

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0423

Applicant: Cole Family Investment Rentals LLP

Agent: Sherman Stacey

Location: 1880 N. El Camino Real, Unit 76, San Clemente, Orange County (APN: 691-432-02)

Project Description: Remodel 1,289 sq. ft., 14-ft.-tall mobile home and construct second-story addition resulting in 2,126 sq. ft., 17-ft.-10-in.-high mobile home, 165 sq. ft. patio cover, and 48 sq. ft. shed on beachfront mobile home space.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to remodel an existing 1,289 sq. ft., 14-ft.-high, one-story mobile home with a pitched roof, and to construct a second-story addition resulting in a 2,126 sq. ft., 17-ft.-10-in.-tall, flat-roofed mobile home with a loft, 165 sq. ft. patio cover, and 48 sq. ft. shed on the beachfront mobile home space ([Exhibit 2](#)).

The project site is a mobile home space (Unit 76) located within a 90-space mobile home park known as Capistrano Shores Mobile Home Park (“Park”) located between the first public road and the sea, seaward of the Orange County Transportation Authority (“OCTA”) railroad tracks in San Clemente ([Exhibit 1](#)). The Park is a legal non-conforming use on a stretch of beach developed with a single row of 90 mobile homes parallel to the shoreline on a lot zoned “OS2 Privately Owned Open Space” (intended for open space – no formal easement) and designated Open Space in the City of San Clemente Land Use Plan (LUP).

A pre-Coastal Act rock revetment and bulkhead protects the Park property from direct wave attack. No improvements are proposed to the existing revetment as part of this

5-21-0423 (Cole Family Investment Rentals LLP)

application and any repair or maintenance, enhancement, reinforcement, or other activity to the existing bulkhead/revetment is the responsibility of the park owner, Capistrano Shores, Inc.

The City of San Clemente only has a certified Land Use Plan and has not exercised the options provided in Coastal Act sections 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity, and the standard of review is Chapter 3 of the Coastal Act. The certified 1996 Land Use Plan may be used for guidance.

The primary issues raised by significant improvements to or replacement of a mobile home within the Park concern consistency with the visual resource and hazards policies of the Coastal Act.

The visual resources issue before the Commission is the appropriateness of approving the proposed project given the importance of preserving scenic resources and public views. Section 30251 of the Coastal Act mandates protection of scenic and visual qualities of coastal areas and requires development to be visually compatible with the character of surrounding areas. The proposal would result in a mobile home height increase from 14 ft. to 17 ft.-10 in. Staff has reviewed the applicant's visual impact study and concluded that, at the development height of 17 ft.-10 in. with a mixed flat roof design, there is a significant blue water view obstruction by the proposed structure's elevation as viewed from the coastal bluff trails at the Marblehead site (see [Exhibit 3](#)). Furthermore, the impact would be compounded if the immediate neighboring units in this portion of the Park were to be elevated in a similar fashion.

However, the applicant may still replace the existing mobile home without any public view obstruction if they propose a development height of 14 ft. with a pitched roof design, if it will not result in an increase in height or change in roof design. Likewise, there may be a design that is lower than the proposed 17-ft.-10-in.-tall design, but higher than the existing 14-ft. design that remains protective of coastal views. On January 11, 2022, the applicant provided a new visual analysis to evaluate the potential impacts that a 16-ft.-high home may have on public views to the ocean ([Exhibit 4](#)). The visual analysis demonstrated that a 16-ft.-tall mobile home with a pitched roof profile is protective of coastal visual resources. In addition, as shown in [Appendix B](#), at several other mobile home parcels nearby, a similar conclusion was that a 16-ft. height would not have significant impacts to public views from the vantage points considered. Therefore, staff recommends the Commission impose **Special Condition 1**, which requires the applicant to submit revised final plans that propose a maximum development height of 16 ft. and a pitched roof design.

Regarding hazards, the primary issue is the potential augmentation of the existing revetment as necessary to protect new development. Section 30253 requires that new development minimize risks to life and property and assure stability and structural integrity, and neither create nor contribute to erosion or geologic instability. These requirements are particularly critical in highly dynamic shoreline environments, such as the subject site. Therefore, staff recommends **Special Condition 3**, requiring the applicant to acknowledge both: (1) that it has no future automatic right to a shoreline protective device; and (2) that the existing revetment may require future work, but that the Commission retains the

authority to prohibit any alteration that is inconsistent with the lawful application of the Coastal Act, considering the Coastal Act's policies and goals.¹ **Special Condition 3** also establishes requirements related to the applicant's response to future coastal hazards, including relocation and/or removal of structures that may be threatened in the future.

In conclusion, staff recommends that the proposed development be conditioned to assure consistency with the resource protection policies of the Coastal Act. The recommended special conditions are: **1)** Revised Final Plans; **2)** Assumption of Risk; **3)** Future Response to Erosion/No Automatic Right to Protective Shoreline Construction; **4)** Future Improvements; **5)** Construction Best Management Practices; **6)** Drainage and Landscaping; **7)** Bird Strike Prevention; **8)** Occupancy Agreement; **9)** Proof of Legal Ability to Comply with Conditions; **10)** Removal Plan for Mobile Home; and **11)** Application Fee.

