. The final habitat management plan shall be developed in consultation with the California Department of Fish & Game and U.S. Fish & Wildlife Service. The final habitat management plan shall substantially conform with the Habitat Management Plan dated November 28, 2001, as amended, and the Protection and Enhancement Plan for Upland ESHA dated February 2003 with Addendum dated February 13, 2003, except that it shall be modified as follows:
- 1. Wetlands shall have 100-ft wide buffers (horizontally), except at the "slot" canyon (generally within Lot D and portion of Lot L depicted on PFM 8817), where a minimum 50-foot wide buffer shall be required. Except for the proposed bridge pilings for proposed Avenida Vista Hermosa, the installation of utilities near the mouth of Marblehead Canyon, and except for habitat restoration and maintenance and construction and maintenance of public trails, there shall be no development, including grading or fuel modification, in the wetland buffers. However, prior to construction of the utilities, the

permittee shall submit a hydrologic analysis for review and approval of the Executive Director which demonstrates that the construction of the utilities in the areas identified as 8 and 9 on Exhibit 19c to the findings adopted on June 11, 2003 in support of the original permit shall have no negative effects on wetland hydrology.

2. Upland ESHA shall have 100-foot wide (horizontally) buffers, where feasible. The minimum buffer width shall be 50 feet wide (horizontally). There shall be no development, including grading, within 50 feet of ESHA boundaries and no grading within 50 feet of coastal bluff scrub, Blochman's dudleya populations, native grasslands and those stands of CSS within gnatcatcher use areas, with these exceptions: a) One-time, brief (less than 30 days) grading to construct the western-most detention basin may take place within 50 feet of CSS; b) One-time, brief (less than 30 days) grading to construct the eastern detention basin; c) Grading and subsequent construction of approved development within 50 feet of ESHA adjacent to the slot canyon (proposed Lot C of Amended Tentative Tract No. 8817 which is a portion of Lot L depicted on PFM 8817); d) one-time trenching and placement of utilities within 50 feet of ESHA located at the mouth of Marblehead canyon; e) Grading adjacent to the gnatcatcher use area next to the existing central soil stockpile (i.e. in the vicinity of Lots 90 to 106 depicted on PFM 8817) may take place within 50 feet of CSS; f) Grading along the upper edges of the western canyon; and along the western edge of Drainage B, g) Brief trenching to install storm drain and sewer along the east side of the western detention basin, h) brief, one-time trenching for the installation of subsurface sewer and storm drain lines within a maximum 20 foot wide disturbance area from the western detention basin, down the bluff face to El Camino Real provided no saltbushes are disturbed and work only occurs outside the gnatcatcher breeding season; i) Construction of approved trails and associated structures; j) Habitat maintenance and restoration activities. In no case shall grading or other soil disturbance (including driving of vehicles), other than for habitat restoration activities and construction and maintenance of trails and associated appurtenances, take place closer than 20 feet from ESHA boundaries.
3. In order to preserve habitat connectivity including protecting the California gnatcatcher, the permittee shall eliminate proposed turf within proposed Lot I of proposed Amended Tentative Tract No. 8817 which is a portion of Lot L depicted on PFM 8817. Vegetation within Lot I shall consist of plants native to coastal Orange County and appropriate to the natural habitat type. Lot I shall be incorporated into the final Habitat Management Plan and shall be managed consistent with the provisions of the plan. In addition to appropriate vegetation, Lot I shall include a recreational trail along the bluff edge and vista points including seating and interpretive signs. Only wildlife resistant trash receptacles shall be utilized within Lot I.
4. All turf within the 50 foot ESHA buffer identified on Exhibit 19 attached to the findings adopted on June 11, 2003 in support of approval of the original permit shall be eliminated. These areas shall be planted with native vegetation appropriate to the habitat type.

5. The proposed trail segment that passes through the slot canyon (Lot C on proposed Amended Tentative Tract No. 8817 which is a portion of Lot L depicted on PFM 8817) shall be routed to avoid ESHA. The revised route shall maintain an on-site connection between the easterly detention basin (Lot P depicted on PFM 8817) and the park (Lot E depicted on PFM 8817) by following the perimeter of proposed Amended Tentative Tract No. 8817 Lots C and D [Lot D and portion of Lot L depicted on PFM 8817]. The trail shall be located at the outer perimeter of the ESHA buffer, where feasible.
6. A trail and pedestrian bridge that crosses ESHA and it's buffer and that provides a public access connection between Amended Tentative Tract No. 8817 Lot F and Lot J [Lot E and portion of Lot L depicted on PFM 8817] shall be allowable.
7. Trails passing through ESHA, buffers and ESHA connecting areas shall be limited to pedestrian and wheelchair use (i.e. no bicycles or equivalent).
8. Grading Adjacent to CSS-ESHA: There shall be no grading within 100 feet of native scrub habitats that occur within ESHA boundaries during the gnatcatcher breeding season (considered to be from February 15 through August 31), if gnatcatchers are present. During the non-breeding season (September 1 through February 14), ESHA defined by historical gnatcatcher use shall be shielded from the sight and sound of construction activities taking place within 50 feet of the ESHA using the techniques proposed by the applicant in the documents identified above.
Grading Associated with Non-ESHA CSS: Approved clearing of non-ESHA CSS shall occur outside of the gnatcatcher breeding season. Subject to the review and approval of the Executive Director, clearing of CSS more than 100 feet from Environmentally Sensitive Habitat Area shown on Exhibit 19 of the findings adopted on June 11, 2003 for the original permit may occur during the gnatcatcher breeding season, if the contingency measures given in subsection 9 of this condition are implemented to minimize impacts to gnatcatchers.
9. The permittee shall staff a qualified monitoring biologist on-site during all CSS clearing and any other project-related work adjacent to CSS to be avoided. The biologist must be knowledgeable of gnatcatcher biology and ecology. The permittee shall ensure that the biologist shall perform the following duties:
 - a. Prior to and during the clearing of any CSS or other suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area away from birds. In addition, the biologist shall walk ahead of clearing equipment to flush birds towards areas of habitat that will be avoided. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by the clearing of CSS.
 - b. If clearing of CSS within 100 feet of the Environmentally Sensitive Habitat Area shown on Exhibit 19 of the findings of approval adopted on June 11, 2003 for the original permit is necessary and approved by the Executive Director during the gnatcatcher breeding season, in addition to the above, the biologist shall locate and monitor gnatcatchers and/or any gnatcatcher nests within clearing areas by conducting a minimum of three

surveys, on separate days, after the initiation of the nesting season to determine the presence of gnatcatchers, nest building activities, egg incubation activities, or brood rearing activities. These surveys shall be conducted within the week prior to the initiation of clearing. One survey shall be conducted the day immediately prior to the initiation of clearing. If gnatcatchers are found, but no nests, the biologist shall flush the gnatcatchers from the clearing area as described above. If nesting birds are found, a nest monitoring program approved by the Executive Director in consultation with the Resources Agencies shall be initiated and clearing shall be postponed within and adjacent to the foraging area used by the pair during the nesting cycle, until the nest is determined either a success or failure by the Executive Director in consultation with the Resources Agencies and the project biologist. Nest success/failure shall be established by regular and frequent trips to the site, on an as-needed basis, as determined by the biologist and approved by the Executive Director in consultation with the Resources Agencies. Further work activities within and adjacent to the foraging area shall not be initiated until nestlings have fledged or the nest has been determined a failure, as approved by the Executive Director in consultation with the Resources Agencies. The biologist shall then flush any adult and/or fledgling gnatcatchers from the clearing area as described above.

