GRANT APPLICATION FORM

Coastal Commission staff is available to assist during the application process. Applicants are encouraged to reach out to the LCP Grant team with any questions as they develop their applications.

Please note the entire grant application will be public record upon submittal. Click in the shaded text fields to enter text, numbers and dates. The fields will expand to accommodate the data.

APPLICANT INFORMATION

Applicant name (agency): County of San Luis Obispo	
Address: 976 Osos Street, Room 200, San Luis Obispo, CA 93408	
Contact name: Airlin Singewald	Title: Supervising Planner
Telephone: (805) 781-5198	Fax: N/A
Email: asingewald@co.slo.ca.us	
Federal Tax ID#: 95-6000939	

Person authorized to sign grant agreement and amendments:	
Name: Trevor Keith	Title: Administration Services Manager
Application prepared by:	
Name: Julia Pujo	Title: Project Manager

Signature: _____ Date: 9/5/2019

PROJECT INFORMATION

Project title:	San Simeon Coastal Hazards Response Plan Project		
LCP/LCP Segment:	County of San Luis Obispo LCP		
Project location			
City/Geographic area:	San Simeon		
County:	San Luis Obispo		
GPS: 35°36'42.37"N 121° 8'44.26"W			
Project timeline			
Start date:	1/2/2020	End date:	3/31/2022

PROJECT DESCRIPTION – SAN SIMEON COASTAL HAZARDS RESPONSE PLAN PROJECT

The County of San Luis Obispo is submitting the California Coastal Commission (CCC) Local Coastal Program (LCP) Planning Grant Program Round 6 Grant Application for the San Simeon Coastal Hazards Response Plan (Project) to request grant funds for planning efforts related to inland relocation of the existing San Simeon wastewater treatment plant WWTP and wastewater facilities away from the coastal hazard zone. This would include potential amendments to the LCP. The County of San Luis Obispo (County) will coordinate with San Simeon Community Services District (SSCSD) to carry out this Project, which entails development of the Coastal Hazards Response Plan, stakeholder outreach, and potential amendments to the San Luis Obispo Local Coastal Program (LCP) that would facilitate future relocation of the WWTP.

The planning area for this Project includes the community of San Simeon Acres, which is entirely located within the Coastal Zone (see Figure 1). Additionally, San Simeon is located within the boundaries of a low-income community, as defined by a community with a median household income less than 80% of the State-wide average. As stated in CCC staff report Th13b for CDP Application No. 3-19-0020: the existing WWTP represents critical public infrastructure that is located in an area known to be at risk from coastal erosion and flooding given the location of the WWTP a top a coastal bluff and adjacent to both a coastal stream. Damage to the existing WWTP resulting from coastal hazards present significant risks to public safety and water quality within the community. This situation is representative of the coastal hazards and sea level rise challenges facing critical infrastructure located along all of coastal California's dynamic shoreline area. The San Simeon WWTP would serve as a case study for similar facilities along the California coast, and CCC funding would allow for technical investigations to inform coastal land use planning goals and policies for inland relocation of critical public infrastructure; to allow for restoration of the existing WWTP property with native riparian, wetland and coastal bluff habitats; and to be consistent with the CCC's *LCP Update Guidelines*. Development of Coastal Hazard Response Plan and related planning efforts would make progress towards goals of preventing the loss of property (both public and private), damage, and disruption of critical public services, providing co-benefits to reduce sea level rise impacts on public health. Planning for the relocation of WWTP infrastructure would reduce the risk of hazardous material release as a result of coastal storm surges or erosion-induced damage, and increase resilience to coastal hazards within the WWTP service area.

The goal of this project is to provide the San Simeon community and decision makers with comprehensive information for planning resilient development and protection of critical infrastructure and coastal resources. In order to address needed adaptive management of critical infrastructure, SSCSD would develop a Coastal Hazards Response Plan that would function as a technical report building on previous studies to advance work on planning for WWTP relocation and revetment removal, while addressing coastline climate change impacts. The Coastal Hazards

Response Plan would serve as a driving document to help guide and determine the need for potential future LCP Amendments.

The County's existing Coastal Zone Land Use Ordinance and the North Coast Area Plan are the two LCP documents that would potentially be amended as part of this Project to address WWTP relocation after considering applicable zoning, planning policies, and the feasibility permitting alternatives identified in the Coastal Hazards Response Plan. If a LCP Amendment is necessary, the County would identify any changes in LCP policies or designated zoning to allow for relocation of the WWTP facilities. Additionally, the Coastal Hazards Response Plan would assess potentially feasible adaptation strategies and best management practices to minimize or reduce coastal hazard impacts to critical public infrastructure, specifically targeted for the San Simeon WWTP.

The Coastal Hazards Response Plan and potential subsequent LCP Amendment would emphasize considerations of sea level rise hazards upon community health and well-being. The project includes the establishment of a policy framework for adapting to coastal hazards and improving resiliency, in order to protect critical public infrastructure and vulnerable populations that are threatened by existing and future coastal hazards. A preferred inland site (or sites) for SSCSD wastewater treatment functions would be identified, including evaluation of alternative wastewater treatment options in-lieu of building a new WWTP. Potentially feasible alternatives involve construction of an inland package plant, combining services with other nearby existing WWTPs, and similar alternatives. Expected costs include purchase of land for a relocated WWTP, decommissioning of the existing plant and to restore the site, and upgrades for any relocated wastewater treatment functions to include water recycling.

The County intends to complete this project with coordination with CCC and stakeholders (e.g., Regional Water Quality Control Board, State Parks, Ocean Protection Council, California Department of Fish and Wildlife, potential study site property owners), through the public hearing and decision-making process. The Project would address needs of environmental justice populations, particularly related to climate resilience of critical public infrastructure, and would protect coastal resources and water quality along the San Simeon shoreline for continued coastal access and recreation. LCP policies that support this Project would be included within the Draft LCP Amendment as necessary. Following the completion of the Project funded under Round 6, the County would have a locally adopted complete LCP package, culminating in submittal to the CCC to initiate the certification process.

San Simeon Coastal Hazards Response Plan – Task Descriptions

Task 1: Project Initiation and Kickoff

Following execution of the Grant Agreement, the County, San Simeon Community Service District (SSCSD), and consulting partners will initiate the preparation of the San Simeon Coastal Hazards Response Plan (Project). A kickoff meeting will be held with County and SSCSD staff, and consultant team, to review and refine the work program, develop an understanding of Project details, establish roles and responsibilities, and protocols for clear lines of communication for the duration of the Project.

Deliverables

- Kickoff Meeting Materials including Agenda, Minutes, Communication Protocols, and Action Items

Task 2: Agency and Stakeholder Engagement

The County is committed to maintaining a collaborative relationship with SSCSD to develop a feasible solution for protection of critical public infrastructure through WWTP relocation and/or continuation of wastewater treatment necessary services for an identified priority population. In addition, coordination with agencies, decision-makers, and landowners will be essential to the success of this Project. Stakeholders involved in this process may include Regional Water Quality Control Board, California State Parks, U.S. Army Corps of Engineers, California Natural Resources Agency, community service districts such as Cambria Community Service District, and local landowners.

Subtask 2.1: Coordination with CCC – The County and SSCSD will coordinate with CCC for initial Project setup, regular Project status updates, and input at major Project milestones. This subtask will be ongoing.

Subtask 2.2: Project Coordination between the County and District - The County and District will meet regularly to coordinate on this project.

Subtask 2.3: Stakeholder Identification – SSCSD will develop a list of key stakeholders that SSCSD will coordinate with for development of Coastal Hazards Response Plan and eventual WWTP relocation. Stakeholders will include local, regional, state, and federal agencies, as well as landowners and other interested parties.

Subtask 2.4:Stakeholder Meetings: The District will facilitate up to eight (8) stakeholder meetings with relevant agencies with authority over the development, as well as with any potential landowners or technical specialists, to discuss alternatives for a proposed new and/or relocated WWTP and wastewater functions and selection of a preferred alternative.

Deliverables

- Communications and Meeting Notes
- Project Meeting Notes and Action Items
- Stakeholder List
- Meeting Minutes and Materials from Stakeholder Meetings

Task 3: Coastal Hazards Response Plan

The Coastal Hazards Response Plan will provide a clear long-term plan for providing necessary wastewater treatment functions at an inland location not subject to significant coastal hazards threatening the existing WWTP as identified within the CCC adopted findings within CDP Application No. 3-19-0020 (see attached CCC Staff Report Th13b). The Coastal Hazards Response Plan will be a technical report designed to inform land use and regulatory decisions, including needed amendments to the LCP. This Task will be performed by SSCSD and their subconsultants.

Subtask 3.1: Evaluate Existing Conditions and Identify Constraints – SSCSD has commissioned several studies and technical analysis for the WWTP since 2008. SSCSD will build on prior technical studies to summarize existing threats and conditions at the current WWTP site, prior sea level rise modeling and vulnerability assessments, and potential constraints that would affect WWTP relocation or site selection.

Subtask 3.2: Alternatives Analysis – SSCSD, through coordination with key stakeholders in Task 2, would identify various landward locations for a wastewater treatment system and evaluate the feasibility. Factors affecting feasibility and selection of wastewater treatment systems may include the presence, absence, or condition of slopes, soils, drainage, elevation, vehicle access points, sensitive receptors, sensitive biological habitat, and surrounding land uses. Additionally, the Alternatives Analysis would assess potential barriers to moving to the final design and implementation stages of the future landward wastewater treatment system to each site for optimal site selection.

Subtask 3.3: Identification of a Preferred Site or Alternative - A preferred site(s) based on feasibility, costs, site-specific characteristics, and minimization of potential environmental impacts would be identified.

Subtask 3.4: Develop Schedule for Potential Major Relocation Events – A conceptual timeline would be developed that would show project phases and major milestones for relocation at the Preferred site or alternative.

Subtask 3.5: Conduct economic analysis – SSCSD and consultants will develop estimated costs and potential funding options for potential land acquisition, planning, permitting,

design, construction, and operation of the relocated WWTP or alternative wastewater treatment solutions.

Subtask 3.6: Prepare Draft Coastal Hazards Response Plan – SSCSD and consultants will prepare the Draft Coastal Hazards Response Plan based on work performed for Subtasks 3.1 through 3.5 and with consideration of stakeholder input under Task 2.

Subtask 3.7 Presentation of Draft Coastal Hazards Response Plan to Planning Commission and Board of Supervisors – SSCSD and consultant team as needed will present the Coastal Hazards Response Plan at up to two (2) public hearings for the Planning Commission and Board of Supervisors.

Subtask 3.8: Final Coastal Hazards Response Plan - SSCSD and will finalize and submit the Coastal Hazards Response Plan to CCC for review and approval.

Deliverables

- Draft Coastal Hazard Response Plan
- PowerPoint Presentation and Materials
- Final Coastal Hazard Response Plan

Task 4: Draft LCP Amendments

The objective of this task will be to develop any necessary amendments to the Coastal Zone Land Use Ordinance and North Coast Area Plan in order to facilitate relocation of the San Simeon WWTP. LCP amendments as part of this Project may include changes in land use designation and zoning, policy updates, and/or inclusion of best management practices and criteria for development of wastewater infrastructure. Such amendments would be informed by the Coastal Hazards Response Plan developed under Task 3, and agency coordination, including CCC, conducted under Task 2.

Subtask 4.1: Develop Work Plan and Policy Framework – Once a preferred alternative has been identified for WWTP relocation, the County would determine the need for amendments to the Coastal Zone Land Use Ordinance and North Coast Area Plan to facilitate future development of the WWTP.

Subtask 4.2: Develop Draft LCP Amendments - The County will prepare draft amendments as necessary to the Coastal Zone Land Use Ordinance and North Coast Area Plan.

Subtask 4.3: Circulate Draft LCP Amendments – The Draft LCP Amendments will be presented at public forums and/or Planning Commission meeting(s) for public review. The County will circulate the Draft LCP Amendments for comment to agencies that have regulatory authority or expertise in areas subject to the LCP Amendments.

Subtask 4.4: Prepare Revised Draft LCP Amendment Package – The County will revise the Draft LCP Amendment package as warranted, with consideration of comments from the public, agencies, and decision-makers.

Deliverables:

- Work Plan
- Draft LCP Amendments
- Public Draft LCP Amendments
- Draft Final LCP Amendments

Task 5: Hearings and Adoption

Under this Task, the County would carry any Draft LCP Amendments through the public hearing and local adoption process and through CCC submittal and certification.

Subtask 5.1: Planning Commission Hearings – The Revised Draft LCP Amendment package will be presented before the Planning Commission. This subtask assumes two (2) hearings may be required.

Subtask 5.2: Board of Supervisors - The Revised Draft LCP Amendment package and Planning Commission recommendations will be presented before the Board of Supervisors for consideration of local adoption. This subtask assumes two (2) hearings may be required.

Subtask 5.3: Submit locally approved LCP Amendment to CCC - The County will prepare and submit the LCP Amendment package to the CCC for certification.

Deliverables:

- Planning Commission Staff Reports and Exhibits
- Board of Supervisors Staff Reports and Exhibits
- LCP Amendment Submittal to the CCC

Task 6: Project Management and Administration

The County and SSCSD will carry out essential project management tasks throughout the life of the Project, including progress reporting and grant administration, and procurement of any needed subconsultants.