Commission staff recommends that the Commission **APPROVE** the coastal development permit, as conditioned. The motion and resolution can be found on page 5.

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

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- [Exhibit 1](#) – Project Location
- [Exhibit 2](#) – Project Plans and Elevations
- [Exhibit 3](#) – Original Visual Impact Study from Applicant
- [Exhibit 4](#) – Updated Visual Impact Study from Applicant

I. MOTION AND RESOLUTION

Motion: I move that the Commission approve Coastal Development Permit Application No. 5-21-0423 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 Coastal Development Permit Application No. 5-21-0423 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the 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 will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Revised Final Plans.

- A. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the

applicant shall submit, for review and written approval of the Executive Director, two full-size sets of revised final plans, which shall reflect that the maximum allowable height of the pitched roof design of the mobile home sited at Unit 76 shall be 16 ft. as measured from the private frontage road (Senda de La Playa).

- B. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the permittee acknowledges and agrees (i) that the permittee's mobile home space (Unit 76) may be subject to hazards from flooding and wave uprush, tsunamis, sea level rise, and erosion; (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 coastal hazards.

3. Future Response to Erosion/No Automatic Right to Protective Shoreline Construction.

- A. No repair or maintenance, enhancement, reinforcement, or any other activity affecting the existing shoreline protective device protecting the mobile home park (Capistrano Shores Mobile Home Park) owned by Capistrano Shores Inc., is authorized by this coastal development permit (the "Permit").
- B. By acceptance of this permit, the permittee, on behalf of itself and all successors and assigns to the applicant's mobile home space (Unit 76), acknowledges that (a) Unit 76 and any structures within that space may become threatened in the future (by floods, wave uprush, tsunamis, sea level rise, etc.) and (b) the revetment and bulkhead owned by Capistrano Shores, Inc., that currently protect the entire park, may not continue to provide the protection that they currently provide unless they can be repaired, maintained, enhanced, or reinforced in the future. However, the permittee, on behalf of itself and all successors and assigns, further acknowledges that expansions or alterations thereof require a Coastal Development Permit, which the Commission may deny if future requests for such expansions or alterations are inconsistent with the lawful application of the Coastal Act as articulated in the ruling of the Orange County Superior Court in *Capistrano Shores Property LLC v. California Coastal Commission*, Case No. 30-2015-00785032-CU-WM-CJC.

- C. By acceptance of this permit, the permittee further agrees, on behalf of itself and all successors and assigns, that it shall remove the development authorized by this permit (including the residence, foundations, patio, etc.) if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to natural hazards including but not limited to waves, erosion, storm conditions, or sea level rise, and that there are no measures that could make the structures suitable for use without the use of shoreline protective devices. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required. In the event that portions of the development fall to the beach before they are removed, the permittee shall remove all recoverable debris associated with the development from the beach and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- 4. Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-21-0423. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-21-0423. Accordingly, any future improvements to the mobile home or the space pursued under this Coastal Development Permit No. 5-21-0423, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-21-0423 from the Commission or shall require a new, additional coastal development permit from the Commission or from the applicable certified local government.
- 5. Construction Best Management Practices.** The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
- A. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion;
 - B. Staging and storage of construction machinery and storage of debris shall not take place on any sandy beach areas or areas containing any native vegetation;
 - C. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - D. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;

- E. Concrete trucks and tools used for construction of the approved development shall be rinsed off-site;
- F. Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- G. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
- H. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.

6. Drainage and Landscaping.

- A. Vegetated landscaped areas shall only consist of native plants or non-native drought-tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://ucanr.edu/sites/WUCOLS/files/183514.pdf> and <http://ucanr.edu/sites/WUCOLS/files/183488.pdf>).
- B. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather-based irrigation controllers.
- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised civil plans that direct runoff away from the ocean and towards the main drainage system on the street-side, and which minimize uncontrolled flow through adequate measures for infiltration, flow-through, and catchment of onsite surface water, without adversely impacting seawater or groundwater quality.

7. Bird Strike Prevention.

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

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

8. Occupancy Agreement. PRIOR TO ISSUANCE OF THE COASTAL

DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the landowner and the applicant have executed an Amendment to the Occupancy Agreement for the applicant's mobile home space (Unit 76), (1) stating that pursuant to this permit, the California Coastal Commission has authorized the placement of a mobile home and related accessory structures, including without limitation, mobile home foundation system and patio covers, on Unit 76, subject to terms and conditions that restrict the use and enjoyment of the mobile home and related accessory structures located on Unit 76; and (2) stating that the Special Conditions of this permit are restrictions on the use and enjoyment of the mobile home and related accessory structures located on Unit 76. The Amendment to the Occupancy Agreement shall also state that, in the event of an extinguishment or termination of the Occupancy Agreement for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the mobile home and accessory structures located on Unit 76 of the mobile home park so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on Unit 76. Notwithstanding the foregoing, the landowner and lessee may, at their discretion, extend, assign, or execute a new Occupancy Agreement, providing that the Occupancy Agreement Amendment provision required under this Permit Condition may not be deleted, altered or amended without prior written approval of the Executive Director of the Coastal Commission or by approval of an amendment to this coastal development permit by the Commission, if legally required.