- c. If project construction within 100 feet of CSS to be avoided is necessary and approved by the Executive Director during gnatcatcher breeding season, the biologist shall locate and monitor gnatcatchers (including nests) within 100 feet of work. The biologist shall determine whether bird activity within this area is being substantially disrupted by implementing a monitoring plan developed in consultation with the Resources Agencies and approved by the Executive Director. If the biologist determines that gnatcatcher activity is being substantially disrupted, the permittee shall stop work and coordinate with the Executive Director in consultation with the Resources Agencies to minimize and mitigate noise to 60 dBA adjacent to habitat occupied by gnatcatchers through the use of sound walls and/or other measures designed in consultation with the Resources Agencies and approved by the Executive Director.
- d. Prior to initiating clearing and/or project construction during the gnatcatcher breeding season, the biological monitor shall meet on-site with the construction manager and/or other individual(s) with oversight and management responsibility for the day-to-day activities on the construction site to discuss implementation of the relevant avoidance/minimization/mitigation measures for gnatcatcher. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.
- e. The permittee shall submit biweekly reports (including photographs of impact areas) to the Executive Director and the Wildlife Agencies during initial clearing of CSS and/or project construction within 100 feet of avoided CSS during the gnatcatcher breeding season. The biweekly reports shall document that authorized CSS impacts were not exceeded,

work did not occur within the 100-foot setback during the gnatcatcher breeding season except as approved by the Executive Director, and general compliance with all conditions. The reports shall also outline the duration of gnatcatcher monitoring, the location of construction activities, the type of construction which occurred, and equipment used. These reports shall specify numbers, locations, and sex of gnatcatchers (if present), observed gnatcatcher behavior (especially in relation to construction activities), and remedial measures employed to avoid, minimize, and mitigate impacts to gnatcatchers. Raw field notes shall be available upon request by the Executive Director.

10. The 4.3 acres of native perennial grassland proposed to be created by the applicant shall not count toward mitigation of impacts to native grassland that occurred during emergency bluff grading. In addition to the 4.3 acres of native perennial grassland proposed to be created by the applicant, the applicant shall mitigate the impact to 2.5 acres of native perennial grassland (a.k.a. needlegrass grassland) that occurred during emergency bluff grading in 1990 by restoring/creating native perennial grassland at biologically suitable site(s) within the habitat management plan area that will not be subject to fuel modification, in quantities consistent with biological restoration goals (but not less than 5 acres), subject to the review and approval of the Executive Director.
11. Trails, parks, turf areas, sidewalks, and roadways shall be separated from adjacent ESHA and buffer areas with fences and barrier plantings designed to define the limits of the use area but that are easily passable by coyotes and smaller mammals. Those portions of residential lots immediately adjacent to ESHA and buffer areas shall be separated from those areas with fencing or walls adequate to prevent the passage of people and domestic pets.
12. Any fences around the western and central detention basin shall be easily passable by coyotes and smaller mammals. The area of the western detention basin shall not be accessible from the nearby residential area by residents and the general public. Fencing and barrier plantings shall be used, as appropriate, to control entry to habitat areas and detention basins by residents and the general public.
13. Only locally native species (no cultivars) obtained within coastal Orange County as available from as close to the project area as possible shall be used within the habitat restoration area. The source and proof of local nativeness of all plant material and seed shall be provided in the plan;
14. Coastal bluff scrub restoration (CBS) shall be designed to preserve existing Blochman's dudleya habitat and shall be designed to allow expansion of the dudleya occupied habitat by natural recruitment. Restoration shall include enhancing Blochman's dudleya populations wherever there is appropriate physical habitat.
15. All CSS and CBS restoration sites shall be prepared for planting by decompacting the top soil in a way that mimics natural CSS top soil to the maximum extent practicable and in a manner consistent with preservation of Blochman's dudleya. Topsoil and plant materials salvaged from the CSS areas to be impacted shall be transplanted to, and/or used as a seed/cutting

source for, the CSS restoration areas to the maximum extent practicable. All planting shall be installed in a manner that mimics natural plant distribution, and not in rows.

16. Only irrigation that is temporary and associated with restoration shall be allowed within ESHA boundaries, within ESHA buffers, and within open space and habitat intended to promote connectivity between Marblehead canyon and the western canyon.
17. Restoration activities in the open space areas adjacent to the coastal bluff and in the western canyons shall be initiated as soon as possible and planting shall take place prior to the construction of residences near this area, except where this schedule is not compatible with best restoration practices (e.g., optimal weed control). Restoration (including preparatory activities such as weed control) shall begin no later than the initiation of grading activities and shall proceed contemporaneously with project construction.
18. The permittee shall fence the limits of the construction corridor to demarcate the boundary of the habitat that is authorized to be impacted by this coastal development permit and the habitat which shall be avoided. Fencing shall be designed to prevent additional CSS impact and spread of silt from the construction zone into adjacent CSS and other habitats and shall allow the continued circulation of small mammals, including coyote, through the site.
19. The habitat management plan shall be modified to eliminate reference to off-site mitigation as an automatically acceptable contingency measure. Contingency mitigation shall be determined by the Executive Director, or the Commission if an amendment or new permit is deemed necessary.
20. The habitat management plan shall be modified to eliminate the exemption for replanting due to natural hazards. The necessity to replant as a result of damage to restored areas due to natural hazards shall be determined by the Executive Director.
21. The permittee shall submit a final report prepared by the biological monitor to the Executive Director, for review and approval, within 60 days of project completion that includes: as-built construction drawings with an overlay of CSS and wetlands that were impacted and avoided, photographs of CSS and wetland areas avoided, and other relevant summary information documenting that authorized CSS and wetlands impacts were not exceeded and general compliance with all conditions of this permit.
22. The permittee shall install protective fencing or barriers along any interface with developed areas and/or use other measures, designed in consultation with the Resources Agencies and approved by the Executive Director, to deter human and pet entrance into all avoided/restored CSS and wetland areas. Plans for fencing and/or other preventative measures shall be submitted to the Executive Director for review approval prior to the issuance of the coastal development permit in accordance with the 'Construction Staging Area and Fencing' special condition of this permit.
23. The permittee shall implement a perpetual management, maintenance and monitoring plan for the habitat management plan area. The plan shall include a description of the perpetual management, maintenance and

- monitoring actions. The permittee shall also establish a non-wasting endowment in favor of a public agency, non-profit organization, or other entity approved by the Executive Director for an amount determined in consultation with the Resources Agencies and approved by the Executive Director based on a Property Analysis Record (PAR) (Center for Natural Lands Management □ 1998) to secure the ongoing funding for the perpetual management, maintenance and monitoring of the habitat management plan area by an agency, non-profit organization, or other entity approved by the Executive Director. The non-wasting endowment shall be no less than the proposed \$1,000,000 (one million dollars). Until a qualified management entity is identified, the permittee shall be responsible for such management.
24. The permittee shall develop a resident education program. The program shall advise residents of the potential impacts to sensitive plant and animal species and the potential penalties for taking (i.e. disturbing or harming) such species. The program shall include, but not be limited to, information pamphlets and signage included as part of the interpretive program within the habitat management plan area. Informational pamphlets shall be distributed to all residences on a regular basis (e.g. once a year). At a minimum, the program shall include the following topics: occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, impacts from free-roaming pets (particularly domestic and feral cats), legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, the importance of the presence of large predators such as the coyote in maintaining the habitat, and project features designed to reduce the impacts to these species and promote the species continued successful occupation of the preserved areas.
 25. The permittee shall ensure that development landscaping adjacent to the habitat management plan area shall be consistent with the 'Landscaping Requirements' special condition of this permit which prohibits the use of exotic plant species that may be invasive to native habitats anywhere within the development. The final habitat management plan shall incorporate the lists of approved and prohibited plant species required to be submitted pursuant to the 'Landscaping Requirements' special condition of this permit.
 26. The permittee shall ensure that development lighting adjacent to the habitat management plan area shall be directed away from and/or shielded so as not to illuminate native habitats.
 27. The proposed restoration monitoring and maintenance shall occur for the proposed five (5) year period. Annual mitigation maintenance and monitoring reports shall be submitted to the Executive Director no later than one month following the close of the reporting year. The permittee or successor in interest shall comply with the proposed Habitat Management Plan performance criteria. Monitoring shall include botanical as well as animal resources such as gnatcatcher usage. Gnatcatcher monitoring shall document nesting, breeding territory size and location, and fledging success. Performance criteria shall include botanical goals and wildlife usage goals. If at the end of the proposed 5 year period the performance criteria have not been met, the permittee or successor in interest shall provide an analysis to

the Executive Director of reasons the plan did not succeed and the measures to be taken to ensure success. If at the end of the proposed 5 year period the performance criteria have not been met, the permittee or successor in interest shall seek an amendment for measures to ensure the success of the habitat restoration plan. Restoration monitoring and maintenance shall be extended in accordance with the requirements of any amendment. This requirement does not limit the permittee's responsibility for post-restoration, perpetual monitoring and maintenance required in these special conditions.