Deliverables:

- Quarterly Progress Reports
- CCC Grant Administration

Proposed starting date: 1/2/2020
Estimated completion: 3/31/2022

Task 1. Project Initiation and Kickoff	**Projected start date: 1/2/2020**	**End date: 3/31/2020**
Outcomes: Kickoff Meeting		
Deliverables: • Kickoff Meeting Materials including Agenda, Minutes, Communication Protocols, and Action Items		
Task 2. Agency & Stakeholder Coordination	**Projected start date: 1/2/2020**	**End date: 3/31/2022**
2.1 Coordination with CCC	Projected start date: 1/2/2020	End date: 3/31/2022
2.2 Project Coordination between the County and District	Projected start date: 1/2/2020	End date: 3/31/2022
2.3 Stakeholder Identification	Projected start date: 1/2/2020	End date: 3/31/2020
2.4 Stakeholder Meetings	Projected start date: 4/1/2020	End date: 9/30/2021
Outcomes: Coordination with CCC, County, and key stakeholders throughout the life of the Project		
Deliverables: • Communications and Meeting Notes • Project Meeting Notes and Action Items • Stakeholder List • Meeting Minutes and Materials from Stakeholder Meetings		
Task 3. Coastal Hazards Response Plan	**Projected start date: 1/2/2020**	**End date: 10/1/2021**
3.1 Evaluate Existing Conditions and Identify Constraints	Projected start date: 1/2/2020	End date: 3/31/2020
3.2 Alternatives Analysis	Projected start date: 1/2/2020	End date: 9/30/2020
3.3 Identification of a Preferred Site or Alternative	Projected start date: 10/1/2020	End date: 1/31/2021
3.4 Develop Schedule for Potential Major Relocation Events	Projected start date: 10/1/2020	End date: 4/31/2021
3.5 Conduct economic analysis	Projected start date: 10/1/2020	End date: 4/31/2021
3.6 Prepare Draft Coastal Hazards Response Plan	Projected start date: 4/1/2020	End date: 6/30/2021
3.7 Presentation of Draft Coastal Hazards Response Plan to Planning	Projected start date: 7/1/2021	End date: 8/13/2021

Commission and Board of Supervisors		
3.8 Final Coastal Hazards Response Plan	Projected start date: 8/16/2021	End date: 10/1/2021
Outcomes: Preparation and Submittal of the Coastal Hazards Response Plan to CCC		
Deliverables: • Draft Coastal Hazard Response Plan • PowerPoint Presentation and Materials • Final Coastal Hazard Response Plan		
Task 4: Draft LCP Amendments	**Projected start date: 2/1/2021**	**End date: 9/30/2021**
4.1: Develop Work Plan and Policy Framework	Projected start date: 2/1/2021	End date: 3/1/2021
4.2: Develop Draft LCP Amendments	Projected start date: 3/2/2021	End date: 6/30/2021
4.3: Circulate Draft LCP Amendments	Projected start date: 7/1/2021	End date: 8/13/2021
4.4: Prepare Revised Draft LCP Amendment Package	Projected start date: 8/16/2021	End date: 10/1/2021
Outcomes: Draft LCP Amendments to facilitate WWTP relocation		
Deliverables: • Work Plan • Draft LCP Amendments • Public Draft LCP Amendments • Draft Final LCP Amendments		
Task 5: Hearings and Adoption	**Projected start date: 10/1/2021**	**End date: 3/31/2022**
5.1: Planning Commission Hearings	Projected start date: 10/5/2022	End date: 12/31/2022
5.2: Board of Supervisors	Projected start date: 1/2/2022	End date: 2/4/2022
5.3: Submit locally approved LCP Amendment to CCC	Projected start date: 2/7/2022	End date: 3/31/2022
Outcomes: Local adoption of LCP Amendments and submittal to CCC for certification		
Deliverables: • Planning Commission Staff Reports and Exhibits • Board of Supervisors Staff Reports and Exhibits • LCP Amendment Submittal to the CCC		
Task 6: Project Management and	**Projected start date:**	**End date:**

Administration	1/2/2020	3/31/2022
Outcomes: Ongoing Project Management & Grant Administration		
Deliverables: • Quarterly Progress Reports • CCC Grant Administration		

BENCHMARK SCHEDULE

ACTIVITY	COMPLETION DATE
Kickoff Meeting & Identification of Stakeholders	3/31/2020
Draft Coastal Hazards Response Plan & Draft LCP Amendments	6/30/2021
Presentation at Public Hearing(s) & Circulation of Draft LCP Amendments	7/1/2021 – 8/31/2021
Final Coastal Hazards Response Plan & LCP Amendments	10/1/2021
Local Adoption & Submittal to CCC	3/31/2022

APPLICATION BUDGET INFORMATION

Funding Request: $130,000 **Total Project Cost: $163,000**

	CCC Grant Total	*Match/ Other Funds (SSCSD)*	*Match/ Other Funds*	*Total (LCP Grant Funds + Match/ Other Funds)*
LABOR COSTS[1]				
County Staff Labor				
Task 1 – Project Initiation	$2,500	--		$2,500
Task 2 – Agency & Stakeholder Coordination	$5,000	--		$5,000
Task 3 – Coastal Hazards Response Plan	--	--		--
Task 4 – Draft LCP Amendments	$25,000	--		$25,000
Task 5 – Hearings and Adoption	$8,000	--		$8,000
Task 6 – Project Management & Administration	$2,500	--		$2,500

[1] *Amount requested should include total for salary and benefits.*

	CCC Grant Total	*Match/ Other Funds (SSCSD)*	*Match/ Other Funds*	*Total (LCP Grant Funds + Match/ Other Funds)*
Total Labor Costs	**$43,000**			**$43,000**
DIRECT COSTS				
San Simeon Community Services District & Consultants[2]				
San Simeon CSD				
Task 1 – Project Initiation	$2,500			$2,500
Task 2 – Agency & Stakeholder Coordination	$15,000			$15,000
Task 3 – Coastal Hazards Response Plan	$67,000	$33,000		$100,000
Task 4 – Draft LCP Amendment Package	--			
Task 5 – Hearings and Adoption	--			
Task 6 – Project Management & Administration	$2,500			$2,500
Total Direct Costs	**$87,000**	**$33,000**		**$120,000**
OVERHEAD/INDIRECT COSTS[3]				
Total County Staff Overhead/Indirect Costs				
TOTAL PROJECT COST	**$130,000**	**$33,000**	**--**	**$163,000**

[2] All consultants must be selected pursuant to a bidding and procurement process that complies with all applicable laws.
[3] Indirect costs include, for example, a pro rata share of rent, utilities, and salaries for certain positions indirectly supporting the proposed project but not directly staffing it. Amount requested for indirect costs should be capped at 10% of amount requested for "Total Labor."

wood.

Regional Map – San Simeon, CA

FIGURE 1

Project Location

Project Site Photos

(looking south)

Project Site Photos

(looking south)

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

Th13b

Filed:	5/21/2019
Action Deadline:	11/172019
Staff:	Brian O'Neill - SC
Staff Report:	6/28/2019
Hearing Date:	7/11/2019

STAFF REPORT: CDP HEARING

Application Number: 3-19-0020

Applicant: San Simeon Community Services District

Project Location: Bluff, beach, and riparian area fronting the San Simeon Wastewater Treatment Plant (WWTP) at 9245 Balboa Avenue in the unincorporated San Simeon Acres area of North San Luis Obispo County immediately adjacent to Arroyo del Padre Juan Creek (APNs 013-031-028 and 013-031-041).

Project Description: After-the-fact recognition and retention of: 1) a riprap revetment fronting the WWTP (completed in 1983); 2) replacement of a portion of the ocean outfall pipeline (completed in 1984) and other repairs and replacement to the outfall (completed between 2010-2013); 3) improvements to a pipe support structure across Arroyo del Padre Juan Creek, including placement of riprap at abutments (completed in 1995); 4) full replacement of the pipe support structure (completed in 1999); and 5) other WWTP structural and component upgrades and related development over many years. Also, new proposed riprap augmentation of the revetment fronting the WWTP (adding two feet in height).

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicant, the San Simeon Community Services District (CSD or District), owns and operates the San Simeon Wastewater Treatment Plant (WWTP) located in the community of San

Simeon Acres, which is located north of Cambria and south of Hearst Castle in northern San Luis Obispo County. The WWTP is located adjacent to and just downcoast/seaward of the mouth of Arroyo del Padre Juan Creek, and just inland of the public beach at this location. The WWTP is sited at an approximate elevation of 13 to 15 feet above mean sea level (with many components nearer to sea level given they are below the general elevation of natural grade at this location and inland of the site's retaining walls) on a low-lying property that slopes toward the creek, partly facing the Pacific Ocean to the west and partly facing the creek channel to the north.

In 1983, and due to severe winter storms, the District placed over 650 cubic yards of unauthorized rock riprap to form an approximately 200-foot-long by 12-foot-high by 15-foot-deep revetment along the bluffs fronting both the beach and the creek to protect the then-existing WWTP. In addition, as a result of winter storms in 1995, the District repaired its pipe support structure (containing associated sewer and water pipelines) that crosses over Arroyo del Padre Juan Creek just inland of the WWTP site. As part of this unauthorized action, the District removed riparian vegetation, graded the streambank, and placed at least 260 cubic yards (and up to 450 cubic yards) of additional riprap[1] along both sides of the creek near the support structure's abutments. In 1999, the District fully replaced the pipe support structure with a new unauthorized pipe support structure. All of the aforementioned development was undertaken without the benefit of any coastal development permits (CDPs), and thus constitute violations of the Coastal Act and the San Luis Obispo County Local Coastal Program (LCP), for which the Commission's enforcement unit opened an enforcement case in 2001 (Enforcement Case No. V-3-01-028), which remains active today. The District is now proposing as part of this CDP application that such development be recognized by the Commission after-the-fact (ATF), as well as proposing to add two feet of additional riprap to the top of the revetment.

In addition, other development has been undertaken on the site over the years without the benefit of any CDPs, and the District is proposing such development to be recognized ATF as well. Specifically, in 1984, and again as a result of winter storms, the District replaced a 600-foot-long portion of the original 840-foot-long by eight-inch-diameter outfall pipe that extends from the WWTP site into the Pacific Ocean. More recently, the outfall line failed, prompting repair and replacement to a portion of the outfall between 2010 and 2013.[2] The District also undertook a variety of unauthorized upgrades and replacements to, and expansions of, key WWTP components over the years (e.g., new pumps, lining of tanks, headworks building upgrades, etc.). Again, none of this development was covered by a CDP (and is also part of Enforcement Case No. V-3-01-028), and thus all of it constitutes a violation of the Coastal Act and the LCP, which the District proposes to permit via ATF authorization through the current CDP application.

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[1] The District's plans for the project identify differing amounts of riprap and the District does not know whether the amount placed was 260 or 450 cubic yards or some quantity in between, and visual inspection has proven inconclusive on this point.

[2] A 100-foot section of the outfall pipe was replaced in 2013, following other repairs in 2010. Charles Grace, the District's General Manager, indicated to Commission staff that the project consisted of six joints of eight-inch-diameter pipe shielded with HDPE that covered approximately 100 feet of line along the ocean substrate. As part of that project, Mr. Grace indicates that the diffusers at the ocean end of the pipe were also removed to flush sand out of the line, and were then re-installed using new bolts.

On that point staff notes that while the District has agreed to include the outfall work and the structural and component upgrades and related development as part of the proposed project to be recognized ATF, they disagree that a CDP is needed at all in the first place. Essentially, the District asserts that the work had been properly permitted or exempted by San Luis Obispo County and/or was repair and maintenance that was exempted from CDP requirements. Staff disagrees. Concerning the outfall development, the Commission's regulations require a CDP for outfall development that includes, among other things, "the placement, whether temporary or permanent, of riprap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters…"[3] The outfall pipe was clearly a solid material placed in coastal waters (i.e. the ocean), requiring a CDP from the Commission.

In terms of the other structural and component upgrades undertaken on the site over time for which the Applicant claims a repair and maintenance exemption, any such exempt development cannot include augmentation to or replacement of the object purportedly being repaired or maintained. In other words, "repair and maintenance" presumes that the object of the "repair or maintenance" is not being augmented, upgraded, or replaced, but rather is simply being perpetuated in its existing state. The District's equipment and component augmentations, upgrades, and replacements that were undertaken without CDPs over time were not repair and maintenance, but rather were augmentation or upgrades to or replacement of the equipment, which do not qualify for the repair and maintenance exemption. In addition, even if they did qualify as repair and maintenance (which they do not), any such repair and maintenance development that is located within 50 feet of the edge of the bluff or within 20 feet of a stream and includes the presence of mechanized equipment or construction material is explicitly <u>not</u> exempt from CDP requirements, and neither is any development that includes the replacement of 50 percent or more of the structure.[4] Because the development at issue occurred within 50 feet of both the coastal bluff and within 20 feet of the environmentally sensitive habitat (ESHA) of Arroyo del Padre Juan Creek with the use of mechanized equipment, and also due to the augmentation and upgrade nature of the work undertaken (rather than repair and maintenance), it is clear that CDPs were required for the development that was undertaken. And it is equally clear that CDPs were never obtained, and thus these proposed project elements are properly before the Commission ATF as part of the current CDP application, and are also valid components of Enforcement Case No. V-3-01-028.