9. Proof of Legal Ability to Comply with Conditions. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall demonstrate its legal ability or authority to comply with all the terms and conditions of this coastal development permit by submitting information indicating approval from the record title property owner that authorizes the applicant to proceed with the approved development and permits the applicant to comply with the terms and conditions of this coastal development permit.

10. Removal Plan for Mobile Home. By acceptance of this permit, the permittee shall undertake removal in accordance with the Removal Plan submitted to the Commission's office on September 12, 2022. 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 legally required.

11. Application Fee. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay the balance of the application fee for after-the-fact development, which equals \$6,993.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION & DESCRIPTION

The applicant is proposing to remodel an existing 1,289 sq. ft., 14-ft.-high, one-story mobile home with a pitched roof, and to construct a second-story addition resulting in a 2,126 sq. ft., 17-ft.-10-in.-tall, flat-roofed mobile home with a loft, 165 sq. ft. patio cover, and 48 sq. ft. shed on the beachfront mobile home space. Drainage is proposed to be diverted towards the beach. Project plans are included as [Exhibit 2](#). The Park provides two parking spaces per unit space.

The project site (Unit 76) is located between the first public road and the sea and is seaward of the Orange County Transportation Authority (OCTA) railroad tracks. The address is 1880 North El Camino Real, Unit 76, San Clemente, in the Capistrano Shores Mobile Home Park ("Park") ([Exhibit 1](#)). The Park is an existing legal non-conforming use on a stretch of beach developed with a single row of 90 mobile homes parallel to the shoreline on a lot zoned "OS2 Privately Owned Open Space" (intended for open space – no formal easement) and designated Open Space in the City of San Clemente Land Use Plan (LUP).

The subject site is fronted by a narrow-perched beach inland of an older timber bulkhead that exists roughly along the seaward limits of the unit space. A quarry stone rock revetment exists seaward of the bulkhead and between the proposed development and the Pacific Ocean. The pre-Coastal Act timber bulkhead and rock revetment exists along the entire length of the Park and protects the Park from direct wave attack. The applicant has

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

The applicant owns the existing mobile home but does not own the land under the existing unit or the land upon which the landowner has built the bulkhead/revetment. The Park is owned by Capistrano Shores, Inc., a non-profit mutual benefit corporation in which the applicant holds a 1/90 "membership" interest, which allows the applicant the use of a unit space for mobile home purposes. The applicant, as a "member" of the corporation, is only responsible for repair/maintenance of its own mobile home, ancillary development, and the landscaping on its unit. The corporation provides for all necessary repairs, maintenance, and replacements to the rest of the Park common areas, including the bulkhead and rock revetment.

Vertical public access to this beach is not available along the length of the Park. The nearest vertical public access is available at the North Beach access point to the south of the Park and to the north at the Poche Beach access point. In addition, lateral access along the beach seaward of the Park, which includes the bulkhead and rock revetment, is only accessible during low tide. During high tide, waves crash against the rock revetment. Pursuant to the grant deed property description of the parcels owned by Capistrano Shores, Inc. comprising Capistrano Shores Mobile Home Park, property ownership of the common beach area seaward of the Unit Space property lines extends 30 ft. from the bulkhead to the ordinary high tide line. The rock revetment begins immediately adjacent to the wood bulkhead and extends approximately 20 ft. out seaward but still inland of the ordinary high tide line. A large portion of the rock revetment remains buried depending on varying sand level elevations throughout the year.

Since the City of San Clemente does not have a certified LCP, the standard of review is the Chapter 3 policies of the Coastal Act. While the certified San Clemente Land Use Plan (LUP) is not the standard of review, the policies of the 1996 LUP provide guidance.

B. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

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

Policy VII.3 states, in relevant part:

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

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

Policy XII states:

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

Policy XII.4 states:

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

Policy XIV.8 states:

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

Policy XII.9 states:

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

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

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

As previously stated, the standard of review is the Chapter 3 policies of the Coastal Act. Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The applicant is proposing to remodel an approximately 1,289 sq. ft., 14-ft.-high pitched roof, one-story mobile home, resulting in a much bulkier and higher 17-ft.-10-in.-high flat roof, 2,126 sq. ft. mobile home at the applicant's mobile home space (Unit 76).