28. Restoration activities, such as weed control and removal and planting and seeding shall not take place within 100 feet of gnatcatcher territory where gnatcatchers are present unless the permittee provides a biological monitor who will ensure no impacts to gnatcatcher occur and the permittee must obtain prior written approval from the Resources Agencies. Prior to initiation of such activities, the permittee shall submit written evidence of Resources Agency approval for the review and approval of the Executive Director.
 29. Appropriate controls and services that prohibit the entry of domesticated animals into habitat restoration areas shall be identified and implemented. In addition, appropriate controls and services shall be identified and implemented for areas where domestic animals may be permitted, such as trails.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans or phases of construction 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 required.

11. Landscape Requirements

- A. All areas disturbed and/or denuded by the development shall be re-vegetated and maintained to protect habitat and to prevent erosion into habitat areas, wetlands, and coastal waters. Such re-vegetation shall occur in accordance with the requirements of the special conditions of this permit. Furthermore, undisturbed areas shall be re-vegetated in accordance with the final Habitat Management Plan approved by the Executive Director. All required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials that conform to the requirements of the special conditions of this permit.
- B. Except for landscaping within 1) the non-open space lots in the regional commercial development, 2) the private residential lots within TTM 8817, 3) within the right-of-way of Avenida Pico and Avenida Vista Hermosa, and for turf authorized by this permit within the park areas, all landscaping (including temporary erosion control and final landscaping) for the entire development covered by this permit shall be of plants native to coastal Orange County and appropriate to the natural habitat type. Native plants used for landscaping shall be obtained, to the maximum extent practicable, from seed and vegetative sources on the project site. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant

Council, or as may be identified from time to time by the State of California shall be utilized anywhere within the proposed development area, including the landscaping within the 'excepted' areas noted in the first sentence of this paragraph. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within the proposed development area, including the 'excepted' areas noted in the first sentence of this paragraph. Use of drought tolerant and native plant species is encouraged within the private residential lots and within approved turf areas in parks.

- C. For visual purposes, prior to the issuance of the coastal development permit, a visual enhancement plan shall be submitted for review and approval by the Executive Director that is designed to soften, through selective placement of vegetation, the visual impact of large expanses of wall or roof within residentially and commercially developed portions of the site that would be visible from the proposed parks and significant vantage points along proposed trails. The plan shall provide for the adequate planting of shrubs, vines, groundcover, and occasional trees, selectively placed to soften the visual impact of approved development from significant vantage points. Such plantings shall comply with fuel modification requirements of the relevant fire authority. Vegetation for visual softening shall be installed by the landowner within 180 days of occupancy of each applicable residence in accordance with the CC&Rs for the proposed residences and prior to occupancy of the applicable commercial structure(s).
- D. Temporary Erosion Control Landscaping. See 'General Construction Responsibilities' Condition.
- E. Timing of Final Landscaping. Final landscaping guidelines for all areas outside the habitat management plan area shall be completed and submitted for review and approval by the Executive Director prior to the issuance of the coastal development permit. The guidelines shall state that landscaping shall be installed by the landowner consistent with the guidelines within 180 days of initial occupancy of each residence or each commercial building approved by this permit. Interim erosion control measures shall be identified in the guidelines. The guidelines shall be consistent with the requirements of this coastal development permit. The applicable covenants, conditions and restrictions required by Special Condition 5 for all areas outside the habitat management plan area shall require that landscaping be consistent with the landscaping guidelines approved by the Executive Director. The timing of re-vegetation efforts within the habitat restoration areas identified in the revised final Habitat Management Plan shall be as indicated in the revised final Habitat Management Plan approved by the Executive Director.
- F. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit landscape palette lists to be incorporated into the landscaping guidelines detailed in Special Condition 11.E. subject to the review and approval of the Executive Director, that identify: 1) the native plant species that may be planted in the development; 2) a representative list of the non-native, non-invasive common garden plant species that may be planted in the residential and commercial lots and the rights-of-way of Avenida Pico and Avenida Vista Hermosa; 3) the non-native, non-invasive turf that may be planted

within approved turf areas in parks, and 4) the invasive plant species that are prohibited from use anywhere within the development. The landscape palette for the development shall be consistent with the lists of approved plants as reviewed and approved by the Executive Director. These lists shall remain available for public consultation at the California Coastal Commission, the City of San Clemente, any homeowners association(s) established for the development, and from the on-site naturalist for the Project. Additions to or deletions from these lists may be made by the Executive Director of the California Coastal Commission, in consultation with the project's restoration ecologist and the resource agencies. No deviations from the list shall occur in the plantings on the site without an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

- G. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for review and approval by the Executive Director final landscaping and erosion control plans for the entire project (e.g. open spaces, parks, trail corridors, common open spaces, graded and disturbed areas, and the commercial and residential development). The plans shall be modified in accordance with the requirements of the special conditions of this permit. The permittee shall undertake development in accordance with the approved 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 required.
- H. PRIOR TO SUBMITTAL OF FINAL LANDSCAPE PALETTE LISTS, LANDSCAPE PLANS, AND TEMPORARY EROSION CONTROL PLANS, the permittee shall obtain the review and approval of those lists and plans by the California Department of Fish and Game, the United States Fish and Wildlife Service and the Orange County Fire Authority. Written evidence of the required reviews and approvals shall be submitted with the lists and plans submitted to the Executive Director.
- I. CONCURRENT WITH SUBMITTAL OF ALL PLANS IDENTIFYING LANDSCAPING, the permittee shall provide an analysis of each plan submitted, prepared by a qualified biologist, which documents that the landscaping complies with all of the landscaping and habitat management requirements of this permit.
- J. Monitoring. Five years from the date of the completion of the installation of landscaping as required in these special conditions, the permittee shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the requirements of the special conditions of this permit and the landscape plans approved pursuant to the special conditions of this permit. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the permittee, or

successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.

12. Fire Hazard Mitigation and Fuel Modification Requirements

- A. All fuel modification shall be consistent with the requirements of this permit, the final habitat management plan approved by the Executive Director, and the final fuel management plan to be submitted for review and approval of the Executive Director pursuant to subpart B of this condition that is conceptually described in the "Conceptual Fuel Management Plan for the Marblehead Coastal Development Amended Tentative Tract No. 8817", prepared by Firewise 2000, Inc. dated 27 November 2002 and amended on February 14 and February 21, 2003. Proposed and future residential and commercial structures shall be set back a sufficient distance from proposed habitat preservation and restoration areas such that there is no vegetation thinning or clearance required by the relevant fire authority (e.g. Orange County Fire Authority) within habitat preservation and restoration areas and such that there is no prohibition by the fire authority on the types of native plant species that may be planted or allowed to grow within the habitat preservation and restoration areas, except as specified in the Conceptual Fuel Management Plan identified above and the final fuel management plan identified below. In general, the fuel management allowed within habitat preservation and restoration areas is outside of ESHA and buffers and limited to trimming of created native perennial grasses located between residences and CSS along each side of Marblehead canyon, and between residences and the trail and the eastern detention basin (Lot P depicted on PFM 8817). This requirement shall not result in any reduction of preserved and restored habitat or public access and recreation opportunities.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final fuel management plan for the development for review and approval by the Executive Director which shall be consistent with the requirements outlined above and in the special conditions of this permit. The final fuel management plan and relevant development plans shall have received final approval from the relevant fire authority and the submittal shall include written evidence of said approval. The final plans for the development and the final fuel management plan shall incorporate the mitigation measures outlined in the "Conceptual Fuel Management Plan for the Marblehead Coastal Development Amended Tentative Tract No. 8817", dated November 27, 2002 and amended February 14 and February 21, 2003. The fuel management plan shall include a statement which states that any changes to the plan, including any changes required by the relevant fire authority or other resource agencies, shall be reported to the Executive Director of the Coastal Commission, and shall require an amendment to this permit or a new coastal development permit prior

to implementation of changes unless the Executive Director of the Coastal Commission determines that no amendment or new permit is required.