Some of the above development (e.g., near the pipe support structure and internal to the plant itself) is located within San Luis Obispo County's CDP jurisdiction, and the remainder is located in the Commission's retained CDP jurisdiction. The Applicant, the County, and the Commission's Executive Director agreed to have the Commission hear this application as a consolidated ATF CDP application, as allowed by the Coastal Act, with the Coastal Act as the standard of review. Approval of this application as conditioned pursuant to the staff recommendation, issuance of the CDP, and the District's subsequent compliance with all terms and conditions of it will result in resolution of all of the above-described violations.

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[3] Per Section 13252(a)(1)(B) of Title 14 of the California Code of Regulations (CCR).

[4] Per 14 CCR Sections 13252(a)(3), 13252(b), and 13252(a)(1)(B).

Commission staff and the District have engaged in ongoing conversations and efforts to resolve the violations at this site for some time, beginning in 2001 when staff first became aware of the unpermitted placement of riprap around the WWTP. Ultimately, following an enforcement investigation and notice of violation letter in 2004, the District submitted an ATF CDP application, which was then scheduled for hearing in 2009, but the District withdrew the application after the staff report was distributed and before the Commission's hearing on the matter, including to continue discussions about staff's proposed resolution of coastal resource issues. Additional conversations followed the withdrawal, including staff providing the District with a list of information that would need to be updated prior to submittal of a new application. Ultimately, following additional violation noticing in 2015, the District applied for the current project, seeking recognition and retention of all of the work previously done on the site without benefit of a CDP that is the subject of Enforcement Case No. V-3-01-028 (CDP Application No. 3-15-2114). Commission staff worked very closely with District staff and its representatives over the years on a project description that included all of the work identified above, so that the District could move forward with a clean slate and resolve the violations. Ultimately, however, when the CDP application was heard by the Commission on October 2018 in San Diego, the District withdrew its CDP application at the hearing. The District subsequently reapplied for the same project, and it is again before the Commission for action (CDP Application No. 3-19-0020) at the Commission's July meeting in San Luis Obispo. Staff continues to believe that because all of the identified unpermitted development above requires ATF recognition, the now proposed project justifiably includes the means to resolve the entire scope of work undertaken on the site that is the subject of Enforcement Case No. V-3-01-028.

The main Coastal Act concern regarding ATF approval of the unpermitted development is that the WWTP is located in a low-lying area that is just above the beach and sea level on a low bluff that is also located just above and adjacent to Arroyo del Padre Juan Creek. This area is subject to coastal hazards related to ocean and creek flooding, which will only be exacerbated as sea level rises. As such, there are significant questions as to whether the aging WWTP (which at this point does not constitute an "existing structure" under Coastal Act Section 30235 due to its significant history of redevelopment and changes to most of its internal structural components over the years, as discussed below) can be allowed to remain at this location over the longer term, consistent with the Coastal Act, as it addresses both the need for further upgrades and augmentations. The Commission's adopted 2015 Sea Level Rise Guidance provides a statewide framework for analyzing coastal development in an era of climate change, which will result in more frequent, more severe, and more unpredictable coastal weather events. One of the key findings of the Guidance is the need to ensure that critical infrastructure is located out of harm's way as a means of providing continued function and viability of such essential services in a manner that does not lead to significant adverse coastal resource impacts (e.g., on shoreline resources when armoring and other hazard responses are considered), and to ensure that public dollars are invested wisely in an era of sea level rise. Other efforts, such as the California Climate Action Plan (2018) and reports such as the 2015 California Coastal Armoring Report (from Stanford Law School) support the Commission's Guidance on these issues as well, and there is a growing recognition that critical infrastructure, such as WWTPs, need to be closely evaluated when proposals are made to maintain them in hazardous areas over the long term, such as is the case here.

The District's WWTP represents critical public infrastructure that is located in an area at risk from coastal flooding and other related hazards (especially due to its adjacency to both a coastal stream and the open ocean), all of which are exacerbated by sea level rise, and in some ways it is representative of the coastal hazards and sea-level rise challenges facing critical infrastructure located along California's dynamic shoreline area. This is an issue that is not just confined to this project but rather one that is being played out throughout coastal California, given that such infrastructure was historically placed in low-lying areas near the coast in many cases and such facilities are being forced to address coastal hazard realities head-on as decisions are being made about major remodels, redevelopments, upgrades, expansions/augmentations and replacement of critical components or whole public facilities, as well as the need for protection from coastal hazards.[5] In this case, these coastal hazard concerns related to the District's WWTP are exemplified by the fact that the District installed the aforementioned riprap in 1983, without appropriate authorization, to protect the then-existing WWTP from coastal hazards, and this was not the first time the District armored the site in response to such concerns.[6] Commission staff agrees with the District about the importance of this facility for addressing wastewater functions in this area, and has thus been working with the District cooperatively for many years to try to identify a feasible long-term path forward toward eventually relocating its current, aging WWTP away from a dynamic and unpredictable shoreline area, consistent with the Coastal Act.

A key issue in this case is the applicability of Coastal Act Section 30235 with respect to the status of the current, aging WWTP. Staff believes the WWTP no longer constitutes an existing structure for which armoring is required to be approved in certain circumstances under Section 30235. The Applicant believes that the WWTP is an existing structure because the WWTP's structural frame was originally built in the early 1960s. On this point staff agrees that the facility's walls and foundation pre-date the 1976 Coastal Act, but approximately 90% of the functional components of the WWTP (e.g., aeration basins, new pumps, tank liners, building upgrades, etc.), which essentially comprise the structures and components that enable a WWTP to exist and operate at all in this specific industrial context, have been augmented, upgraded and/or replaced since CDP requirements came into effect in 1973,[7] with much of this information being provided by the Applicant's own Life Expectancy Analysis document, which describes the status of every component of the WWTP, including upgrade and modification

[5] And the Commission has played an active role in several such projects, including related to wastewater treatment facilities (see, for example, the Commission's temporary CDP (3-16-0233) for South San Luis Obispo County CSD's WWTP in May 2017 that identified a long-term path forward for moving the WWTP out of the way of coastal hazard risks, and the Commission's denial of a CDP (A-3-MRB-11-001) for a WWTP in Morro Bay in January 2013, instead directing the City and the Cayucos Sanitary District to pursue WWTP facilities inland out of harm's way (where Cayucos Sanitary District's new inland wastewater treatment and water recycling facility is currently under construction, and the City's proposed new inland wastewater treatment and water recycling facility is being recommended for approval by staff and considered by the Commission at the July meeting in San Luis Obispo).

[6] District materials indicate that some 125 cubic yards of riprap was placed in the late 1960s to protect the then-just-constructed WWTP from coastal hazards. District materials also indicate that any such riprap had been fully displaced or migrated away by the time the District placed over 650 cubic yards of riprap to form a new revetment in 1983, which is one of the subjects of this CDP application.

[7] Pursuant to 1972's Proposition 20, "The Coastal Initiative," and subsequently pursuant to the 1976 Coastal Act.

dates.[8] Based on this data and other analysis undertaken by staff, the WWTP cannot be considered a pre-Coastal Act existing structure for purposes of Section 30235 of the Coastal Act. Rather staff believes the WWTP *was* a pre-Coastal Act structure that has since been substantially redeveloped over time without any CDPs,[9] and thus it cannot be considered an existing structure for Section 30235 armoring purposes. For other reasons (i.e., coastal resource impacts from the proposed retention of unpermitted armoring), the Coastal Act directs denial of the ATF armoring component of the project.

At the same time, Coastal Act Section 30253 requires new development (which the redeveloped WWTP qualifies as in this ATF application) to minimize risks to life and property in areas of high flood hazard and to 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. In this case, Commission staff, including the Commission's Senior Coastal Engineer, Dr. Lesley Ewing, and its Sea Level Rise Team, have evaluated the relevant materials (which include the District's consultant's multiple geotechnical reports which use standard projected/accepted sea level rise data as recommended by the Commission's 2015 Sea Level Rise Guidance), engaged with the District's consultants on the evidence, and concluded that the then-existing WWTP was in danger from erosion at the time of the placement of unauthorized riprap in 1983 and the current WWTP redeveloped in place continues to be in danger today. In 1983, as now, the erosion danger was/is primarily due to flooding associated with storm and wave attack and inundation, but also due to scour and flooding from the adjacent Arroyo del Padre Juan Creek, and the combination of ocean and creek effects. Thus, the WWTP represents new critical public infrastructure that is currently at risk, requiring an evaluation of options to address that risk in order to achieve consistency with Section 30253 and other Coastal Act policies.

Concerning Section 30253, the proposed retention of the ATF riprap revetment fronting the WWTP does not "minimize risks to life and property in areas of high flood hazard." Specifically, the riprap does not provide the level of protection which the Commission has required in the past for critical coastal public infrastructure such as this facility (i.e., protection against a 100-year storm event as well as for 100 years of safety and stability), including as the effects of such storms may be exacerbated by expected sea level rise. According to the Applicant's consultant's own geotechnical and sea level rise assessment, the riprap at the WWTP provides protection for only a 10- to 20-year storm event (including storm waves, erosion, flooding, etc.), and even with

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[8] Per Table 1 of Phoenix Civil Engineering, Inc.'s "Estimated WWTP Life Expectancy Analysis," the only two WWTP components that have not been replaced/augmented/upgraded/expanded are the Parshall Flume Meter and the Lab Building. All other WWTP components have been augmented/upgraded/replaced/expanded without any CDPs in the time since CDPs were first required at this site in 1973. See also discussion above on page 3 regarding why such component augmentation/upgrades/expansion does not constitute CDP-exempt repair and maintenance.

[9] Almost 90% of the WWTP's operational components have been replaced/augmented/upgraded/expanded in some form (e.g., the blower building, disinfection chamber, digester, clarifiers, aeration tanks, outfall pipe, etc.) since CDPs were first required in 1973, with only a portion of these modifications being properly permitted. These modifications have also resulted in increased lifespans for the components and associated mechanical equipment, which corresponds to an increased lifespan beyond the life of the original WWTP. In total, 12 out of the 14 major WWTP components have been replaced/augmented/upgraded/expanded in some manner.

that level of protection there remains the potential for some 2.4 feet of overtopping of the revetment and into the WWTP proper. And even if it were appropriate under the Coastal Act to approve an additional two feet of height to the revetment as the District now proposes (which it is not for the same reasons that the ATF revetment is impermissible), this threat remains essentially unchanged. Thus, the WWTP is not appropriately sited pursuant to Section 30253, and there is the potential for catastrophic events (e.g., operational malfunctions, untreated or partially treated sewage spills, ocean and creek contamination, etc.) as a result, even in a 10- or 20-year storm, let alone a larger storm as the California coast is accustomed to on a fairly regular basis. Thus, the proposed ATF development does not minimize risks to life and property as required by 30253.

In addition, even if the revetment met Section 30235 and 30253 tests, the Coastal Act requires that such a project eliminate or mitigate impacts to local shoreline sand supply, and that it avoid and/or mitigate (if unavoidable) other coastal resource impacts (related to public access, views, etc.). In this case, the current revetment does not avoid or limit coastal resource impacts and the District has not mitigated for its unavoidable impacts to coastal resources over its lifetime. Specifically, the revetment's footprint results in a direct loss of usable public beach area (with portions of the riprap also occupying a previously deed restricted public access area),[10] and the revetment has not been sited and designed to minimize visual impacts. Moreover, the project fails to mitigate for long-term sand supply loss and related beach recreational access impacts (such as those due to fixing the back beach on an eroding shoreline) at this popular beach area. Therefore, the revetment also cannot be found consistent with Section 30235 and other Coastal Act resource protection requirements, which also warrants denial.

Furthermore, portions of the revetment and the riprap placed along the creek and at the pipe support structure's abutments occupy resource areas that are environmentally sensitive habitat (ESHA) associated with Arroyo del Padre Juan Creek. This ESHA was graded over and covered with riprap without authorized CDPs, and this riprap is also part of the ATF application here. Section 30240 only allows resource-dependent use and development in ESHA, and riprap and revetments do not constitute such an allowable use in ESHA. As a result, Section 30240 directs denial of these elements of the proposed project independently as well.

Thus, the Coastal Act directs denial of the riprap revetment fronting the WWTP as well as the other riprap in the creek area.

At the same time, staff fully understands the current WWTP represents vital public infrastructure *in situ* that, if damaged or otherwise impacted by erosion and other coastal hazards, could result in sewage effluent discharges or other WWTP malfunctions that would negatively impact water quality, habitat, wildlife, and human health and safety, and that it is infeasible to decommission, remove, and relocate the WWTP in the very near term. For this reason, Sections 30230, 30231, and 30240 (viewed from this lens) compel approval in the near term of the ATF components that allow the current WWTP to operate, as well the revetment/riprap that protects the WWTP. Thus, Coastal Act policies related to coastal hazards (in particular Section 30253) and coastal resource

[10] Required by the Commission on March 9, 1979 as a condition of approval of CDP 199-09, which allowed for the construction of a 100,000 gallon flow balancing tank at the WWTP.

protection (and particularly related to Section 30240 requirements for ESHA) direct denial of the revetment to ensure long-term consistency with the Coastal Act, but at the same time denial would conflict with other Coastal Act policies for which an operational WWTP at the present time are key (i.e., Sections 30230, 30231, and 30240). In these scenarios where the Commission identifies a conflict between application of policies of the Coastal Act to a specific set of facts, the Commission is empowered to resolve the conflict in a manner that is on balance the most protective of significant coastal resources (pursuant to Section 30007.5 and 30200).