The proposed development is located immediately seaward and upcoast from the public trails along the coastal bluffs inland of the first public road, at the Marblehead coastal site ([Exhibit 1](#)). The Marblehead site is a 247-acre, large-scale, mixed-use development (CDP No. 5-03-013) approved by the Coastal Commission in 2003. That CDP included extensive public trails to and along the bluffs with view areas, public parks, preservation of coastal canyons and bluffs and riparian areas. Because of the proximity to the trails, any redevelopment of the Park below has the potential to significantly impact public views from the trails. Unit 76 is located at the northern portion of the Park. Unit 76 is visible from the beach, from El Camino Real, and from along the public trails that extend along the coastal bluffs at the Marblehead Coastal site. The viewshed from the public trails provides views of major scenic resources including ocean white water and blue water, ocean horizon, shoreline and coastline, beach, headlands, the San Clemente Pier, and coastal bluffs.

The proposal would result in a home height increase of 3 ft. 10 in. and an increase in floor area of approximately 837 sq. ft. In past permit actions, for various evaluated sites, the Commission has concluded that a 16-ft.-high mobile home on these unit spaces, nearly two ft. shorter than the currently proposed height, would not have a significant adverse impact on the ocean viewshed from public areas along the Marblehead trails ([Appendix B](#)). These were site-specific determinations that considered the impacts based on many factors including but not limited to the distance between the vantage point and the structure, the height and angle from which the viewer sees the structure and the vista beyond it, the presence of other development and vegetation in the foreground and surrounding area, and the bulk and scale of the structure. The Commission must review each replacement mobile home at the Park on a case-by-case basis because there are no certified standards in the applicable LCP. While in these other cases the conclusion was that a 16 ft.-height structure would not have significant impacts to public views from the vantage points considered, it should be noted that establishing a specific single target height for structures in the Park that would not have an adverse visual impact is made difficult by the fact that the linear-shaped Park is about $\frac{3}{4}$ -mile-long and the public vantage points available behind that line of development vary greatly in terms of their location and the viewer's distance, height, and angle from the structure at issue. The subject project illustrates this issue, where a taller mobile home is proposed.

As stated above, Unit 76 is located near the northern end of the Park and is highly visible from along the public trails that extend along the coastal bluffs at the Marblehead Coastal site. Staff has reviewed the applicant's visual impact study and concluded that at the proposed development height of 17 ft.-10 in. with a flat roof design, there is a significant blue water view obstruction by the structure's elevation, as shown in the applicant's provided view simulations ([Exhibit 3](#)). Furthermore, the impact would be compounded greatly if the immediate neighboring units in this centermost portion of the Park were to be elevated in a similar fashion. Therefore, the applicant's proposed development height of 17

ft. 10 in. is inconsistent with Section 30251 of the Coastal Act, which provides for protection of scenic and visual qualities of coastal areas and requires development to be visually compatible with the character of surrounding areas.

While the applicant could simply replace the mobile home without resulting in an increase in height or change in roof design, or repair and maintain the existing mobile home, there may be an alternative design that is lower than the proposed 17 ft. 10 in. design, but higher than the existing 14 ft. design that remains protective of public views to the ocean. On January 11, 2022, the applicant provided a new visual analysis to substantiate the claim that a slightly lower, more common 16-ft.-high mobile home with a pitched roof profile would pose less significant adverse view impacts ([Exhibit 4](#)). Indeed, the visual analysis demonstrated that such a proposal is more protective of coastal visual resources. Therefore, the Commission imposes **Special Condition 1**, which requires the applicant to submit revised final plans that propose a maximum development height of 16 ft. and a pitched roof design. Only as conditioned can the Commission find the proposed development at Unit 76 is sited in a manner that would minimize its visual impacts from public areas and will not have a significant adverse impact on visual resources, consistent with 30251 of the Coastal Act as well as with the relevant policies of the City's Local Coastal Land Use Plan.

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

Pursuant to sections 13250(b) and 13252(a)-(b) of the Commission's regulations, the Commission imposes **Special Condition 4** requiring a CDP amendment or new CDP for any future improvements or repair and maintenance to the development approved under the subject permit and/or any new development to adequately protect public visual resources. As conditioned, the Commission finds the proposed project will not have a significant adverse impact on visual resources and is consistent with Section 30251 of the Coastal Act, as well as the relevant policies of the City's certified Land Use Plan.

C. HAZARDS

Section 30253 of the Coastal Act states in relevant part: New development shall:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that

would substantially alter natural landforms along bluffs and cliffs.

Section 30235 of the Coastal Act states in relevant part:

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

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

Policy XV.4 states in relevant part:

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

Revetment/Bulkhead – Existing Conditions

The applicant has provided a Coastal Hazard and Wave Runup Study prepared by GeoSoils, Inc. for the project site. The study states that the shore protection for the site primarily consists of a quarry stone revetment; a timber bulkhead abuts the stone revetment on its landward side, which is then backfilled with a 10-ft.-wide perched beach that runs the length of the Park. The revetment is composed of meta-volcanic quarry stones that range in size from less than ½ ton to approximately 11 tons, with an average size of approximately five tons. According to the GeoSoils report, which used the National Geodetic Vertical Datum 1929 (NGVD 29), the top of the revetment varies from +14.4 ft. NGVD29 to +15.4 ft. NGVD29 with an average elevation of about +15 ft. NGVD29. The visible slope of the revetment varies from 2/1 to 1.5/1 (h/v). A visual inspection of the existing revetment/bulkhead conducted by GeoSoils, Inc. found the revetment in good condition and not in need of maintenance at this time.