- C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- D. For purposes of this permit, this condition shall serve as notification to present and future property owners that certain structures and areas of land are subject to special fuel treatment requirements that are specified in the final fuel management plan approved by the Orange County Fire Authority and the Executive Director of the Commission. With some exceptions, all commercial and residential structures facing upon open spaces and perimeter slopes vegetated with coastal sage scrub within Tract 8817 are required to incorporate building construction features consistent with Orange County Fire Authority guidelines for construction of structures within special fire hazard areas. Furthermore, with some exceptions, there is a prohibition on the placement of combustible materials in an area of land within residential and commercial lots that abut open spaces and perimeter slopes vegetated with coastal sage scrub within Tract 8817. Proposed and future development shall conform to the requirements of the final fuel management plan.

13. Lighting

- A. All lighting within the development shall be directed and shielded so that light is directed away from wetlands, canyons, coyote access corridors, bluff face, and other habitat areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, revised plans to protect the wetlands, canyons, coyote access corridors, bluff face and other habitat areas from light generated by the project. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that the lighting plan is effective at preventing lighting impacts upon adjacent environmentally sensitive habitat.
- B. The permittee shall undertake development in accordance with the approved 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 required.

14. Walls, Fences, Gates, Safety Devices and Boundaries

- A. Walls, fences, gates, safety devices and boundary treatments within or controlling access to open spaces and wildlife corridors shall be designed to allow the free ingress, egress and traversal of the habitat areas of the site by wildlife, including the coyote. Where the backyards of residences abut habitat areas, there shall be walls, fences, gates, safety devices and boundary

treatments, as necessary, to contain domestic animals within the residential and commercial development and exclude such animals from sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit final revised plans showing the location, design, height and materials of all walls, fences, gates, safety devices and boundary treatments for the review and approval of the Executive Director. Said plans shall be accompanied by an analysis of the wall, fence, gate and boundary treatment plan prepared by a qualified biologist which documents that the modified walls, fences, gates and safety barriers and boundary treatments will minimize the uncontrolled entry of domesticated animals into environmentally sensitive habitat and allow for free ingress, egress and traversal of the habitat areas of the site by wildlife, including the coyote. The plans shall have received prior review and approval by the City of San Clemente, the California Department of Fish and Game and the United States Fish and Wildlife Service.

- 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 required.

15. Public Access and Recreation Improvements and Signage

- A. The applicant shall ensure the construction of the public access and recreation improvements for park and trail purposes as described in the project description submitted by the applicant; in a letter from the City of San Clemente dated February 2, 2002; and depicted on plans titled Marblehead Coastal, Amended Tentative Tract No. 8817, Sheets 1 and 2, dated February 14, 2003; Marblehead Coastal Amended Residential Site Plan #97-16, plot date February 14, 2003; Marblehead Coastal Landscape Concept Plan Amended Commercial Site Plan, dated December 5, 2001; Marblehead Coastal Landscape Concept Plan Amended Residential Site Plan #97-16, dated February 14, 2003 and as modified by the special conditions of this permit. All public access and recreation improvements for park and trail purposes shall be completed and open for use by the general public in accordance with the final construction phasing plan approved by the Executive Director in accordance with the 'Construction/Development Phasing' special condition of this permit. Furthermore, the facilities identified in this condition shall be maintained in accordance with the final maintenance and funding program approved by the Executive Director in accordance with the 'Access and Habitat Management and Maintenance' special condition of this permit.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit revised final, detailed plans of the public access and recreation improvements for park and trail purposes for review and approval by the Executive Director. All facilities constructed shall be sited and designed to minimize disturbance to adjacent habitat areas and to minimize the obstruction of public views. All facilities shall conform with the final habitat management plan approved by the Executive Director. Plans shall identify all structures including location, dimensions, materials and colors, and use as well as sign text, size and orientation. All plans shall be of sufficient scale and detail to verify

the location, size and content of all signage, and the location, size, materials and use of structures during a physical inspection of the premises. The plans shall be revised to incorporate any additional trails, open space and park areas required by the Special Conditions of this permit. Said plans shall have received prior review and approval by the City of San Clemente and shall reflect the City's final plans relative to the parks and trails. Development which is not specifically shown on the final plans which are reviewed and approved by the Executive Director and which the City intends to construct within the park shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required. The final plans shall also comply with the following:

1. Public Recreational Facilities: The final plans submitted for review and approval by the Executive Director shall include detailed plans identifying all recreational and support amenities such as picnic tables, outdoor cooking facilities, trash facilities, children's play facilities, restrooms, sports courts, recreational buildings, hardscape, etc. In addition to any other modifications necessary to comply with the special conditions of this permit, the following modifications shall be incorporated into the public recreational facilities plan:
 - i. At minimum, restrooms shall be located within proposed Lot F and within proposed Lot N of proposed Tract 8817. An additional restroom may be located at Lot R of proposed Tract 8817 provided the restroom complies with all applicable requirements established in this permit (e.g. ESHA buffers, fuel modification);
 - ii. Turf shall not be installed within the proposed turf area (Amended Tentative Tract No. 8817 Lot I which is a portion of Lot L depicted on PFM 8817) seaward of the central detention basin. In place of turf, the area shall be re-vegetated with plants native to coastal Orange County and appropriate to the natural habitat type. In addition to appropriate vegetation, Amended Tentative Tract No. 8817 Lot I which is a portion of Lot L depicted on PFM 8817 shall include a recreational trail along the bluff edge and vista points including seating and interpretive signs. Only wildlife resistant trash receptacles shall be utilized within Amended Tentative Tract No. 8817 Lot I which is a portion of Lot L depicted on PFM 8817;
 - iii. All turf within the 50 foot ESHA buffer, such as the area of Lot N of Amended Tentative Tract No. 8817 (which has become a portion of Lot L on PFM 8817) adjacent to the western canyon, shall be eliminated. These areas shall be re-vegetated with plants native to coastal Orange County and appropriate to the natural habitat type. The proposed trail through this area shall be retained but re-routed to conform with the buffer criteria identified in the 'Final Habitat Management Plan' special condition of this permit.
2. Public Trail Plan: The final plans submitted for review and approval by the Executive Director shall include detailed trail improvement plans for both interim (as necessary) and final phases. An interim trail improvement plan shall only be necessary should the applicant choose to implement interim trail improvements in advance of final, trail improvements in accordance with

the criteria outlined in the 'Construction/Development Phasing' condition of this permit. The detailed interim and final trail improvement plans submitted shall be in substantial conformance with the plans identified above and as modified by the conditions of this permit. Said plan(s) shall include trail alignment, width, and materials; designated parking; interpretive signs; designated overlooks; recreational appurtenances such as benches, picnic tables, shade structures, refuse containers; fencing between trails and habitat areas; erosion control and footpath control plantings (such as cactus adjacent to sensitive areas); steps, where necessary. In addition to any other modifications necessary to comply with the special conditions of this permit, the following modifications shall be incorporated into the final trail plan:

- i. Unless deemed inconsistent with the final habitat management plan by the Executive Director, a trail and pedestrian bridge that bypasses El Camino Real and provides a direct trail connection between the portions of the bluff park that flank the mouth of Marblehead canyon (e.g. Lot F and Lot J of proposed Amended Tentative Tract No. 8817 which are Lot E and a portion of Lot L depicted on PFM 8817) shall be constructed;
 - ii. A continuous pedestrian trail shall follow the entire rim of the western canyon with connections to the bluff edge trail at each end;
 - iii. The proposed trail segment that passes through the slot canyon (Lot C on proposed Amended Tentative Tract No. 8817 which is a portion of Lot L depicted on PFM 8817) shall be routed to avoid ESHA. To the maximum extent feasible the revised route shall maintain an on-site connection between the trail that follows the perimeter of the easterly detention basin (Lot P depicted on PFM 8817), and the park (Lot E depicted on PFM 8817), by following the perimeter of proposed Amended Tentative Tract No. 8817 Lots C and D which are Lot D and a portion of Lot L depicted on PFM 8817. The trail shall be located at the outer perimeter of the ESHA buffer, where feasible.
3. Sign Plan: The final plans submitted for review and approval by the Executive Director shall include a detailed signage plan which directs the public to the various public access and recreation opportunities on the project site and declares the public's right to use such facilities. Signs shall invite and encourage public use of access opportunities and shall identify, provide information and direct the public to key locations. Key locations including, but not limited to, public parking (including both parking along streets and within parking lots), parks, trails, restrooms, and overlooks. Signage shall be visible from major thoroughfares (e.g. El Camino Real, Avenida Pico, proposed Avenida Vista Hermosa) and from internal circulation roads, access corridors and parks. Signage shall include public facility identification monuments (e.g. public park name); community identification monuments (e.g. Marblehead Community); facility identification/directional monuments (e.g. location of park amenities); key directional monuments (e.g. small monuments at key street intersections to direct the public to various amenities); informational signage and circulation (e.g. maps of community and circulation, location of major amenities); interpretive signs, and roadways signs. Signs shall also identify key habitat

preservation areas, explain biology and other resource characteristics of the site, explain water quality management at the site, and identify restricted areas. Signs not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is required.

- B. The revised plans shall, prior to submittal to the Executive Director, be reviewed and certified by a qualified professional to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.
- C. The permittee shall undertake development in accordance with the approved 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 required.

16. Water Quality

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a final revised Water Quality Management Plan (WQMP) for the post-construction project site. The WQMP shall be prepared by a licensed water quality professional and shall include project plans, hydrologic calculations, and details of the structural and non-structural Best Management Practices (BMPs) that shall be included in the project.

The final plan shall be reviewed by the consulting engineering geologist to ensure conformance with geotechnical recommendations. The final plan shall demonstrate substantial conformance with the Marblehead Coastal Water Quality Plan dated November 28, 2001, prepared by RBF Consulting with addendum sheet received April 17, 2002; revision dated April 18, 2002, including Revised Exhibit 8 'Marblehead Stormwater Quality Monitoring Plan by GeoSyntec Consultants; Exhibit 9 Recommended Maintenance Activities by GeoSyntec Consultants; Exhibit 10 Proposed Responsibility and Funding for Marblehead Coastal Development Water Quality Best Management Practices; and revision dated February 14, 2003. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- 1. Best Management Practice Specifications
 - a. Site Design, Source Control, and Treatment Control BMPs shall be designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of storm water and nuisance flow leaving the developed site.
 - b. Maintain, to the maximum extent practicable, pre-development peak runoff rates and average volume of runoff;
 - c. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.

- d. The structural BMPs shall be constructed prior to or concurrent with the construction of infrastructure associated with the development within Tentative Tract 8817. Prior to the occupancy of residential or commercial structures approved by this permit, the structural BMPs proposed to service those structures and associated support facilities shall be constructed and fully functional in accordance with the final WQMP approved by the Executive Director.
- e. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development to ensure the water quality special conditions are achieved. Maintenance activity shall be performed according to the specifications in 'Exhibit 9: Recommended Maintenance Procedures, prepared by GeoSyntec Consultants' (dated February 5, 2002) of the "Marblehead Coastal Water Quality Plan" (dated November 28, 2001 plus amendments thereto). At a minimum, maintenance shall include the following:
 - i. All structural BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no later than October 1st of each year; after every major storm event; and at least once during the dry season;
 - ii. Wetlands vegetation installed within water quality detention basins shall be monitored and maintained in a manner that ensures successful establishment of the vegetation and ongoing ability of the vegetation to remove pollutants for the life of the development. All such maintenance shall be conducted under the supervision of a qualified wetlands biologist or qualified professional for the life of the development;
 - iii. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work. If the Executive Director determines that an amendment or a new permit is required to authorize the work, no such work shall begin or be undertaken until it is approved in accordance with the process outlined by the Executive Director;
 - iv. Should a qualified water quality professional(s) determine that the Recommended Maintenance Procedures as proposed in the Marblehead Coastal Water Quality Plan need to be revised due to site-specific data, the applicant shall submit revisions and supporting information describing the reason for the revisions for review and approval of the Executive Director.

2. Residential Low Flow Diversion:

- a. The applicant shall submit final design specifications for the installation of the low flow diversion pumps for the residential area. Prepared by a licensed water quality professional, the designs shall demonstrate sufficient sizing of pumps and/or pump structures to divert all dry weather/nuisance flows from the drainage area called the “residential area” in the submitted Water Quality Plan.
3. Landscaping and Gardens
- a. Where irrigation is necessary and consistent with the final Habitat Management Plan approved by the Executive Director, the applicant shall install efficient irrigation systems, and to the extent feasible and commercially available satellite technology irrigation controllers, in all commercial landscaped areas and common areas and the CC&Rs required pursuant to Special Condition 5 shall require such efficient irrigation systems in landscaping and in residential lots. Efficient irrigation systems are those that match the water demand of the vegetation and the quantity of water delivered to the vegetation.
 - b. Drought tolerant, non-invasive vegetation that is native to coastal Orange County shall be used as dictated in the ‘Landscape Requirements’ special condition of this permit.
 - c. The use of chemical pesticides, herbicides, and fertilizers shall be minimized to the maximum extent practicable. An Integrated Pest Management Program (IPM) shall be implemented in all common area landscaping and encouraged in other development areas. The IPM Program shall be designed and implemented for all of the proposed landscaping/planting on the project site and shall include the following IPM features, as appropriate:
 - i. Bacteria, viruses and insect parasites shall be considered and employed as a pest management measure, where feasible.
 - ii. Manual weeding, hoeing and trapping.
 - iii. Use of non-toxic, biodegradable, alternative pest control products.
 - d. Where pesticides and/or herbicides are deemed necessary in conjunction with the IPM program, the list of pesticides and their application methods shall be included in the plans. Pesticides that are not on the list approved by the Executive Director shall not be used.
 - e. The applicant or responsible party shall be responsible for educating all landscapers or gardeners on the project site about the IPM program and other BMPs applicable to water quality management of landscaping and gardens. Education shall include written and verbal materials.
4. Restaurants:
- a. Wash down areas for restaurant equipment and accessories and food preparation areas shall be designed to meet the following:
 - i. The area shall be self-contained, equipped with a grease interceptor, and properly connected to a sanitary sewer. The grease interceptor shall have the capacity to capture grease to the maximum extent practicable.