One alternative to resolving the policy conflict in this case (coastal hazards and ESHA policies on the one hand, and marine resource, water quality, and ESHA/biological resource policies on the other hand) is to encourage/facilitate the District to relocate the entire facility and its wastewater functions to a more inland and safer location, and to at some fixed point require removal of the existing unpermitted revetment and related development for which the Coastal Act directs denial and which is resulting in ongoing coastal resource impacts. The District submitted an analysis of alternative locations within the San Simeon Acres area that were potentially available for such relocation. However, immediate relocation is not feasible because, while it is possible to physically relocate and reconstruct a new WWTP in a different location, implementation would require significant time to secure funding, to purchase property, to develop relocation plans, to construct a new WWTP, to decommission the existing WWTP and restore the site, and to address related issues (e.g., to address the possibility that a San Luis Obispo County LCP amendment would be necessary to allow a WWTP on a particular inland property). All of this necessarily requires a significant expenditure of public funds, and significant time and energy by the District to secure funds for these purposes. In addition, the District has not undertaken analysis of other potentially feasible alternatives to the current situation beyond relocation within San Simeon Acres, such as replacing the existing WWTP with a smaller package plant (or a series of smaller package plants) in a different location (and perhaps in conjunction with State Parks installing its own package plant or developing an alternative means of sewage disposal related to Hearst Castle operations), or potentially directing effluent to Cambria's WWTP (if feasible), or in the future combining flows to a regional wastewater facility that could serve Cambria, San Simeon, and the remainder of the north coast of San Luis Obispo County, thus avoiding the need for a full-scale WWTP in the San Simeon Acres area altogether. Regardless, any relocation alternative would be a significant undertaking, and thus staff has concluded that a wholesale relocation or other similar such alternative does not appear to be a feasible alternative in the near term to reconcile the conflict between the coastal hazards and ESHA policies (associated with project approval) with the marine resource, water quality, and ESHA/biological resource policies (associated with project denial).

Absent relocation or another similar alternative that moves wastewater treatment functions away from the identified coastal hazards, the most appropriate near-term resolution of identified Coastal Act conflicts would be to allow a taller vertical seawall that could protect the endangered WWTP while minimizing encroachment onto the beach, and planning for an appropriate long-term resolution to the identified Coastal Act conflicts (i.e., inland relocation of the WWTP and related development, and restoration of the site). Removal of the encroaching revetment (in conjunction with construction of such a taller vertical wall) would also open up public beach space that is currently covered by this revetment (and is, in part, already required by an existing deed restriction). However, in this case, staff is recommending that the revetment only stay in place for the short term, and that the top of the existing revetment be slightly augmented in the

interim while the District develops plans to relocate the WWTP and its functions in the near future. Staff believes that such an approval will help to direct scarce District resources towards longer-term relocation efforts (to better address *long-term* consistency with coastal resource policies than a replacement seawall would achieve), while still providing for crucial WWTP water quality functions in the interim (thus ensuring short-term consistency with marine resources and water quality protection), and making minor revetment modifications to slightly increase protections from coastal hazards during the time of interim authorization (and in a manner that mitigates impacts resulting from the restacked/augmented revetment).

Thus, staff is recommending an up-to 10-year temporary authorization (subject to a five-year check-in) to both address short-term water quality, biological resources, and flood-proofing issues, but also to require a thorough evaluation of long-term wastewater service options (including those listed above) to ensure minimized risk in conformance with Coastal Act Section 30253. During the life of the 10-year authorization, the District would be required to submit a Coastal Hazards Response Plan within three years to expand on prior work done by the District to study alternative site locations, as well as alternative options to reconstruction as discussed above, and feasibility issues, funding options, and costs related to same. To ensure that the District makes adequate progress towards meeting the terms and conditions of this approval, including with respect to the aforementioned plans and analyses, approval would be conditioned upon the Executive Director verifying that significant and diligent progress has been made on meeting the terms and conditions of this approval following the initial five-year period. If the Executive Director is satisfied with the progress made towards such compliance at this check-in, then the authorization will continue for the duration of the permit authorization (subject to the same procedure at the next five-year check-in (up to a possible maximum of twenty years) until expiration of authorization under the CDP. If the Executive Director is not satisfied with the progress, then the Executive Director shall provide written notification to the Permittee and this CDP authorization shall be suspended, subject to the right of the Permittee to dispute the Executive Director's determination to the Commission for consideration and potential action regarding progress made in terms of compliance with the conditions of this CDP.

Recognition and retention of the revetment for 10 more years via this CDP requires compensatory mitigation for the impacts to sand supply and public recreational access, natural landforms, and public views due to the unpermitted presence of the revetment in past years without any required mitigation and future impacts related to the proposed additional 10-year authorization (i.e., mitigation for the 36 years the revetment has been in place, and for the 10 additional years of placement authorized by this CDP). In terms of sand supply and shoreline/beach use loss over this 46-year period, staff has used a methodology that the Commission has in the past applied to quantify the total magnitude of impact to coastal resources caused by the revetment (calculated here at over$ 4.5 million), and has worked with the District to develop a compensatory mitigation package. Specifically, the District now proposes to decommission, demolish, and restore the WWTP site by the end of the CDP authorization (by which point the District also should have identified an alternate site to relocate the WWTP pursuant to the Coastal Hazards Response Plan), and to dedicate the site in fee for public use (e.g., low-intensity public park use). Such restoration and dedication is appropriate, and provides for meaningful offsetting mitigation for project impacts to public access and sand supply loss at that time. In addition, and to provide meaningful mitigation in the near term to begin to offset accrued impacts, the project is also conditioned to provide public access overlook improvements

in the San Simeon Acres area, subject to State Parks' concurrence. Together, staff believes the mitigation package is an appropriate means to offset the impacts from the unpermitted armoring and development that has been in place for more than three and a half decades without proper consideration of mitigation for substantial adverse impacts caused to coastal resources resulting from said armoring and development, and for continuing project access impacts over the temporary approval's horizon.

Compensatory mitigation is also appropriate and required for past and future impacts to coastal resources within Arroyo del Padre Juan Creek caused by approval of the proposed ATF revetment and development. Rock riprap placed within and along both banks of the creek in 1995 has resulted in direct and substantial adverse impacts to stream and riparian ESHA. Such has been the case for the 24 years since the identified rock riprap was placed around the pipe support structure's abutments, and these impacts will continue for the 10 years associated with this temporary approval (for a total of 34 years of impacts). Even though the riprap has settled and been overgrown by a mix of native and non-native vegetation, as indicated above, riprap is not an allowed use in ESHA and thus approval of the rock riprap in this location for the long term would be inconsistent with the Coastal Act. However, Staff believes this riprap is still presently serving its intended purpose to help protect the pipe support structure from erosion, and removal of the riprap at this time could lead to potential damage to that structure, including the potential for service disruption and/or sewage leaks. Staff, including Commission Ecologist Dr. Laurie Koteen, additionally believes that removal of this riprap at this time could create additional significant adverse impacts to stream and riparian habitat, and thus denial of this rock riprap would result in near-term inconsistencies with marine resource, water quality, and ESHA policies, specifically Coastal Act Sections, 30230, 30231, and 30240. Such impacts would likely be acceptable (but mitigated for) in the context of full removal/restoration (as ultimately removal, as mitigated, would ensure consistency with marine resource, water quality, and ESHA policies in the long term), as is required in the future after the 10-year term of this temporary authorization, but is not an acceptable impact justifying immediate removal of the riprap in the creek area now. This is because full mitigation of impacts to marine resources, water quality, and ESHA would not be feasible considering the risk of related impacts to those resources associated with immediate removal of the revetment, and immediate relocation of the WWTP in the near-term is infeasible anyway. Thus, to at least partially mitigate the past and current marine resource and ESHA impacts associated with continued placement of the riprap within Arroyo del Padre Juan Creek under the temporary 10-year approval, staff is recommending that the District carry out a limited but focused restoration aimed at removing pockets of *Myoporum*, iceplant and other nonnative and invasive vegetation in the general vicinity of the pipe support structure (i.e., within and adjacent to the creek) and planting appropriate native vegetation. Such a focused approach can achieve near-term restoration objectives short of requiring removal of the revetment at this time, on the basis of impacts to biological resources and ESHA. The balance of sufficient mitigation for past and current marine resource and ESHA impacts associated with continued placement of the riprap within Arroyo del Padre Juan Creek under the temporary 10-year approval will be achieved upon site restoration following expiration of this CDP authorization.

Finally, in terms of the proposed ATF outfall work, the District replaced a 600-foot-long section of original outfall pipeline in 1984 and undertook follow-up repair and replacement work to a portion of the pipeline between 2010 and 2013, all without any CDP. Currently, the outfall is

located partly on top of or under soft substrate, such as sand, which generally does not result in significant adverse impacts due to the relative abundance of similar offshore habitat that typically lacks sensitive species. However, available baseline habitat mapping and survey data that have been collected as part of Marine Protected Area (MPA) monitoring efforts, as well as aerial photography from Google Earth and oblique imagery from the California Coastal Records Project, indicate that the seaward one-third of the outfall very likely passes through an area of rocky outcrops/reefs and kelp beds.[11] As such, there is a strong possibility that at the time the 600-foot-long replacement portion was installed (1984), it was placed within and through an area of sensitive marine habitat and therefore resulted in some level of adverse impacts to that habitat.[12] To resolve this portion of the violation, the District would be required to provide mitigation for the impacts that it has caused and will continue to cause at its current location, until relocation of the WWTP warrants closure/abandonment of the outfall or following expiration of the 10-year limited authorization.

Specifically, in several past projects, the Commission has found that the removal of derelict fishing gear and other marine debris has provided important enhancements to the marine environment that adequately mitigate for impacts to hard substrate.[13] Thus, this project is conditioned to require such mitigation to mitigate for impacts to the marine habitat caused by the seaward one-third of the outfall. In addition, more recent repairs to the outfall indicate that as recently as 2010 the outfall had failed in one section and released treated sewage (disinfected secondary effluent) onto the beach and into surf zone. While tests were performed to assess the integrity of the outfall at that time, the tests were not capable of detecting smaller leaks or areas of the line that are in imminent threat of failing. In addition, the outfall is located within two different protected areas (the Cambria State Marine Conservation Area MPA and the Monterey Bay National Marine Sanctuary) which are afforded special protection under Coastal Act Section 30230. Given the lack of certainty (and thus, potential) regarding whether the integrity (or lack thereof) of the outfall is causing substantial adverse impacts to the marine habitat environment, as well as marine resources and water quality, staff is recommending that the District complete an integrity assessment of the outfall to ensure that the outfall is not leaking or in danger of failure. If the assessment shows the line is leaking, that the outfall's diffusers are not functioning as designed, or that portions of the line are at risk of failing, then this CDP approval is conditioned to require the District to submit a complete CDP amendment application within 30 days to address the compromised condition of the line.

In short, to address Coastal Act policy conflicts in a manner that is most protective of coastal resources, staff recommends that the Commission approve the project on a temporary basis in a manner designed to allow the District adequate time to plan for the eventual relocation of its facility and its functions. Staff understands the significance of this relocation and that it will not and cannot happen overnight. The recommendation thus represents a *process* to getting to that

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[11] While more recent information (including the District's 2016 and 2017 diver survey reports from Marine Diving Solutions) indicate that the majority of the replaced outfall portion is partially or fully buried, this may be the result of recent trends in sand movement and does not appear to be a consistent pattern.

[12] Those impacts likely persisted until burial occurred and would likely occur again if the line and the reef are exposed again in the future due to storm activity.

[13] See, for example, E-08-021, E-11-017, and 9-16-0160.

point, which would also necessarily include securing funding and spending the time to plan for relocation of wastewater treatment functions to an inland location safe from coastal hazards and where such a facility will have fewer coastal resource impacts and issues overall. Such approval recognizes the need for the WWTP in the current location in the short term, while also providing a path forward to relocation and other alternatives that are appropriate for such critical public infrastructure in light of coastal hazards and sea-level rise in the longer term, consistent with Coastal Act imperatives.

In other words, on the basis of conflict resolution, an up-to 10-year limited authorization (with possibility for extension if warranted) for the revetment and a requirement to remove the revetment and WWTP after 10 years (and plan for relocation of the WWTP during the interim) resolves the conflict between Chapter 3 policies that warrant denial of the proposed ATF riprap revetment on the basis of inconsistency with the Coastal Act in the long term (specifically, coastal hazards and ESHA policies) with Chapter 3 policies that warrant approval presently of the proposed ATF revetment and riprap (specifically, marine resource, water quality, and ESHA policies) to ensure protection of coastal resources in the near term. This is appropriate because the 10-year limited authorization for the revetment and riprap ensures immediate and near-term protection for marine resources, water quality, and ESHA that would be threatened if the revetment and riprap were removed now, but over 10 years ensures minimization of coastal hazards and coastal resource impacts in the long term by providing the District time to plan for relocation of the WWTP to a location more consistent with coastal resource policies overall. This approval recommendation resolves the conflict between Coastal Act policies in a manner that on balance is the most protective of significant coastal resources by balancing coastal resource protection in both the near term and the long term. As conditioned, the project can be found consistent with the Coastal Act, and staff recommends approval of the CDP. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the Applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violations of Enforcement Case No. V-3-01-028.