Wave Run-Up/Overtopping Analysis

The Wave Run-Up and Coastal Hazard Study (Study) conducted by GeoSoils, Inc., written in August 2020, ascertains that mobile homes are typically constructed of lighter material with a shorter design life of less than 50 years if situated on the oceanfront (as compared to non-mobile homes). In addition, the study states that the mobile homes are unique in that the structures are “mobile” and can be moved if jeopardized by coastal hazards. The Study continues:

“The design water level will be the “maximum historical water level of +4.9 feet NGVD29 plus 2.0 feet of SLR [Sea Level Rise], and plus 4 feet of SLR...”

Using the above-mentioned SLR estimates, the study took into account ocean water depths and elevations, wave heights, the height of the revetment, the height of the timber bulkhead, the calculated overtopping rate of the revetment under both scenarios and

concluded that “the development is reasonably safe from coastal hazards associated with wave runup even under the most onerous SLR conditions in the next 50 to 75 years. In the event the water does reach the mobile home and associated improvements, the water velocity will [be] insufficient to cause significant damage.” The Study continues:

“Under the extreme, worst case (>50 year) oceanographic conditions, the revetment can be overtopped at a rate of about 2.3 ft³/s-ft. This is less than one foot of water coming over the top of the revetment for each wave (18 second period) ... The area between the top of the revetment and the structure will partially dissipate the overtopping waters.”

Moreover, the Study continues:

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

Staff concurs with the Study that a 40- to 50- year period is a reasonable upper limit for measuring sea level rise impacts, and this period is appropriate for a mobile home development, as the expected life of a mobile home structure can reasonably be estimated at 50 years. In addition, such a unit can potentially be relocated in the event of a known threat. For purposes of mobile home replacements, the Commission’s staff coastal engineer concurs that an upper limit of a 40- to 50- year period to measure sea level rise impacts is appropriate for the anticipated economic life of a mobile home development.

Erosion and Flooding Hazards

Regarding erosion hazards on the subject site, the Coastal Hazard and Wave Runup Study states:

“While the beach experiences short term erosion, there is no clear indication of a significant long term erosion trend. Because the shoreline is stabilized by the revetment and as long as the revetment is maintained, the mobile homes [at Capistrano Shores Mobile Home Park] are reasonably safe from erosion hazards. It is unlikely that additional shore protection will be necessary to protect the [subject] mobile home over the economic life of the structure.”

The Study found that the proposed development is reasonably safe from flooding over its economic life. The analyses show that the site has the potential to be flooded on occasion from waves breaking on the revetment, overtopping the bulkhead and reaching the mobile home unit. Such flooding is a hazard that would be expected for a location this close to the ocean even with the existing shore protection provided by the bulkhead/revetment (deemed adequate by the Study) that is protecting the Park property from the main wave attack.

Furthermore, the entire Park is located within the tsunami inundation zone according to the California Emergency Management Agency (CalEMA). **Special Condition 2** places the applicants and subsequent owners on notice (through an amendment to the occupancy agreements per **Special Condition 8**) that this is a high hazard area and that by acceptance of CDP No. 5-21-0423, the applicant acknowledges the risks, such as flooding, that are associated with the location in the tsunami inundation zone, and that are associated with development sited so close to the ocean. The applicant should cooperate with the local CalEMA or emergency responders in case of a large earthquake or a tsunami warning.

The applicant does not propose any changes or improvements to the existing bulkhead/revetment along the portion that protects the Park. Any repair or maintenance, enhancement, reinforcement, or other activity to the existing bulkhead/revetment is the responsibility of Capistrano Shores Inc. The applicant is only responsible for repair/maintenance to the mobile home, landscape, and ancillary structures (i.e., decks, patios, and garden walls) on Unit 76. In the future, Capistrano Shores Inc. would be the applicant for a CDP for any modifications to the existing bulkhead/revetment. Although the bulkhead/revetment that currently protects the Park may require repair, maintenance, enhancement, or reinforcement in the future, **Special Condition 3** requires that the applicant acknowledge that it does not own the existing shoreline protective device and the shoreline protective device is not built to be solely protective of Unit 76, and that the Commission retains full authority and discretion to prohibit any expansions or alterations thereof that would be inconsistent with the lawful application of the Coastal Act, considering the Coastal Act's policies and goals.