- ii. If a wash area is to be located outdoors, it shall be covered, paved, have primary containment, and be connected to the sanitary sewer.
 - iii. The grease interceptor shall be regularly maintained according to manufacturer's specifications to ensure maximum removal efficiencies.
 - iv. The applicant shall be responsible for ensuring that restaurant owners, managers, and staff are educated about the use and maintenance of grease interceptors, as well as best management practices designed to limit, to the maximum extent practicable, the contribution of pollutants from restaurants, wash areas, loading areas, trash and recycling storage areas.
 - v. Informational signs around the establishments for employees and customers about water quality and the BMPs used on-site shall be provided.
5. Trash and recycling containers and storage areas:
The applicant shall use trash and recycling containers and storage areas that, if they are to be located outside or apart from the principal commercial structures, are fully enclosed and water-tight in order to prevent stormwater contact with waste matter which can be a potential source of bacteria, grease, and particulates and suspended solids in runoff, and in order to prevent dispersal by wind and water. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area(s), and must be screened or walled to prevent off-site transport of trash.
6. Avenida Pico:
- a. Runoff from all new and redeveloped surfaces on Avenida Pico, including the portion of road northeasterly of the proposed Avenida Vista Hermosa and Avenida Pico intersection, as well as all surfaces in the 8.5 acre drainage area that encompasses the northwesterly half of Avenida Pico fronting the project site (Lots D and E depicted on PFM 8817) and the Parking Lot (portion of Lot E depicted on PFM 8817) contained therein, shall be collected and directed through a system of media filter devices and bioswales. The filter elements shall be designed to treat, filter, or infiltrate runoff and 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through filtration and biological uptake. The drainage system shall also be designed to convey and discharge runoff in a non-erosive manner.
 - b. The applicant shall incorporate the proposed bioswale within Lot E depicted on PFM 8817, in the treatment train treating runoff from Avenida Pico which is described in the April 26, 2002 letter prepared by RBF Consulting to the California Coastal Commission.
7. El Camino Real:
- a. Runoff from all new and redeveloped surfaces on El Camino Real shall be collected and directed through a system of media filter devices. The filter elements shall be designed to treat, filter, or infiltrate runoff and 1) trap sediment, particulates and other solids and 2) remove or mitigate

contaminants through filtration. The drainage system shall also be designed to convey and discharge runoff in a non-erosive manner.

8. Education and Training

- a. Annual verbal and written training of employees, tenants, landscapers, and property managers and other parties responsible for proper functioning of BMPs in commercial development shall be required.
- b. Outdoor drains in the commercial site shall be labeled/stenciled to indicate whether they flow to an on-site treatment device, a storm drain, or the sanitary sewer as appropriate.
- c. Storm drain stenciling (“No Dumping, Drains to Ocean” or equivalent phrase) shall occur at all storm drain inlets in the development.
- d. Annual verbal and written training of homeowners, Homeowners Associations, BMP maintenance crews, landscapers, and other parties responsible for proper functioning of BMPs in commercial development shall be required.
- e. Informational signs around the commercial establishments for customers and employees/tenants about water quality and the BMPs used on-site shall be provided.
- f. Informational signs around the residential development for homeowners and the public about urban runoff and the BMPs used on-site shall be provided near the detention ponds, at trail heads, and at centralized locations near storm drain inlets.

B. Water Quality Monitoring Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a final revised Water Quality Monitoring Plan, designed to characterize and evaluate the potential effects of stormwater and dry weather runoff from the proposed development on receiving waters. The final plan shall demonstrate substantial conformance with the “Exhibit 8 “Marblehead Coastal Stormwater Quality Monitoring Plan Overview” dated December 5, 2001, prepared by GeoSyntec Consultants and its revisions dated February 5, 2002, and it shall be consistent with the requirements of these special conditions:

1. Water quality monitoring for the Marblehead Development shall comply with the following requirements:
 - a. Baseline water quality data of pre-development conditions shall be collected prior to commencement of construction. The baseline water quality studies shall be sufficient to document background (pre-development) levels of the contaminants that will be analyzed in the ongoing water quality monitoring program.
 - b. Dry weather sampling shall be conducted from the commencement of construction through the time in which low flow diversions are permanent. Dry weather sampling shall occur on a monthly basis.
2. The Water Quality Monitoring Plan shall include a map of the proposed sampling locations.

3. If monitoring results indicate that incidents are occurring in which applicable water quality standards including, but not limited to, any applicable standards in the California Toxics Rule and the California Ocean Plan, are not being met and/or that recurring incidents are threatening to establish a condition in which applicable water quality standards are not being met, the applicant shall investigate the cause or source of the incidents and/or condition and provide information to the Executive Director demonstrating any incidents and/or resulting condition in which applicable water quality standards have not been met is not the result of the applicant's failure to comply with the terms and conditions of this Permit. If the Executive Director determines otherwise, based on the information generated from the applicant's investigation and all other information available to the Executive Director, corrective actions or remedies shall be required. If remedies or corrective actions constitute development under Section 30106 of the Coastal Act, an amendment to this Permit shall be required, unless the Executive Director determines no such amendment is required.
 4. Baseline water quality data of the pre-development conditions of the constituents that will be monitored in the Stormwater Quality Monitoring Plan shall be collected.
 5. The applicant shall clarify parameters that will "trigger" a reevaluation of trash and debris BMPs in the Water Quality Monitoring Plan.
 6. In addition to construction phase monitoring, post-development monitoring shall be conducted for a minimum period of three (3) years, following completion of development approved by this permit. Annual reports and semiannual updates containing data and analytical assessment of data in comparison to any applicable water quality objectives and other criterion specified herein, shall be submitted to the Executive Director of the Commission and to the San Diego Regional Water Quality Control Board for three (3) years after all construction approved by this permit has been completed.
- C. The permittee shall undertake development in accordance with the approved 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 required.
- 17. Avenida Vista Hermosa Bridge Requirements and Plan Revisions**
- A. All development associated with the construction of the proposed Avenida Vista Hermosa Bridge shall maintain a minimum 25 foot horizontal setback from wetlands and a minimum 61 foot vertical clearance from the wetland surface, except as allowed below. Also, the permittee shall maximize public views available to motorists, bicyclists and pedestrians from the proposed bridge through the installation of bridge rails that minimize visual obstructions for bridge users. Furthermore, the bridge shall be constructed with materials that are colored and textured to be compatible with the canyon. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. The revised

plans shall incorporate the above requirements and also the following exceptions and show the following changes to the Avenida Vista Hermosa bridge:

1. Except for the limited, temporary, construction related encroachments described in a memorandum by Glenn Lukos Associates dated November 29, 2004 and a letter prepared by RBF Consulting dated November 29, 2004 and upon plans referenced therein, all development shall maintain a minimum 25 foot horizontal setback from wetlands and a minimum 61 foot vertical clearance from the wetland surface;
 2. The bridge should be designed to provide suitable habitat for locally occurring bat species, as feasible.
 3. Bridge rails shall be designed to minimize visual obstructions for bridge users. Bridge rails to be used shall have been crash tested and approved for use with sidewalks in California by the California Department of Transportation (CalTrans). At minimum, the applicant shall utilize the Type 80-SW bridge rail or Type ST-10 bridge rail, whichever is less visually obtrusive in this application. If a less visually obtrusive bridge rail has been crash tested and approved for use with sidewalks in California, said rail shall be used. The Executive Director shall approve the least obtrusive CalTrans-approved bridge rail, which in order of preference from least preferable to most preferable known at this time consists of the Type-80SW (CalTrans-approved), "Wyoming modified" rail (not yet known to be CalTrans-approved), and then the "Alaska" rail (not yet known to be CalTrans-approved).
 4. Excepting the roadway surface, the structure shall be constructed with materials that have been colored with earth tones that are compatible with the canyon; white and black tones shall not be used; the color shall be maintained through-out the life of the structure; the structure shall have a non-reflective texture to be compatible the adjacent canyon; decorative accents (e.g. stamped patterns) shall be used where feasible.
- B. If a less visually obtrusive bridge railing becomes CalTrans approved after the permittee complies with subsection A of this condition, the permittee is strongly encouraged to use such railing. The Executive Director may approve revised plans incorporating said railing without requiring an amendment to this coastal development permit, unless the Executive Director determines that an amendment is required.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Except as noted in subsection B, 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 required.

18. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, revised final plans, approved by the City of San Clemente, which conform with the

requirements of the special conditions of this permit and indicate the final layout of all development including but not limited to lots, grading, streets, utilities and easements, infrastructure, water quality management system, trails and other access corridors, park and recreation facilities, signs, interpretive amenities, habitat restoration, landscaping, and residential and commercial buildings and appurtenance. The permittee shall undertake development in accordance with the approved 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 required.