The necessary motion and resolution to approve the staff recommendation are found on page 14 below.

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Exhibit 12: Applicant's Public Access Mitigation Proposal
Exhibit 13: Adjacent Landowners' Authorization for Retention of Riprap (9231 Balboa Avenue)
Exhibit 14: Applicant's Alternative Locations Analysis & Site Map (San Simeon Acres only)
Exhibit 15: Applicant's WWTP Life Expectancy Analysis and Component Upgrades
Exhibit 16: Applicant's Contractor's Invoices (dated November 25, 1969 and February 6, 1970)
Exhibit 17: Applicant's 1982 Geologic Report (Wooley)
Exhibit 18: Coastal Commission Notices of Violation (October 12, 2004 and January 26, 2015)
Exhibit 19: Draft Memorandum of Agreement for Outfall Substrate Mitigation
Exhibit 20: Applicant's Correspondence (August 29, 2018, June 14, 2018, February 16, 2018, and February 1, 2018)
Exhibit 21: Assessor's Parcel Map (APNs 013-031-028, -041, and -046)

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a CDP for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

> ***Motion:*** *I move that the Commission approve Coastal Development Permit Number 3-19-0020 pursuant to the staff recommendation, and I recommend a yes vote.*
>
> ***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number 3-19-0020 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

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 Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee 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. Approved Project.

a. ATF Development. This CDP authorizes after-the-fact development consisting of: 1) the placement of over 650 cubic yards of riprap on the beach and fronting the bluffs immediately adjacent to the San Simeon Community Services District's (District's) wastewater treatment plant (WWTP) in 1983 (as described and shown on the plan sheet titled *Site Map* dated June 2016 and dated received in the Coastal Commission's Central Coast District Office on December 23, 2015); 2) the placement of up to 450 cubic yards of riprap along both sides of Arroyo del Padre Juan Creek and improvements to a pipe support structure crossing the creek, both in 1995 (as shown on a plan sheet from John Wallace & Associates dated received in the Central Coast District Office on December 23, 2015); 3) replacement of the entire pipe support structure with a new structure in 1999; 4) replacement of 600 feet of outfall pipe in 1984 and replacement of a 100-foot section of outfall pipe between 2010 and 2013; and 5) other structural and component upgrades and development relating to the WWTP over many years (as described in **Exhibits 4 and 15**).

b. New Development. This CDP also authorizes: additional riprap atop the existing riprap fronting the bluffs at the WWTP (up to an additional two feet in height) (see **Special Condition 4**); native habitat restoration in Arroyo del Padre Juan Creek (see **Special Condition 6**); public access improvements on the bluff south of Vista Del Mar Avenue (see **Special Condition 7**); an ocean outfall assessment (see **Special Condition 9**); and decommissioning and demolition of the WWTP in the future and restoration of the site (see **Special Condition 10**).

c. Maintenance. This CDP also authorizes maintenance of the following: the existing and new riprap on the beach and fronting the bluffs at the WWTP until the WWTP is decommissioned and demolished and the site restored, including removal of the riprap (see **Special Condition 5**); the native habitat restoration in Arroyo del Padre Juan Creek (see **Special Condition 6**); and the public access improvements on the bluff south of Vista Del Mar Avenue (see **Special Condition 7**)

d. Other Minor Measures. This CDP also authorizes limited additional measures necessary to address coastal hazards (including as exacerbated by sea level rise) in order to ensure the continuous operation of the WWTP for the duration of the authorized approval to protect water quality and public health, upon determination by the Executive Director that the limited additional measures fall within the scope of authorized development pursuant to this CDP and do not require a CDP amendment. Any such measures shall be the minimum necessary to abate the identified problem.

e. Interim Authorization. By acceptance of this CDP, the Permittee acknowledges and agrees that this approval is an interim authorization (i.e., for up to 10 years, subject to potential extensions, as specified in **Special Condition 2**) for the Approved Project as

specified in subsections (a) through (d) above, to allow for the continued operation and function of the District's WWTP over this timeframe to protect the WWTP against erosion and potential water quality and public health impacts, while simultaneously providing the Permittee time to plan for and consider inland alternatives for future wastewater treatment functions, such as WWTP relocation away from existing and future coastal hazards at this low-lying shoreline location. The habitat restoration and public access improvements described in **Special Conditions 6 and 7** are not subject to the 10-year authorization timeframe, and instead are authorized and required permanently.

2. Duration of Authorization. The Approved Project identified in **Special Condition 1** is authorized for up to 10 years from the date of approval (i.e., through July 11, 2029, the expiration date of this CDP, subject to potential extension as detailed below), subject to a compliance check-in after five years by the Executive Director (i.e., by July 11, 2024). By acceptance of this CDP, the Permittee acknowledges and agrees that such development authorized pursuant to this CDP is only permitted for up to the next 10 years to provide the Permittee adequate time to secure funding and to plan, develop, consider, and implement a project designed to relocate WWTP functions to an inland site (or sites if functions are broken up into more than one facility location) that minimizes coastal hazard threats (see also **Special Condition 3**). The duration of authorization parameters above do not apply to the habitat restoration and public access components of the project (see **Special Conditions 6 and 7**), which are authorized and required permanently.

The Permittee also acknowledges and agrees that it shall remove the Approved Project in its entirety and restore the affected bluff and creek areas to their pre-development condition or better within one year of cessation of wastewater treatment operations at the Balboa Avenue site, or by expiration of this CDP, whichever comes first. Prior to initiating decommissioning and removal of the WWTP and resultant site restoration activities, the Permittee shall submit a plan for same to the Executive Director for review and approval pursuant to **Special Condition 10**.

The expiration date of this CDP may only be modified (a) by the Commission via a CDP amendment, or (b) as part of the Executive Director's check-in process below. In the case of a Permittee-proposed CDP amendment, the Commission shall only consider such a request if the Permittee submits a complete CDP amendment request (i.e., including all necessary information identified by the Executive Director as required for filing purposes) to the Commission prior to the expiration date of this CDP (i.e., before July 11, 2029). Any CDP amendment request that includes proposed retention of the Approved Project and WWTP in its current location beyond the expiration date of this CDP may not be accepted for filing without a showing of significant and diligent action taken in furtherance of implementing the approved Coastal Hazards Response Plan (see **Special Condition 3**), and may not just rely on an expectation of long-term operation of the WWTP at the present location beyond the expiration date of this CDP.

The Permittee shall be subject to a five-year check-in with the Executive Director on the status of its CDP compliance efforts following approval of this CDP. In no event later than July 11, 2024, the Permittee shall request a determination from the Executive Director about whether significant and diligent progress has been made by the Permittee on meeting the terms and conditions of this CDP, particularly in furtherance of implementing the Coastal Hazards Response Plan required by **Special Condition 3**. At that time, the Permittee shall submit to the Executive Director

documentation that the Executive Director deems necessary or appropriate to evaluate and demonstrate significant and diligent progress in this regard. At a minimum, the documentation shall include the following: (1) evidence of steps taken in compliance with **Special Condition 3**; (2) evidence of public and other outreach undertaken by the Permittee toward CDP compliance; (3) identification of potential alternatives to be considered through this CDP to relocate WWTP functions to an inland site (or sites if functions are broken up into more than one facility location) that minimizes coastal hazard threats; and (4) identification of funding sources. The Executive Director's determinations with respect to whether the Permittee is making significant and diligent progress shall be governed by the following:

a) **Progress Made and CDP Authorization Continues.** If the Executive Director determines that significant and diligent progress is being made towards such compliance, then the Executive Director shall provide written notification of same to the Permittee, and the remaining five-year authorization specified under this CDP will continue until authorization expiration on July 11, 2029 (potentially subject to additional extension(s) per subsection b. below).

b) **Progress Made and CDP Expiration Extended.** If the Executive Director determines that significant and diligent progress is being made towards such compliance, but that the Permittee, for good cause, will be not able to relocate WWTP functions to an inland site (or sites if functions are broken up into more than one facility location) by the expiration date of this CDP as contemplated by the Coastal Hazards Response Plan (see **Special Condition 3** below), then the CDP expiration may be extended in five-year increments by the Executive Director up to ten additional years (i.e., to either July 11, 2034, or July 11, 2039), subject to additional Executive Director check-ins every five years following the first check-in by July 11, 2024 (i.e. no later than July 11, 2029 and July 11, 2034 (if applicable)).

    i) **July 11, 2029 Check-In.** The Executive Director five-year check-in by July 11, 2029 for determination that significant and diligent progress is being made, if necessary, shall substantially follow the same process and be governed by the same standards as specified above for the first Executive Director five-year check-in by July 11, 2024. At that time, the Permittee shall submit to the Executive Director documentation that the Executive Director deems necessary or appropriate to evaluate and demonstrate significant and diligent progress in this regard. At a minimum, the documentation shall include the following: (1) the Permittee has finalized its Coastal Hazards Response Plan; (2) any environmental/permitting documents or other governmental approvals required with respect to the Coastal Hazards Response Plan are being diligently pursued; (3) identified funding sources are being diligently pursued; and (4) the Permittee has selected an identified preferred alternative to pursue.

    ii) **July 11, 2034 Check-In.** The Executive Director five-year check-in by July 11, 2034 for determination that significant and diligent progress is being made, if applicable, shall substantially follow the same process and be governed by the same standards as specified above for the Executive Director five-year check-ins on July 11, 2024 and July 11, 2029. At that time, the Permittee shall submit to the Executive Director documentation that the Executive Director deems necessary or appropriate to evaluate

and demonstrate significant and diligent progress in this regard. At a minimum, the documentation shall include the following: (1) any environmental/permitting documents or other governmental approvals required with respect to the Coastal Hazards Response Plan have been approved and/or material progress has been made with respect to such approvals being pursued in relation to the status at the July 11, 2029 five-year check-in; (2) identified funding sources have been secured and/or material progress has been made with respect to such funding being pursued in relation to the status at the July 11, 2029 five-year check-in; and (3) the Permittee has provided an up-to-date timeline, including benchmarks, with respect to projected implementation of the Coastal Hazards Response Plan.

iii) If the authorization period of this CDP is still effective by July 11, 2039, but the Permittee, for good cause, will still not be able to relocate WWTP functions to an inland site (or sites if functions are broken up into more than one facility location), the Permittee must submit a CDP amendment application prior to expiration of this CDP to the Commission for consideration of changes to the CDP authorization beyond July 11, 2039.

Any extension of CDP authorization duration past July 11, 2029 shall include assessment of additional project impacts on coastal resources for the additional period of CDP duration, and assessment of additional mitigation if the Executive Director concludes that the original CDP mitigations do not adequately address the additional impacts accruing from the extended CDP authorization duration.

c) **Progress Not Made and CDP Authorization Suspended.** If the Executive Director concludes at any particular five-year check-in that, based on information submitted as part of the check-in process and/or based on other available evidence, the Permittee is not making significant and diligent progress with respect to compliance with the terms and conditions of this CDP (and, particularly, in furtherance of implementing the Coastal Hazards Response Plan required by **Special Condition 3**), then the Executive Director shall provide written notification of same to the Permittee and this CDP authorization shall be suspended, subject to the right of the Permittee to dispute the Executive Director's determination to the Commission for consideration and potential action regarding progress made in terms of compliance with the terms and conditions of this CDP at a public hearing, where the Commission may either: (a) concur with the Executive Director's determination, at which point the Commission may amend the CDP authorization period, potentially subject to new or modified conditions to ensure compliance of the CDP as approved or, if the Commission does not amend the CDP authorization period, upon concurrence with the Executive Director's determination the CDP authorization will be deemed to have expired; or (b) determine that significant and diligent progress is being made towards such compliance, and the remaining five-year authorization specified under this CDP will continue until the next CDP five-year authorization period or CDP expiration, whichever is applicable.. If the Permittee does not dispute the Executive Director's determination to the Commission within 30 days of said determination, this CDP authorization will be deemed to have expired. Any Commission extension of the CDP authorization duration past July 11, 2029 shall include an assessment of additional project impacts on coastal resources for the additional period

of CDP duration, and an assessment of additional mitigation if the Commission concludes that the original CDP mitigations do not adequately address the additional impacts accruing from the extended CDP authorization duration.

3. Coastal Hazards Response Plan. WITHIN THREE YEARS OF THE DATE OF THE APPROVAL OF THIS CDP (i.e., no later than July 11, 2022), the Permittee shall submit two copies of a Coastal Hazards Response Plan to the Executive Director for review and approval. The Response Plan shall be developed in coordination with appropriate staff and agencies at San Luis Obispo County, the Regional Water Quality Control Board, and any other relevant agencies with authority over the development to propose a new and/or relocated WWTP and/or associated wastewater functions. The Response Plan shall build upon the work completed to date as described in the document titled *Alternatives Analysis for Relocation of the San Simeon Community Services District Wastewater Treatment Plant* (dated April 18, 2008 and received in the Coastal Commission's Central Coast District Office on December 23, 2015) and the document titled *San Simeon Community Services District Estimated WWTP Life Expectancy Analysis* (dated August 18, 2016 and dated received in the Central Coast District Office on August 29, 2016). The Response Plan shall provide a clear long-term plan for providing necessary wastewater treatment functions at an inland location or locations that are not subject to the significant coastal hazards threatening the existing WWTP as identified in the Commission-adopted findings for this CDP.