Regarding the latter point, an Orange County Superior Court opinion issued in 2016, *Capistrano Shores Property LLC v. Cal. Coastal Com.*, Case No. 30-2015- 00785032-CU-WM-CJC (the "Court Opinion") provided guidance on the Commission's ability to condition a similarly situated project proposal in the Park with respect to shoreline protection, taking into consideration future coastal hazards. **Special Condition 3** has been drafted in conformance with and in reference to that Court Opinion. Although the Court Opinion involved the owner of Unit 12 in the Park and therefore is not binding on the current applicant as a matter of law, the erosion and flooding hazards at issue are identical for similarly-situated mobile home owners proposing similar development projects in the same Park. Therefore, in drafting **Special Condition 3** for the current project proposal, the Commission deems it reasonable to rely on and reference the Court Opinion.

Given that the applicant does not have an automatic right to expand or alter the revetment in ways that are inconsistent with lawful application of the Coastal Act (and the park owner may not choose to or be able to do so), the proposed mobile home may need to be altered or removed in the future either in response to changes to the revetment or to threats posed by shoreline hazards. Therefore, **Special Condition 3** also establishes requirements related to response to future coastal hazards, including relocation and/or removal of structures that may be threatened in the future if any government agency has issued a permanent order that the structure is not to be occupied due to the threat of or actual damage or destruction to the premises resulting from waves, erosion, storm conditions, sea level rise, or other natural hazards in the future, and in the event that portions of the development fall to the beach before they are removed, requiring the applicant or

successor(s) to remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. To further ensure that the unit homeowner/occupant has a plan for removal if/when it becomes necessary to remove the unit, **Special Condition 10** requires the applicant to undertake removal in accordance with the plans submitted to the Commission on September 12, 2022, which describes in detail the phases, timing, and equipment necessary for the removal process of the mobile home.

Because of the shoreline location of the proposed development, pursuant to sections 13250(b) and 13252(a)-(b) of the Commission's regulations, the Commission imposes **Special Condition 4** requiring a coastal development permit amendment for any future improvements or repair and maintenance to the development approved under the subject permits and/or any new development.

Because the applicant does not own the land under Unit 76, the applicant cannot record a deed restriction, and the property owner (Capistrano Shores, Inc.) will not agree to record a deed restriction for the applicant. The Commission finds, if the deed restriction is not recorded against the parcel, it would not change or weaken the requirement for the applicant to acknowledge the risks and agree to remove the structure if it becomes unsafe for occupancy. The purpose of a deed restriction is simply to notify future owners of the permit conditions of approval. An Occupancy Agreement Amendment between the land owner and the applicant will serve to notify future owners or occupants of the new mobile home of the permit requirements, with the amendment stating that: (1) pursuant to this permit, the California Coastal Commission has authorized the placement of a mobile home and related accessory structures, including without limitation, mobile home foundation system and patio covers, on Unit 76, subject to terms and conditions that restrict the use and enjoyment of the mobile home and related accessory structures located on Unit 76; and (2) the Special Conditions of this permit are restrictions on the use and enjoyment of the mobile home and related accessory structures located on Unit 76. Thus, the Commission imposes **Special Conditions 8**.

Furthermore, Coastal Act Section 30601.5 states:

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

Therefore, because the applicant does not own the property on which the proposed development is to be sited, the Commission imposes **Special Condition 9**, requiring the applicant to demonstrate its legal ability or authority to comply with all the terms and conditions of the subject CDP No. 5-21-0423, prior to issuance of said permit. The applicant shall submit information indicating approval from the record title property owner

that authorizes the applicant to proceed with the approved development and permits the applicant to comply with the terms and conditions of its CDP.

Thus, as conditioned, the permit ensures that any prospective future owners of any of the development approved on Unit 76 pursuant to this CDP will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which Unit 76 is subject, and will be noticed of the Commission's immunity from liability. The amendment to the occupancy agreement will indicate that the California Coastal Commission has authorized development on Unit 76, subject to terms and conditions that restrict the use and enjoyment of Unit 76 only and does not restrict the remainder of the land that the Park occupies.

Since the scope of the development in this case is limited to Unit 76, the Commission has focused discussion on the fact that its authorization for placement of a mobile home on that space (and ancillary development) does not necessarily mandate or support any future requests for repair, maintenance, or expansion of shoreline protection if doing so would be inconsistent with the lawful application of the Coastal Act, considering the Coastal Act's policies and goals. In addition, representatives for Capistrano Shores, Inc. were previously notified that repair, maintenance, or enhancement of the existing shoreline protection, if deemed necessary, should occur as part of a comprehensive plan for the entire Park. The Capistrano Shores Mobile Home Park Homeowner Association submitted a coastal development permit application in February 2012 which, in addition to park wide improvements, included maintenance of the existing shoreline protective device. That application has since been withdrawn. Any such repairs/enhancements should occur within the Park's private property and not further encroach onto the public beach. No additional shoreline protective devices should be constructed for the purpose of protecting ancillary improvements (e.g., patios, decks, fences, landscaping, etc.) located between the proposed mobile home and the ocean. For any type of future shoreline hazard response, alternatives to the shoreline protection must be considered that will eliminate impacts to coastal and recreational resources including, but not limited to, scenic visual resources, recreation, and shoreline processes. Alternatives would include but are not limited to relocation and/or removal of all or portions of the mobile home and ancillary improvements that are threatened, and/or other remedial measures capable of protecting the proposed mobile home without shoreline stabilization devices.

Alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative, and whether each alternative can protect a mobile home that may be in danger from erosion and other coastal hazards.

Only as conditioned does the Commission find the proposed development consistent with Sections 30253 and 30235 of the Coastal Act, as well as with the relevant policies of the City's certified Land Use Plan.

D. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

5-21-0423 (Cole Family Investment Rentals LLP)

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.

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

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

Policy IX.15 states in relevant part:

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

The new mobile home will be located between the first public road and the sea directly seaward of the OCTA railroad tracks. Vertical public access is not currently available through the Park; therefore, no construction impacts to public access are anticipated. Lateral public access is available along the public beach seaward of the bulkhead/revetment during low tide. Vertical public access to the beach exists nearby at Poche Beach, approximately 600 yards north of the Park. Vertical public access is also available at the North Beach public access point to the south of the Park.

Regarding shoreline setbacks, the proposed project is sufficiently setback to be consistent with that of the surrounding mobile homes within the Park. Furthermore, the setback provides an area that may accommodate any necessary future bulkhead/revetment repairs or retreat efforts within the Park private property thereby protecting intertidal habitat and avoiding any possible future public access impacts that may arise due to rock revetment encroachment into public beach areas (both individually and cumulatively).

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

The beach in front of the project site is narrow, varying from a few ft. to 70 ft. wide depending on the season. High tide extends up to the existing rock revetment, which makes public access difficult to impossible. Because of the narrow beach in this location, allowing a future shoreline protective device to protect a new residential structure could adversely impact public access by occupying existing sandy beach and depriving the beach of sand re-nourishment.

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

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

Given the foregoing potential impacts to access and shoreline sand supply that a shoreline protective device would cause (among other coastal resource impacts), the applicant would be taking a risk by relying on an expectation to future alterations to the existing revetment which may not be approved. To adequately protect public access, recreation, and shoreline sand supply, especially considering probable future sea level rise, **Special Condition 3** requires the applicant to acknowledge that it has no future automatic right to a shoreline protective device. It further requires the applicant to acknowledge the risk that, although the existing revetment may warrant alterations in the future to respond to coastal hazards, the Commission retains the authority to deny any future requests for such expansions or alterations that are inconsistent with the lawful application of the Coastal Act, considering the Coastal Act's policies and goals, as articulated in the Court Opinion.

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

E. MARINE RESOURCES AND WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges- and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act states:

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

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

Policy XIV.5 states:

Maintain and enhance the City's beaches and marine resources.

Policy XIV.8 states:

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

Policy XV.4 states:

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

Water Quality & Landscaping

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

Drainage from the predominantly paved site currently slopes towards the ocean and away from the street. The applicant is proposing to retain the natural drainage flow, where runoff would be running uncontrolled towards the beach, which is likely to adversely impact water quality. In previous actions at the Park, the Commission required water runoff from the site to be directed to a dry well or percolation box for onsite water infiltration, and for the flow to be diverted to the main drain system on the street. Since runoff from the site will flow

uncontrolled to the beach as proposed, **Special Condition 6** requires that the applicant submit revised civil plans showing how runoff would be minimized and controlled on the site. The condition requires drainage to be directed away from the ocean and towards the main drainage system on the street-side, and provide adequate measures for runoff control via infiltration, flow-through, and catchment of onsite surface water, without adversely impacting seawater or groundwater quality. In addition, the applicant may incorporate minor landscaping in contained planters to minimize water use and water runoff from the subject site. **Special Condition 6** thus also requires the applicant utilize drought-tolerant, non-invasive plant species to minimize water use and water runoff from the subject site.

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

Plexiglas or Glass Wind Screens

The proposed development includes new glass railings around the decks/patios on the seaward side of the project site. Glass railing systems, walls or wind screens are known to have adverse impacts upon a variety of bird species. Birds are known to strike these glass walls causing their death or stunning them, which exposes them to predation. To ensure bird strike prevention, **Special Condition 7** requires that the applicant use a material for the glass railing that is designed to prevent creation of a bird strike hazard.

Conclusion

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

F. COASTAL ACT VIOLATIONS

Violations of the Coastal Act have occurred on the subject site, including but not limited to the installation in 2005 of a mobile home, according to confirmation from both HCD and the applicant, without benefit of the necessary coastal development permit (CDP). Any non-exempt development activity conducted in the coastal zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

The applicant is proposing after-the-fact approval for the 2005 mobile home, a portion of which will be retained pursuant to this CDP. Approval of this CDP pursuant to the staff recommendation, issuance of the permit, and the applicant's performance of the work authorized by this permit pursuant to the terms and conditions herein would result in a

resolution of the violation on the subject property described above. Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

After-the-Fact Permit Fee

Section 30620 of the Coastal Act states, in relevant part:

(c)(1) The Commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the Commission of an application for a coastal development permit[.]