19. Conformance of Design and Construction Plans to Geotechnical Report

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in Geotechnical Review of the Proposed Grading Plan for Marblehead Coastal, Amended Tentative Tract 8817, City of San Clemente, Orange County, dated October 19, 2001, and prepared by Lawson & Associates of San Clemente (Project No. 010009-01) and subsequent, supplemental recommendations identified in the geologic reports listed under Substantive File Documents of the adopted findings. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluations approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved 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 required.

20. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, and earth movement; (ii) to assume the risks to the permittee 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 hazards.

21. Lot 314 Restriction

Development of Lot 314 (depicted on PFM 8817) shall be limited to:

5-03-013-A10 (Villa San Clemente, LLC)

1. Grading and development approved by Coastal Development Permit 5-03-013, future visitor-serving commercial, active public recreation and support facilities, passive public recreation and support facilities, open space, habitat restoration, and water quality improvement facilities; and
2. the following development, if approved by the Coastal Commission as an amendment to this coastal development permit or new coastal development permit: landslide and erosion repair and underground public utilities.
3. Future structures shall not exceed two floors above the land grade approved by Coastal Development Permit 5-03-013.
4. Future structures shall be sited and designed to minimize the obstruction of public views from public parks, trails and open spaces approved by Coastal Development Permit 5-03-013.
5. Future structures shall be sited and designed to conform, at minimum, with the ESHA buffer requirements outlined in this permit.

22. Structural Appearance Condition - Exterior Building Materials

- A. For structures that would be visible from, face upon, or be constructed within proposed parks, open spaces and trails, all walls and building exteriors shall be finished in earth tones including deep shades of brown, gray and green, with no white, light or bright colors except as minor accent features. The color shall be maintained through-out the life of the structure(s).
- B. The proposed to be re-constructed terrace and down drains on the El Camino Real bluff shall be finished in earth tones that are compatible with the adjacent bluff face and vegetation. White and black tones shall not be used. The color shall be maintained through-out the life of the structure(s). The structure(s) shall have a non-reflective texture to match the adjacent bluff face.

23. Residential Area Height Restrictions and Slope Edge Setbacks

- A. The heights of residential structures and appurtenances shall be as identified in the final plans approved by the Executive Director. Future development shall conform with these heights unless such heights are changed by an amendment to this permit, unless the Executive Director determines that no amendment to this permit is required.
- B. Structures (enclosed) and appurtenant buildings on residential lots adjoining canyons within Tract 8817 shall be setback a minimum of 20 feet from the slope edge created as a result of grading approved under Coastal Development Permit 5-03-013. Slope edge shall be defined as the upper termination of a canyon slope. In cases where the top edge of the canyon is rounded away from the face of the canyon slope as a result of grading approved under this permit or erosional processes related to the presence of the slope, the slope line or edge shall be defined as that point nearest the canyon slope beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon slope. In a case where there is a steplike feature at the top of the canyon slope, the landward edge of the topmost riser shall be taken to be the slope edge.

24. Inland Commercial Site Restrictions

- A. Non-visitor serving uses shall be prohibited on the main pedestrian level of all commercial buildings located on designated commercial lots in Tract 8817 [Lots 315 to 327 depicted on PFM 8817], or portions thereof, within the coastal zone, excluding Lots 319-321, upon which a one-time relief shall allow the non-visitor serving uses proposed in, and subject to, Permit Amendment No. 5-03-013-A10.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide written evidence of a reciprocal/shared parking agreement which ensures that all proposed and future uses in the commercial center shall have use of all parking spaces within commercial lots 315 to 327 (depicted on PFM 8817).
- C. As proposed by the applicant, the general public shall be allowed to park within the parking spaces within commercial lots 315 to 327 (depicted on PFM 8817) at the same times and under the same conditions as the visitors to the shopping center. Parking validation from the commercial center shall not be required to park within the commercial parking area.
- D. If the regional commercial center is constructed in sub-phases, prior to the occupation of any portion of each sub-phase, the permittee shall demonstrate to the Executive Director that sufficient parking to support that sub-phase, in combination with demand and available parking associated with any prior sub-phase, has been provided on-site. At minimum, such demonstration shall consist of a parking analysis prepared by qualified personnel and evidence of approval of the proposed quantity of parking from the City of San Clemente.
- E. Structures (enclosed) and appurtenant buildings on commercial lots adjoining canyons within Lots 321 to 323 (depicted on PFM 8817) shall be setback a minimum of 20 feet from the slope edge created as a result of grading approved under Coastal Development Permit 5-03-013. Slope edge shall be defined as the upper termination of a canyon slope. In cases where the top edge of the canyon is rounded away from the face of the canyon slope as a result of grading approved by this permit or erosional processes related to the presence of the slope, the slope line or edge shall be defined as that point nearest the canyon slope beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the canyon slope. In a case where there is a steplike feature at the top of the canyon slope, the landward edge of the topmost riser shall be taken to be the slope edge.
- F. The heights of commercial structures and appurtenances shall be as identified in the final plans approved by the Executive Director. Future development shall conform with these heights unless such heights are changed by an amendment to this permit, unless the Executive Director determines that no amendment is required.

25. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. 5-03-013. Pursuant to Title 14, California Code of Regulations, sections 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(a) and 30610(b) shall not apply. Accordingly, any future improvements to the single family houses and other structures described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14,

California Code of Regulations, sections 13252(a)-(b), shall require an amendment to Permit No. 5-03-013 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government, unless the Executive Director of the Commission determines that no amendment or new permit is required.

26. Area of Potential Archaeological Significance

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director a revised archeological monitoring plan prepared by a qualified professional, that shall incorporate the following measures and procedures:
1. The applicant shall comply with all recommendations and mitigation measures contained in the Archaeology Plan prepared for the project by Gavin H. Archer, RPA, dated November 2002, as amended by the Archeological Monitoring and Treatment plan dated February 20, 2003 and as further modified by the conditions below and any other applicable conditions of this permit;
 2. If any cultural deposits are discovered during project construction, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, the permittee shall carry out significance testing of said deposits and, if cultural deposits are found to be significant, additional investigation and mitigation in accordance with this special condition including all subsections. No significance testing, investigation or mitigation shall commence until the provisions of this special condition are followed, including all relevant subsections;
 3. If any cultural deposits are discovered, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, all construction shall cease in accordance with subsection B. of this special condition;
 4. In addition to recovery and reburial, in-situ preservation and avoidance of cultural deposits shall be considered as mitigation options, to be determined in accordance with the process outlined in this condition, including all subsections;
 5. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading;
 6. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
 7. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. Procedures outlined in the monitoring plan shall not prejudice the ability to comply with applicable State and Federal laws, including but not limited to, negotiations between the landowner and the MLD regarding the manner of treatment of human

remains including, but not limited to, scientific or cultural study of the remains (preferably non-destructive); selection of in-situ preservation of remains, or recovery, repatriation and reburial of remains; the time frame within which reburial or ceremonies must be conducted; or selection of attendees to reburial events or ceremonies. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Where appropriate and consistent with State and Federal laws, the treatment of remains shall be decided as a component of the process outlined in the other subsections of this condition.

8. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures established by this special condition, including all subsections. Furthermore, prior to the commencement and/or re-commencement of any monitoring, the permittee shall provide a copy of this special condition, the archeological monitoring plan approved by the Executive Director, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor.
- B. If an area of cultural deposits, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, is discovered during the course of the project, all construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options or the ability to implement the requirements of this condition shall cease and shall not recommence except as provided in subsection C and other subsections of this special condition. In general, the area where construction activities must cease shall be 1) no less than a 50 foot wide buffer around the cultural deposit; and 2) no more than the residential enclave or commercial development area within which the discovery is made.
 - C. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.
 - (1) If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
 - (2) If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing

may not recommence until after an amendment to this permit is approved by the Commission.