The Response Plan shall, at a minimum, identify a preferred inland site or sites for District wastewater treatment functions, including evaluating alternative wastewater treatment options in-lieu of building a new inland WWTP (including the construction of an inland package plant or plants, the possibility of combining services with other nearby existing WWTPs, and similar alternatives), and shall provide details regarding the mechanisms, costs, funding options, and timing for potential relocation and for full restoration of the existing WWTP site. Expected costs to purchase land for a relocated plant, to decommission the existing plant and to restore the site, to upgrade any relocated wastewater treatment functions to include water recycling (including addressing the potential for joint satellite facilities and/or collaborations with nearby communities and wastewater service providers for water recycling) must be included. The Response Plan shall provide a detailed evaluation of whether the use of the WWTP outfall can be eliminated and the outfall removed as part of moving wastewater functions to a more inland location. Any costs associated with new and/or upgraded outfall pipelines, pumps, and/or lift stations deemed necessary (including rerouting of sewer pipes to a relocated plant, etc.) shall also be included. The Response Plan shall include a timeline of potential major relocation events, including expected timeframes for land acquisition, planning, permitting, design, construction and eventual operation of a relocated plant or alternative wastewater treatment solutions that avoid the significant coastal hazards that threaten the existing WWTP as identified in the Commission-adopted findings for this CDP. Extension to the three-year deadline for submittal of the Coastal Hazards Response Plan may be granted by the Executive Director for good cause, but in no event may it be extended beyond the five-year compliance check-in required by **Special Condition 2**.

4. Additional Riprap Installation Plan. PRIOR TO INSTALLATION OF ADDITIONAL RIPRAP as authorized by **Special Condition 1(b)**, the Permittee shall submit two copies of a Riprap Installation Plan to the Executive Director for review and approval. The Plan shall

provide for the placement of additional riprap along the exposed fill areas located between the top of the existing riprap revetment and the existing WWTP perimeter wall to an elevation of approximately 22.5 to 23.0 feet, as shown on **Exhibit 4**. The Plan shall provide for this additional riprap to be installed as soon as possible following approval of the Plan by the Executive Director and shall describe all aspects of the riprap construction methodology (e.g., riprap to be used (which may include riprap that has migrated seaward from the existing revetment); minor changes to the existing revetment if required to account for the placement of the additional riprap; machinery to be used; construction staging areas; time and duration of construction; construction access (e.g., from the area of the WWTP itself or from the beach); etc.). All riprap installation activities shall be subject to a Construction Plan, which shall, at a minimum, include the following:

a. Construction Areas. The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the fullest extent feasible in order to have the least impact on public access, beach and creek habitat, and ocean resources, including by using inland areas for staging and storing construction equipment and materials as feasible.

b. Construction Methods. The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from public recreational use and habitat areas (including using unobtrusive fencing or equivalent measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not significantly degrade public views during construction to the maximum extent feasible.

c. Construction BMPs. The Construction Plan shall identify the type and location of all erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality, including at a minimum the following: (1) silt fences, straw wattles, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from discharging to the ocean; (2) equipment washing, refueling, and/or servicing shall take place at least 50 feet from the bluff edge, and all construction equipment shall be inspected and maintained at an offsite location to prevent leaks and spills of hazardous materials at the project site; (3) the construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site); and (4) all erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.

d. Construction Site Documents. The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and that such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public

review requirements applicable to them, prior to commencement of construction.

e. **Construction Manager.** The Construction Plan shall provide that a construction manager be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that the construction manager's contact information (i.e., address, phone numbers, email, etc.) including, at a minimum, a telephone number and email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas (while minimizing public view impacts), along with an indication that the construction manager should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction manager shall record the name and contact information (i.e., address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and inquiries shall be documented, including any actions taken by the construction manager in response, and shall be provided to the Executive Director at least monthly during all construction.

5. Riprap Revetment and Pipe Structure - Monitoring, Repair and Maintenance. The Permittee shall ensure that the condition and performance of the approved riprap revetment (which is located on the seaward and creek sides of the WWTP's vertical containment wall) and the pipe support structure (located in and above Arroyo del Juan Padre Creek) (both authorized by **Special Conditions 1 and 2)** must be regularly monitored by a licensed civil engineer with experience in coastal structures and processes. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that would adversely impact future performance of these structures, and identify any structural damage requiring repair to maintain the as-built project in its approved and/or required state for the duration of the authorization. A monitoring report prepared by a licensed civil engineer with experience in coastal structures and processes, and covering the above-described evaluations, shall be submitted to the Executive Director for review and approval at least every five years from the date of approval (i.e., by July 11, 2024, July 11, 2029, and additional periodic terms should the expiration date of this CDP be extended as described in **Special Condition 2**). The monitoring report shall provide for evaluation of the condition and performance of the revetment and the pipe support structure, and shall recommend any necessary maintenance, repair, changes or modifications.

This CDP authorizes revetment and pipe support structure repair and maintenance as described in this special condition. The Permittee acknowledges and agrees to: (a) maintain the approved revetment and the pipe support structure in a structurally sound manner and in their approved states; (b) retrieve and restack any portion of the permitted revetment or related improvements that become displaced or otherwise substantially impair beach access and recreation; and (c) annually or more often inspect the revetment and the pipe support structure for signs of failure and, with respect to the revetment, any displaced riprap. Any such repair- or maintenance-oriented development associated with the approved riprap revetment and pipe support structure shall be subject to the following:

a. **Repair and Maintenance.** "Repair" and "Maintenance," as it is understood in this special condition, means development that would otherwise require a CDP whose purpose is to bring the condition of the overall permitted riprap revetment and the pipe support structure into conformance with its approved configuration, including retrieval of any riprap that may be displaced from the approved configuration.

b. **Other Agency Approvals.** The Permittee acknowledges that this repair and maintenance condition does not obviate the need to obtain authorizations from other agencies for any future maintenance and/or repair episodes.

c. **Repair and Maintenance Notification.** At least 30 days prior to commencing any repair and/or maintenance event, the Permittee shall notify, in writing, planning staff of the Coastal Commission's Central Coast District Office. The notification shall include: a detailed description of the repair and/or maintenance event proposed; any plans, engineering and/or geology reports describing the event; a construction plan that complies with all aspects of the approved riprap construction plan (see **Special Condition 4**); identification of a construction manager and his/her contact information (i.e., email, phone numbers, etc.) as described above (see **Special Condition 4(e)**); other agency authorizations; and any other supporting documentation (as necessary) describing the repair and/or maintenance event. The repair and/or maintenance event shall not commence until and unless the Permittee has been informed by planning staff of the Coastal Commission's Central Coast District Office that the repair and/or maintenance event complies with this CDP. If the Permittee has not been given a verbal response or sent a written response within 30 days of the notification being received in the Central Coast District Office, the repair and/or maintenance event shall be authorized as if planning staff affirmatively indicated that the event complies with this CDP. The notification shall clearly indicate that the repair and/or maintenance event is proposed pursuant to this CDP, and that the lack of a response to the notification within 30 days constitutes approval of it as specified in this CDP. Absence of such description in the notification shall negate the automatic approval provisions of this condition.

d. **Emergency.** In the event of an emergency requiring immediate maintenance, the notification of such an emergency episode shall be made as soon as possible, and shall (in addition to the foregoing information) clearly describe the nature of the emergency. Nothing in this condition shall serve to waive any Permittee rights that may exist in cases of emergency pursuant to Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).

e. **Non-compliance Proviso.** If the Permittee is not in compliance with any of the conditions of this CDP, or is in violation of the permitting requirements of the Coastal Act otherwise related to the WWTP site, at the time that a repair and/or maintenance event is proposed, then the repair and/or maintenance event that might otherwise be allowed by the terms of this future repair and maintenance condition may not be allowed by this condition, subject to determination by the Executive Director. Any proposed repair and/or maintenance event that planning staff of the Coastal Commission's Central

Coast District Office determines to not be in compliance with this CDP shall require a CDP amendment or a new CDP.

f. **Duration and Scope of Covered Revetment Repair and Maintenance.** Future revetment and pipe support structure repair and maintenance under this CDP is allowed subject to the above terms throughout the duration of the authorization (see **Special Condition 2**). The Permittee shall maintain the approved revetment and the pipe support structure in their approved state during the period of authorization.

6. Creek Enhancement. NO LATER THAN ONE YEAR FROM THE APPROVAL OF THIS CDP (i.e., no later than July 11, 2020), the Permittee shall submit two copies of a Creek Enhancement Plan to the Executive Director for review and approval. The Plan shall provide for: a) the removal of all invasive ice plant and *Myoporum* and other nonnative species in the portions of Arroyo del Padre Juan Creek that are in the vicinity of the buried riprap (i.e., in the creek, along the creek bank, and in the creek floodplain, as roughly shown in yellow and green in **Exhibit 9**); and b) restoration of this area through the planting of appropriate native vegetation designed to increase the biological productivity and native species richness of the creek environment. The Permittee shall provide plans and photos of the project area for where the removal and restoration shall occur, and a timeline for when this work shall occur. Other requisite plan elements include a description of the methods of nonnative plant removal and restoration planting, identification of an appropriate reference site and sampling scheme for derivation of the restoration plant palette, as well as a description of the source of plant materials to be used in the restoration, and a list of specific, measurable performance criteria to be achieved. Regular monitoring and provisions for remedial action to occur over the continued life of the Approved Project (such as replanting as necessary based on a failure to achieve performance criteria) shall be identified to ensure restoration success, as well as a timeline for reporting monitoring findings to the Executive Director. The Plan shall provide for this restoration being completed according to the provisions of the approved Creek Enhancement Plan within two years of the approval of this CDP (i.e., by July 11, 2021). Extension to the restoration completion deadline may be granted by the Executive Director for good cause.

7. Public Access Overlook. NO LATER THAN ONE YEAR FROM APPROVAL OF THIS CDP (i.e., no later than July 11, 2020), the Permittee shall submit two copies of a Public Access Overlook Plan to the Executive Director for review and approval. The Overlook Plan shall provide a public access overlook on State Parks' property (subject to State Park's concurrence) on the blufftop overlooking the ocean in the vicinity of the intersection of Balboa Avenue and Vista Del Mar Avenue, with a connecting path (at least 4 feet wide) back to the intersection (see **page 6 of Exhibit 12**). All such development shall be sited and designed to blend seamlessly into the natural environment and to protect public views, including through use of natural materials (e.g., decomposed granite paths, wood materials otherwise, etc.). The overlook shall include at least one bench and one picnic table, at least one public access directional sign at the intersection of Balboa Avenue and Vista Del Mar Avenue, and may include one educational interpretive sign at the overlook itself. Sign details showing the location, materials, design, and text of all public access signs shall be provided as part of the Overlook Plan. The signs shall be designed so as to provide clear information without impacting public views and site character. The directional sign shall include the Commission's access program "feet and wave" logo and the California Coastal Trail logo. Construction on the overlook shall commence immediately upon approval of the

Overlook Plan by the Executive Director. The path and overlook area and all related amenities shall be available to the general public free of charge, and shall be maintained in their approved state by the Permittee in perpetuity consistent with the terms and conditions of this CDP. The Plan shall provide for overlook construction and availability to the public according to the provisions of the approved Public Access Overlook Plan within two years of the approval of this CDP (i.e., by July 11, 2021). Extension to the construction/public availability deadline may be granted by the Executive Director for good cause.

8. Ocean Outfall Mitigation Fee. WITHIN SIX MONTHS OF THE DATE OF THE APPROVAL OF THIS CDP (i.e., no later than January 11, 2020), the Permittee shall compensate for ocean substrate habitat impacts resulting from placement of the outfall through payment of a $3,141.43 mitigation fee to the Regents of the University of California on behalf of the UC Davis Wildlife Health Center. The mitigation fee shall be used by the SeaDoc Society, a marine ecosystem health program of the UC Davis Wildlife Health Center, to remove lost fishing gear offshore of the central coast of California as part of its "California Lost Fishing Gear Recovery Project" in accordance with the terms and conditions of a Memorandum of Agreement (Agreement) (see draft of Agreement in **Exhibit 19**) between the California Coastal Commission and the Regents of the University of California on behalf of the Wildlife Health Center. If the Executive Director determines that the UC Davis Wildlife Health Center is not carrying out the ocean substrate impact mitigation project in accordance with the terms and conditions of the Agreement, the Executive Director shall require transfer of any mitigation fee funds remaining at the time of such determination to an alternative entity to implement an alternative ocean substrate mitigation project acceptable to the Executive Director.

9. Ocean Outfall Assessment Plan. WITHIN SIX MONTHS OF THE DATE OF THE APPROVAL OF THIS CDP (i.e., no later than January 11, 2020), the Permittee shall submit two copies of an Outfall Integrity Assessment Plan to the Executive Director for review and approval. The Assessment Plan shall include a procedure for undertaking a complete inspection of the existing outfall line from the WWTP connection point to the outfall line's termination point in the ocean to assess whether the outfall is leaking or is in danger of leaking or having any type of failure. The Permittee shall undertake the outfall line assessment consistent with the approved Assessment Plan. If the assessment shows that the outfall line is leaking, or that the diffusers are not functioning as designed, or that portions of the outfall are at risk of failing, the Permittee shall submit a complete CDP amendment request within 30 days to address the compromised condition of the outfall line.