Appendix E, Section I.C. of the South Coast CDP Application indicates that for an addition or improvement that does not qualify for a waiver or administrative permit, the fee shall be according to the fee schedule in Section 13055(a)(2)(A) of Title 14 of the California Code of Regulations. This Section sets the filing fees for residential coastal development permit applications, and states in relevant part:

(a)(2)(A) For up to 4 detached, single-family residences the fee of each residence shall be based on the square footage of the proposed residence as shown in the following table:

1,500 sq. ft. or less	\$4,236 ²
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(d) Fees for an after-the-fact (ATF) permit application shall be five times the amount specified in section (a) unless such added increase is reduced by the Executive Director when it is determined that either:

(1) the ATF permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit,) or

(2) the owner did not undertake the development for which the owner is seeking the ATF permit.

In no case shall such reduced fees be less than double the amount specified in section (a) above. For applications that include both ATF development and development that has not yet occurred, the ATF fee shall apply only to the ATF development. In addition, payment of an ATF fee shall not relieve any persons from fully complying with the requirements of Division 20 of the Public Resources Code or of any permit granted thereunder or from any penalties imposed pursuant to Chapter 9 of Division 20 of the Public Resources Code.

² Fee is based on the fee schedule in operation as of application filing on September 12, 2022.

In this case, the owners did not undertake the development for which they are seeking the after-the-fact permit, and review of the application did not require significantly more staff time than similar applications that do not include after-the-fact development. Therefore, the Commission requires an after-the-fact application fee that is double the application fee for the unpermitted portion of development per the current fee schedule, reducing this fee from the five-time fee multiplier mandated by Section 13055.

The applicant has paid an initial application fee of \$5,715. Based on the current fee schedule, the after-the-fact application fee, which is two times that required for the retained 1,289 sq. ft. unpermitted portion of development, would be \$8,652. The proposed 837 sq. ft. addition would incur a fee of \$4,236 per the fee schedule in operation of application filing on September 12, 2022 (which is the current fee schedule), for a total required application fee of \$12,708. Therefore, the required remaining balance, as clarified in **Special Condition 11**, would be \$6,993, consistent with the requirements of Title 14 of the California Code of Regulations, Section 13055. Failure to submit the remaining balance prior to issuance of the permit may lead to substantially greater penalties under Chapter 9 of the Coastal Act.

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a CDP only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. Most recently in 2018, the Commission certified an LUP amendment for a comprehensive update of the City's LUP. At this time, San Clemente does not have a certified LCP. The 2018 comprehensive update does not include the Capistrano Shores Mobile Home Park. The 1996 LUP, which was certified by the Commission on March 14, 1996, is the controlling LUP for the Capistrano Shores Mobile Home Park.

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

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

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which 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).)

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

In addition, in order to ensure compliance with resource protection policies of the Coastal Act, the proposed development is conditioned to mitigate any potential adverse impacts to coastal resources and public access. The conditions are: **1) Revised Final Plans; 2) Assumption of Risk; 3) Future Response to Erosion/No Automatic Right to Protective Shoreline Construction; 4) Future Improvements; 5) Construction Best Management Practices; 6) Drainage and Landscaping; 7) Bird Strike Prevention; 8) Occupancy Agreement; 9) Proof of Legal Ability to Comply with Conditions; 10) Removal Plan for Mobile Home; and 11) Application Fee.**

As conditioned, the proposed development is consistent with the visual resource protection, hazards, public access, and water quality policies of the Coastal Act and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed development, as conditioned, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- CDP Application File No. 5-21-0423 and associated materials.

APPENDIX B – PREVIOUS COMMISSION ACTIONS (HEIGHT SURVEY)

Unit Space #	CDP #	Existing Height (ft.)	Permitted Height (ft.)	Roof Design
3	5-20-0362	13	13	Pitched
6	5-19-1093	13	16	Variable pitched/flat
11	5-08-076-W	Unknown	15	Pitched
12	5-14-1582	16	16	Pitched
22	5-16-0624	11	16	Pitched
32	5-19-1178	13.5	16	Pitched
34	5-08-070-W	Unknown	15'7"	Pitched
36	5-16-0265	13	16	Pitched
37	5-08-069-W	Unknown	15'7"	Pitched
54	5-20-0432	14	16	Variable pitched/flat
67	5-18-0325	13	16	Pitched
68	5-18-0326	13	16	Pitched
70	5-20-0493	13	16	Variable pitched/flat
74	5-08-106-W	12	12	Variable pitched/flat
80	5-09-179	Vacant	18.5	Pitched
81	5-09-180	Vacant	19.5	Pitched