- (3) Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection D of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.
- D. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archaeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection E of this condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.
- (1) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
 - (2) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- E. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected

peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

F. The permittee shall undertake development in accordance with the approved 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 required.

27. U.S. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall provide to the Executive Director a copy of a permit issued by the U.S. Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

28. Other Agency Approvals

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director a copy of a permit, or letter of permission, or evidence that no permit or permission is required for the project by the following entities: City of San Clemente; California Department of Fish and Game; U.S. Fish and Wildlife Service; Regional Water Quality Control Board, Orange County Fire Authority. The applicant shall inform the Executive Director of any changes to the project required by the City of San Clemente; California Department of Fish and Game; U.S. Fish and Wildlife Service; Regional Water Quality Control Board, and Orange County Fire Authority. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

29. Proof of Legal Ability to Comply with Conditions

Prior to issuance of the coastal development permit, the permittee shall provide 1) proof of undivided legal interest in all the properties subject to this permit, or 2) proof of the permittee's ability to comply with all the terms and conditions of this coastal development permit. No land subject to this coastal development permit may be developed until and unless all terms and conditions relating to the project

as a whole have been met and agreed to in writing by all parties with ownership interest.

30. Compliance.

All development shall occur in strict compliance with the proposal as set forth in the application for permit, subject to any changes approved in this permit and subject to any approved revised plans provided in compliance with the Commission's special conditions and any other special conditions noted above. Any proposed change from the approved plans must be reviewed and approved by the Executive Director to determine if an amendment or new permit is necessary.

31. Condition Compliance

WITHIN 1 YEAR OF COMMISSION ACTION ON THIS CDP APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements of Special Condition 10 and 11 that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

32. Buyer'(s) Acknowledgment

- A. Prior to issuance of this coastal development permit, the owner(s) of the property that is the subject of this permit shall agree that before any sale or transfer of any of that property or any interest in that property that occurs before completion of all public amenities required in this permit and establishment of habitat restoration areas required in this permit (collectively, the "Improvements"), the owner-seller shall secure a letter from the buyer of the property (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is restricted by the special conditions of the permit and restrictions recorded on the property pursuant thereto, and development of the property is contingent on the implementation of habitat preservation and enhancement described in the final habitat management plan and the construction and opening to the public of public trails and other public access and recreation amenities, (c) that pursuant to the special conditions of the permit and the special offers recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that that buyer-turned-seller shall secure from its buyer a letter to the same effect.
- B. Subsequent to the issuance of this coastal development permit, and prior to the sale or transfer of any of the property or any interest in the property that is the subject of this permit that occurs before completion of all of the Improvements, the owner of the property being sold shall secure a letter from the buyer (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is therefore restricted by the special conditions of this permit and restrictions recorded on the property pursuant thereto, and development of the property is contingent on the implementation of habitat preservation and enhancement described in the

final habitat management plan and the construction and opening to the public of public trails and other public access and recreation amenities, and furthermore, (c) that pursuant to the special conditions of the permit and the special offers recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to close of escrow on any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that that buyer-turned-seller shall secure from its buyer a letter to the same effect.

- C. A copy of such letter(s) shall be provided to the Executive Director, and the Planning Director of the City of San Clemente before close of escrow.

33. Inspections

The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

34. Generic Deed Restriction

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

35. Funding Condition Compliance And Document Review:

Within 30 days of the approval of this amendment and consistent with its proposal, Marblehead shall fund necessary cost for condition compliance and expedited document review of this permit by the Coastal Commission. These costs will include staff or temporary help salaries and associated operating costs incurred by the Coastal Commission to review legal documents and evaluate compliance with the conditions of this permit.

The Executive Director will determine the form and manner of payment by Marblehead consistent with the requirements of state law and which will ensure efficiency and reasonable costs to Marblehead. The Executive Director will prepare a written request specifying all needed funding. If Marblehead and the Executive Director cannot agree on the funding or the schedule, the disagreement will be submitted to the Coastal Commission for resolution.

- 36. Revisions to Plans and Recorded Documents to Conform with the Changes to the Development Authorized by this Amendment -A5**
PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT, 5-03-013-A5, the applicant shall submit for the review and approval of the Executive Director, revisions/updates to all documents, including but not limited to plans and recorded documents, such as the generic deed restriction and offer to dedicate, that depict or involve the development of areas that are the subject of this permit amendment that were previously approved by the Executive Director prior to issuance of the permit as amended through amendment -a3, subject to the following: 1) the revised/updated documents shall conform with all previously imposed requirements of the special conditions; 2) the revised/updated documents shall substantially conform with the plans submitted with amendment application no. 5-03-013-A5 except that those plans shall be revised to conform with the special conditions imposed through this amendment; and 3) recorded documents shall be amended or superseded/replaced, at the discretion of the Executive Director, to reflect the changes to such recorded documents approved by this permit amendment and said documents shall be subject to the same requirements established through the original condition(s) which required their initial recordation.

The permittee shall undertake development in accordance with the approved 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.

37. Minimize Bird-Strikes

- A. Along with the requirements of Special Condition 14 (regarding domestic animal controls and wildlife circulation) of the permit, as amended, walls, fences, and gates subject to this permit amendment shall use materials designed to minimize bird-strikes with the wall, fence, or gate. Material selection and structural design shall be made in consultation with a qualified project biologist, the California Department of Fish and Game and the United States Fish and Wildlife Service (herein 'Resource Agencies'), and the Executive Director of the Commission. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, plexiglass or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or plexiglass shall not be installed unless 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 a qualified project biologist, the Resources Agencies and 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 a qualified project biologist, the Resources Agencies and the Executive Director. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit final revised plans showing the location, design, height and materials of all walls, fences, and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition and be accompanied by an analysis of the wall, fence, and gate plan prepared by a qualified biologist which documents that the modified walls, fences, and gates will minimize bird-strikes. The plans shall have received prior review and approval by the City of San Clemente and the Resource Agencies.

- 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.

38. Final Revised Plans.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT

AMENDMENT, the applicant shall submit, for review and approval of the Executive Director two (2) full sized sets of final detailed plans with dimensions, approved by the City of San Clemente, which shall substantially conform with the project plans received by the Commission's South Coast District Office on August 9, 2021.

- B. The applicants shall undertake development in accordance with the approved 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 the coastal development permit unless the Executive Director determines that no amendment is legally required.

39. Public Access Deed Restriction

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the applicant's proposal, the permittee shall execute and record a document(s) in a form and content acceptable to the Executive Director, restricting the use and enjoyment of the parcels (APNs: 691-422-07, 691-422-08 and 691-422-09), and providing public access, recreational uses, and public amenities in perpetuity as shown on Exhibit 2.

- 3. Public Access Areas. The deed restriction shall reflect that the permittee shall provide public access for recreational uses consistent with the terms and conditions of this coastal development permit amendment in the following locations (as generally shown in Exhibit 2):

- c. Trails – approximately 4-ft. wide trail segments extending approximately 400 ft. and 585 ft. in length, respectively; and
- d. ADA-Compliant Overlook (vista area) – vista area on Lot 321 and adjacent to the central canyon.

- 4. Development and Use Restrictions. No development, as defined in Section 30106 of the Coastal Act, shall occur within any of the public access areas described in subsection A.1 of this condition, and as described and depicted in Exhibit 2 of this staff report, except for the following development authorized by this coastal development permit amendment:

Grading and construction necessary to complete the public access amenities; water station, drought-tolerant non-invasive vegetation; installation of public access; and maintenance and repair of approved development within the restricted area(s) approved by this coastal development permit.

- D. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated public access area(s) prepared by a licensed surveyor based on an on-site inspection of the public access area(s). The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

40. Deed Restriction. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (5-03-013-A10), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, as amended, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as amended, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. This deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition 34 of Coastal Development Permit 5-03-013 (approved on June 11, 2003) which deed restriction is recorded as Instrument No. 2006000184556 (dated March 21, 2006) in the official records of Orange County.