10. WWTP Site Restoration Plan and Dedication. The Permittee shall decommission and remove the WWTP and all related development in its entirety, and shall restore the affected blufftop, bluff and creek areas (shown in **Exhibit 3**) to their natural conditions (through re-contouring as necessary, and nonnative and invasive plant removal and via the planting of appropriate native plant species in the creek (pursuant to the requirements of **Special Condition 6**) within one year of cessation of wastewater treatment operations at the Balboa Avenue site (see **Special Condition 2**). Prior to initiating decommissioning and removal of the WWTP and resultant restoration activities, the Permittee shall submit a Plan for same to the Executive Director for review and approval. The Plan shall include removal of all WWTP components and infrastructure from the WWTP site itself, from any public or non-public right-of-way, and from any other adjacent impacted properties, including the creek (subject to property owner consent).

The Plan shall include a description of the methods of nonnative plant and/or invasive plant removal and will describe the methods that will be used to restore the WWTP site to a safe and level configuration that roughly matches the surrounding areas.

WITHIN THREE MONTHS OF ISSUANCE OF THE CDP, the Permittee shall also execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate a fee interest to the restored WWTP site (comprised of the parcels designated as APNs 013-031-028, -041, and -046[14] as shown on **Exhibit 21** hereto) to a public agency or private entity approved by the Executive Director for open space conservation and public park purposes in perpetuity. No development, as defined in Section 30106 of the Coastal Act, shall occur within the restored WWTP site except for development related to parks and open space purposes, which may include, but is not limited to, the construction of trails, stairways, benches, bicycle racks, picnic tables, trash and recycling receptacles, signage, and planting and maintenance of native non-invasive drought-tolerant vegetation, in each case consistent with the Site Restoration Plan. The document shall provide that the offer shall not be used or construed to allow anyone to interfere with any rights of public access which may exist on the WWTP site.

The recorded document shall include legal descriptions of the entire WWTP site being dedicated (i.e., APNs 013-031-028, -041, and -046 as shown on **Exhibit 21**), and corresponding graphic depictions prepared by a licensed surveyor based on an onsite inspection. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer to dedicate shall run with the land in favor of the People of the State of California, binding successors and assigns of the Permittee or landowner in perpetuity, and shall be irrevocable for a period of 21 years, such period running from the date of recording, and indicate that the restrictions on the use of the land shall be in effect upon the existing WWTP permanently ceasing operations, and remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

11. Assumption of Risk, Waiver of Liability, and Indemnity Agreement. By acceptance of this CDP, the Permittee acknowledges and agrees on behalf of itself and all successors and assigns:

a. Coastal Hazards. That the site is subject to extreme coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, coastal flooding, landslides, bluff and geologic instability, and the interaction of same;

b. Assume Risks. To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such hazards in connection with this permitted development;

[14] APN 013-031-46 is the upcoast-most portion of the Balboa Avenue right-of-way. This portion of the right-of-way is owned by the District.

c. **30235 Waiver.** To waive any rights that the Permittee may have under Coastal Act Section 30235, the San Luis Obispo County LCP, or other applicable laws, to shoreline armoring beyond what is recognized in this CDP to protect the existing WWTP and development authorized by this CDP for the limited duration of 10 years (potentially subject to additional extension per **Special Condition 2**);

d. **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards;

e. **Indemnification.** To indemnify and hold harmless the Coastal 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; and,

f. **Property Owner Responsible.** That any adverse effects to property caused by the Approved Project shall be fully the responsibility of the property owner.

12. Future Permitting. All future proposed development related to this CDP and/or this site (including any repair, maintenance, or improvements that might otherwise not require a CDP) shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required.

13. Landowner Authorization. WITHIN 90 DAYS OF ISSUANCE OF THE CDP, the Permittee shall submit written evidence from adjacent property owners agreeing that they have authorized the Applicant to retain development authorized by this CDP on their property. Such written evidence to authorize riprap retention at 9231 Balboa Avenue shall be provided by all owners of property at this address whose authorization is not already included in **Exhibit 13**, or from an authorized representative of any homeowners' association at this address. Written evidence to authorize retention of riprap and the portion of the pipe support structure located on Cavalier Acres, Inc. property shall be provided by an authorized representative of Cavalier Acres, Inc.

14. Other Authorizations. WITHIN 90 DAYS OF ISSUANCE OF THE CDP, the Permittee shall provide to the Executive Director written documentation of authorizations from the Regional Water Quality Control Board, the California State Lands Commission and the U.S. Army Corps of Engineers, or evidence that no such authorizations are required. The Permittee shall inform the Executive Director of any changes to the project required by any other such authorizations. Any such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP, unless the Executive Director determines that no amendment is legally required.

15. Minor Changes. The Permittee shall undertake development in conformance with the terms and conditions of this CDP, including with respect to all Executive Director-approved plans and other materials, which shall also be enforceable components of this CDP. Any proposed project changes, including in terms of changes to identified requirements in each condition, shall either

(a) require a CDP amendment, or (b) if the Executive Director determines that no amendment is legally required, then such changes may be allowed by the Executive Director if such changes: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

16. Liability for Costs and Attorneys' Fees. The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission and/or its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP, the interpretation and/or enforcement of the CDP conditions, or any other matter related to this CDP. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission and/or its officers, employees, agents, successors and assigns.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION, BACKGROUND, AND DESCRIPTION

Project Location

The San Simeon Community Services District's (District's) wastewater treatment plant (WWTP) is located on the seaward side of Balboa Avenue fronting the beach and Arroyo del Padre Juan Creek in the unincorporated San Simeon Acres area of northern San Luis Obispo County (see **Exhibit 1**). Construction on the WWTP began in the early 1960s, and aerial photographs from 1972 to 2013 provide a historical visual perspective of the site in relation to the beach, the bluff, and the adjacent creek (see **Exhibit 2**).[15] In addition, more recent site photos give a perspective of the site today (see **Exhibit 3**). Because of its low-lying location adjacent to the beach and adjacent to a creek, the site is located wholly within the LCP's Flood Hazard (FH) combining designation (see **Exhibit 5** for a map of the FH zone specific to the San Simeon Acres area).

Arroyo del Padre Juan Creek drains from the foothills inland of Highway 1 to the beach and the Pacific Ocean and, as a result, the WWTP is located on a cornered bluff/bank (with part of the bluff facing the ocean (westerly) and part running perpendicular to the shoreline facing the channel of Arroyo del Padre Juan (northerly)). The WWTP sits atop this bluff at an approximate elevation of 13 to 15 feet above mean sea level. According to the submitted project materials, the western portion of the WWTP site is underlain by fill, while the eastern portion of the WWTP is underlain by natural terrace deposits. It is believed that the fill originated from excavated terrace deposits, including from excavation to form the WWTP's holding ponds when construction on the WWTP commenced in the early 1960s.

Today, the bluff at this location, both the northern section that faces the creek and the western section that faces the ocean, is almost entirely fronted by an existing riprap revetment that sits on

[15] The Commission's staff report for CDP 4-85-180 notes that "the existing treatment plant" was "completed in 1973."

a sand and gravel base. The District installed these materials (i.e., the riprap, sand, and gravel) in 1983 without a CDP and in violation of the Coastal Act, and this unpermitted development is the subject of Commission Enforcement Case No. V-3-01-028.[16] Dense vegetation consisting of non-native invasive species, such as *Myoporum* and iceplant, covers much of the top of the riprap area nearest the WWTP (again, see **Exhibit 3** for project site photos). The riprap rises to the top of an existing approximately vertical containment/retaining wall that extends around the WWTP and which was built as part of the initial WWTP construction in the early 1960s. An approximately six-foot-tall chain link fence is affixed to the top of this vertical wall.

Project Background

Unpermitted Revetment

District staff asserts that it placed some 125 cubic yards of riprap along the bluff in the late 1960s (prior to the initiation of CDP requirements)[17] to protect the then-just-constructed WWTP from coastal hazards, submitting contractor's invoices dated November 25, 1969 and February 6, 1970 as evidence (see **Exhibit 16**). The District further asserts that this 1969-70 placement of riprap means that they have a pre-Coastal Act right to retain the existing revetment at this location. The Commission does not agree. First, District and Commission files and materials indicate that any such riprap had been fully displaced or had migrated away from the site by the time the District placed over 650 cubic yards of riprap to form a new revetment in 1983 (which is the subject of this ATF CDP application) to minimize the threat of a sewer spill. In fact, according to the District's 1982 site specific geologic investigation of the beach and bluff fronting the WWTP (by R.T. Wooley; see **Exhibit 17**), the material at the foot of the bluff at that time consisted of "water worn gravels and cobbles,"[18] with no presence of any remaining riprap noted. Thus, any pre-Coastal Act riprap was no longer present in 1983 when the District installed the unpermitted revetment that is currently present at the site (and there is no evidence to suggest that any such riprap was present when CDP requirements began in the early 1970s). And second, even if there were some sort of right to a 125-cubic-yard revetment under the facts presented (which there is not), the District installed over 650 cubic yards of riprap in 1983, creating a ***new*** revetment at that time, which is required to be evaluated as " a replacement structure requiring a coastal development permit."[19]

Prior to the unpermitted revetment installation in 1983, the District asked Commission staff about CDP requirements to install a new revetment. In January 1982, Commission staff directed the District to apply for a CDP for the revetment, and informed the District that data supporting

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[16] The riprap revetment and the sand and gravel base that were installed without a CDP and that are subject of the enforcement case are referred to in this report as "existing," where existing is understood to mean physically in place but not legally authorized by a CDP.

[17] CDPs were required for development at this site starting on February 1, 1973 pursuant to 1972's Proposition 20 ("The Coastal Initiative"), and further starting on January 1, 1977 pursuant to 1976's Coastal Act.

[18] A cobble is a type of rock defined on the Udden–Wentworth scale as having a particle size of 2.5 to about 10 inches, larger than a pebble and substantially smaller than a boulder.

[19] 14 CCR Section 13252(b) requires a CDP when 50 percent or more of a revetment is replaced. In this case, even if a 125-cubic-yard revetment was present in 1983 (which it was not), the over 650 cubic yards of riprap installed in 1983 constituted a more than 500% replacement, or over five times what the District asserts had been placed in the late 1960s. This increase clearly exceeds the limit for which a CDP is exempt for replacement of a revetment.

the need for the revetment, such as a geologic report, would need to be part of the application. Although the District subsequently submitted a geologic report to the Commission in mid-1982, the District never submitted a CDP application. Ultimately, in response to winter storms in 1982-83, which resulted in inundation of the WWTP, the District placed a sand-and-gravel base adjacent to and on the seaward and creek sides of the aforementioned vertical containment wall, and then placed riprap on top of this base to form a revetment, without first obtaining a CDP or an emergency CDP as required under the Coastal Act. According to the Applicant's geologist, the revetment is made up of over 650 cubic yards of riprap that forms an approximately 200-foot-long by 12-foot-high by 15-foot-deep protective structure that occupies some 3,000 square feet of beach and stream area, and that stretches roughly 200 linear feet around the northern and westerly faces of the bluff and creek, and extends approximately 50 feet downcoast of the District's property boundary onto adjacent property.[20] The revetment also extends up the bluff face (on both the creek and seaward sides of the WWTP) toward and over the top of the bluff. All of this development was undertaken without the benefit of a CDP, and thus constitutes a violation of the Coastal Act (Enforcement Case No. V-3-01-028), and the District is now proposing that the riprap revetment be recognized by the Commission after-the-fact.

Unpermitted Outfall

In 1984, the District also replaced a 600-foot-long portion of the roughly 800-foot-long[21] outfall pipeline damaged by the 1982-83 winter storms, and replaced a smaller section (100 feet) beginning in 2010 after this section of the outfall line failed. Although the County apparently informed the District that no CDP was necessary for such outfall development in 2011,[22] the outfall is located in the Commission's retained CDP jurisdiction where the County does not exercise CDP authority, and the applicable regulations require a CDP for outfall development that includes, among other things, "the placement, whether temporary or permanent, of riprap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters…"[23] The outfall pipe was clearly a solid material placed in the ocean, requiring a CDP from the Commission. Upon being made aware of the outfall replacement development and the County exemption, Commission staff promptly informed the District that such development is not exempt from CDP requirements. Again, none of this development was covered by a CDP (and is a part of active Enforcement Case No. V-3-01-028), and thus all of it constitutes a violation of the Coastal Act, which the District proposes to correct via ATF

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[20] Some of the adjacent property owners at the 9231 Balboa Avenue condominium complex have given their consent for the District to retain this revetment on their property (see **Exhibit 13**).

[21] According to the District (via the 1964 WWTP plan sheets provided), the original outfall associated with the WWTP was eight inches in diameter and 840 feet long. The District's Waste Discharge Requirements Order No. R3-2013-0021 (National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047961, which officially expired on February 1, 2019 but has been extended administratively by the RWCQB, identifies that "wastewater is discharged via an 800-foot ocean outfall."

[22] An emergency permit was issued by San Luis Obispo County for these outfall replacements on May 10, 2010 (ZON2009-00650). Following the emergency replacements, the District applied to the County for a regular CDP to authorize the emergency replacements (as is required following emergency permitting). However, in a letter dated June 9, 2011, the County informed the District that the emergency replacements undertaken by the District were minor and exempt from CDP requirements pursuant to Coastal Zone Land Use Ordinance (CZLUO) Section 23.03.040(d)(1).

[23] Per Section 13252(a)(1)(B) of the Title 14 of the California Code of Regulations.

authorization.

Unpermitted Creek Riprap

In 1995, again following winter storms, the District placed between 260 and 450 cubic yards of additional riprap[24] along both banks of Arroyo del Padre Juan Creek and on an adjacent property.[25] Placement of this riprap included the removal of riparian vegetation and some grading of the creek bank. The District indicates that it placed this riprap to protect the WWTP's elevated pipe support structure's abutments (which support the structure that contains sewer and water pipelines over the creek) against damaging winter storm flows. As with the outfall, the County again informed the District that an exemption from CDP requirements for this development was appropriate, issuing a non-CDP Construction Permit instead. However, such development is not exempt from CDP requirements under the Coastal Act, where the applicable regulations require a CDP for placing new riprap within certain proximity of both environmentally sensitive habitat area (ESHA) and a stream (the creek). (*See* 14 CCR Section 13252(a)(3)). However, the County at that time deemed this new placement of riprap in ESHA to be a "repair and maintenance" project that did not require a CDP. Such determination was never reported to the Commission and was clearly in error, including because there was no permitted riprap to repair or maintain at the abutments at that time. The District cites to this County exemption as evidence of appropriate permitting. However, and notwithstanding this error, because the placement of new riprap into ESHA cannot be exempted under the law, it requires a CDP. Upon being made aware of the riprap and the County exemption, Commission staff promptly informed the District that such development is not exempt from CDP requirements and requires a CDP. Today this riprap has generally settled into the soft floodplain ground of the creek and its riparian corridor and has been mostly covered over time by sediment and vegetation. This development too constitutes a violation of the Coastal Act (Enforcement Case No. V-3-01-028), which the District proposes to correct via ATF authorization.

Unpermitted Pipe Support Structure

In 1999, the District fully replaced the pipe support structure over Arroyo del Padre Juan Creek, including a portion located on an adjacent property.[26] At that time the County again informed the District that such development was exempt from environmental review and CDP requirements because it constituted "repair and maintenance." However, such development is not exempt from CDP requirements. First, the support structure was replaced in its entirety, and Title 14 of the California Code of Regulations (CCR) Section 13252(b) explicitly states that any development

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[24] The District does not know how much riprap was actually placed, and a visual inspection has proven inconclusive on this point. The file includes two conflicting plan sheets showing the placement of riprap in the creek, where one identifies 450 cubic yards (dated August 28, 1995 by John Wallace & Associates), and another identifies 260 cubic yards (dated August 30, 1995 by Craig Campbell). Thus, it is not clear whether 260 cubic yards or 450 cubic yards of riprap was placed along the creek banks, or some quantity in between.

[25] As of the date of this report, the District has not provided evidence that this adjacent property owner (i.e., Cavalier Acres, Inc.) has authorized the District to retain this riprap on their property. The District has informed Commission staff that it is in the process of receiving such authorization - see **Special Condition 13.**

[26] As of the date of this report, the District has not provided evidence that this adjacent property owner (i.e., Cavalier Acres, Inc.) has authorized the District to retain the portion of the pipe support structure located on their property. The District has informed Commission staff that it is in the process of receiving such authorization – see **Special Condition 13**.

that includes the replacement of 50 percent or more of the structure being repaired and maintained is *not* repair and maintenance but rather constitutes a replacement structure requiring a CDP. In this case, 100% of the pipe support structure was replaced, rendering any repair and maintenance exemption inappropriate. Furthermore, even if the replacement could qualify as "repair and maintenance" (which it does not), any such repair and maintenance development that is located in or within 50 feet of ESHA (or within 20 feet of streams) that includes the use of mechanized equipment or construction material is explicitly not exempt from CDP requirements (per 14 CCR Section 13252(a)((3)). The pipe support structure is within 20 feet of the creek ESHA (thus exceeding the 20-foot limit for streams and the 50-foot limit for ESHA per 14 CCR section 13252(a)(3)) and repair and/or maintenance of it thus requires a CDP. Upon being made aware of the pipe support structure development and the County exemption, Commission staff promptly informed the District that such development is not exempt from CDP requirements and requires a CDP. This development too constitutes a violation of the Coastal Act (Enforcement Case No. V-3-01-028), which the District proposes to correct via ATF authorization.

Unpermitted WWTP Improvements

In addition, the District has also undertaken a variety of upgrades and replacements to, and expansions of, key WWTP structural components over the years (e.g., upgrades to the sludge tank pump and air lines, the blower building's electrical cabinets and wiring and other development, the disinfection contact chamber's pumps and baffles (in 2007), the equalization basin's pumps (in 2013), and other new pumps, lining of tanks, headworks building upgrades, etc.; see **Exhibit 15** for the full list). The District asserts that the work was either properly permitted or exempted by San Luis Obispo County and/or was repair and maintenance that was exempted from CDP requirements. However, such a position is not supported by the facts or the law. First, there is no evidence of County CDPs for such work. Second, such development is not exempt from CDP requirements. In fact, such development would need to first be "repair and/or maintenance" to be able to be considered for an exemption, which does not include augmentation or enhancements to the object being repaired or maintained. In other words, "repair and maintenance" presumes that the object of the "repair or maintenance" is not being improved upon, but rather is simply being perpetuated or sustained in its existing state. As a general rule, the District's upgrades and improvements over time that were undertaken without CDPs were not repair and maintenance but rather were augmentation or enhancements to the equipment, which do not qualify for an exemption as repair and maintenance.[27] In addition, even if they <u>did</u> qualify as repair and maintenance (which they do not), any such repair and maintenance development that is located within 50 feet of the edge of the bluff or the creek ESHA and includes the presence of mechanized equipment or construction material is explicitly not exempt from CDP requirements, and neither is any development that includes the replacement of 50 percent or more of the structure being repaired and maintained (again, 14 CCR Sections 13252(a)(3) and 13252(b)). Given the site location, which fronts both the coastal bluff and the Arroyo del Padre Juan Creek ESHA (where such 50-foot area occupies the majority of the site and essentially all of the WWTP components in question), and the augmentation and upgrade nature of the work undertaken, it is clear that CDPs were required for the work undertaken.

[27] And, pursuant to Coastal Act Section 30610(b), other improvements (i.e., non-repair and/or maintenance) to public works facilities such as the WWTP categorically require a CDP.

However, CDPs for this work were never obtained, and thus these proposed project elements are properly before the Commission ATF, and are also components of Enforcement Case No. V-3-01-028.

Coastal Commission CDP History
Beyond the unpermitted development, the Commission has also approved two CDPs at this site (CDP 199-09 in 1979 and CDP 4-85-180 in 1985). The Commission's 1979 approval of CDP 199-09 allowed for the construction of a 100,000-gallon flow-balancing tank at the WWTP. This CDP included special conditions that required: 1) recordation of a deed restriction allowing public use of the beach seaward of the WWTP property from the mean high tide line to the toe of the bluff (see **Exhibit 6**); and 2) recordation of a deed restriction waiving "any claim due to any geologic or flooding condition" against the Commission and acknowledging that the Commission's approval of the CDP "makes no commitment for approval of the construction of future protective devices."

The Commission's 1985 approval of CDP 4-85-180 allowed the District to increase the sewage treatment capacity from 150,000 gallons per day (gpd) to 200,000 gpd via the installation of additional aeration and clarifier tanks. CDP 4-85-180 included special conditions that required: 1) written evidence of Regional Water Quality Control Board approval of the increase in sewage treatment capacity; and 2) that the District accept and agree to maintain any outstanding public access dedications in the San Simeon Acres area. The District did not comply with the special condition requirement to accept and maintain all outstanding public access dedications in the area. However, since that time other public entities (i.e., San Luis Obispo County and the State Coastal Conservancy) have accepted the totality of public access dedications in the area. Some of these public access dedications are for lateral beach access and some are for vertical access (see **Exhibit 7**). The vertical access dedications are in need of actual construction of improvements to make them usable to the public (see "Public Access" section below).

Project Description
The Applicant is requesting that the Commission authorize ATF all of the unpermitted development identified above, including the riprap revetment fronting the site, the outfall replacements, the creek riprap, the replacement pipe support structure over Arroyo del Padre Juan Creek, and the series of WWTP improvements over the years. In addition, the Applicant proposes augmentation of the unpermitted revetment by adding riprap to the top of the revetment to raise it in elevation by an additional two feet. Even though the "proposed" ATF project (other than the two-foot proposed expansion of the revetment, which has not yet occurred) has already been constructed, for the Commission's CDP review purposes, the revetment and other ATF development must be treated as if it is all newly proposed at this time, given that such development was not properly evaluated, permitted, revised, and conditioned (as applicable) in consideration of impacts to coastal resources and applicable Coastal Act requirements. Where appropriate (e.g., in determining whether the current riprap revetment is providing sufficient safety from erosion and coastal hazards today and adequate protection of the WWTP) the Applicant has provided up-to-date information about the current conditions at the site. See **Exhibit 4** for proposed project plans for the revetment, creek riprap, outfall pipe location, pipe support structure, and onsite WTTP improvements; see **Exhibit 15** for additional details regarding the ATF onsite WTTP improvements.

B. STANDARD OF REVIEW

If a CDP for a particular development is needed from both the Commission and a local government with a certified LCP, Coastal Act Section 30601.3 allows the Commission to act on a single consolidated CDP (with the policies of Chapter 3 of the Coastal Act as the standard of review, and the certified LCP to be used as non-binding guidance), if the Commission, the local government, and the applicant agree to such consolidation and public participation is not substantially impaired by that review process. In this case, the ATF development is proposed in the Commission's retained CDP jurisdiction as well as the CDP jurisdiction of San Luis Obispo County. All parties have agreed to consolidate the CDP application, public participation has not been impaired by the consolidated review process (i.e., the Coastal Commission has scheduled the CDP hearing in San Luis Obispo, which is less than one hour drive from San Simeon Acres, as a means of making it easier for affected residents and local interested parties to participate), and thus the standard of review for this consolidated CDP application is Chapter 3 of the Coastal Act.

C. COASTAL HAZARDS

Applicable Policies

Coastal Act Section 30235 addresses the use and allowance of shoreline protective devices for certain existing structures:

> ***Section 30235.*** *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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Coastal Act Section 30253 requires that new development minimize risk to life and property in areas of high flood hazard areas, ensure long-term structural integrity, and avoid landform altering protective measures along bluffs and cliffs. Section 30253 states in relevant part:

> ***Section 30253.*** *New development shall do all of the following:*
>
> *(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.*

Together, Coastal Act Sections 30235 and 30253 acknowledge that seawalls, revetments, retaining walls, groins, and other such structural or "hard" shoreline protection devices designed to forestall erosion often alter natural landforms and natural shoreline processes. Accordingly, Section 30235 provides for approval of such shoreline protective devices 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 shoreline processes. Furthermore,

Section 30253(b) requires that new development be sited, designed, and built in a manner to not require construction of shoreline protective devices that would substantially alter natural landforms along bluffs and cliffs. The Coastal Act provides these limitations because shoreline protective devices can and often do have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beaches, which are a fundamental coastal resource.

To protect these core coastal resources, the Coastal Act has a series of specific criteria that must be met in order to approve a shoreline protective device. For example, shoreline protective devices compelled by Coastal Act Section 30235 must be supported by substantial evidence demonstrating (1) there is an existing structure; (2) the existing structure is in danger from erosion; (3) a shoreline protective device is required to protect the existing endangered structure; and (4) the required shoreline protective device is designed to eliminate or mitigate its adverse impacts on shoreline sand supply. The first three questions relate to whether the proposed shoreline protective device is necessary, while the fourth question applies to mitigating at least some of its coastal resource impacts. The analysis below discusses both Section 30235 and 30253 issues.

Analysis

Existing Structure to be Protected

The first Section 30235 test is whether the structure for which a shoreline protective device is proposed is "existing" or not. The Coastal Act specifically distinguishes between development for which armoring is required under Section 30235, and development that is not. Under Coastal Act Section 30235, *existing structures* (which the Commission has interpreted to mean structures existing prior to the effective date of the Coastal Act on January 1, 1977) are within the scope of Section 30235 if the remaining three criteria identified above are satisfied. In contrast, under Section 30253, *new structures* (i.e., all structures built on or after January 1, 1977, including those structures that may have originally been built before then, but that have been redeveloped since January 1, 1977) are to be sited, designed, and built in a manner safe from coastal hazards without creating a need for a shoreline protective device that would substantially alter natural landforms along bluffs and cliffs.

In this case, the structure for which the shoreline protective device (i.e., the riprap revetment and riprap at the pipe support structure abutments) is being considered is the WWTP and its related components, including the accessory pipe support structure and pipelines. The WWTP was originally constructed in phases beginning in the early 1960s, before the Coastal Act's operative January 1, 1977 date, and before CDP requirements associated with 1972's Proposition 20 ("The Coastal Initiative") began in February of 1973. However, it should be noted that while the WWTP was originally constructed prior to these dates, it has also had considerable upgrades, expansions, new installation (e.g., new linings in tanks to expand the life expectancy), and various component replacements performed since then,[28] and thus substantial redevelopment (here, nearly 90% replacement and/or upgrade of internal components) has been undertaken after

[28] See **Exhibit 15** for the Applicant's Life Expectancy Analysis, which provides a full list of these changes.

the Coastal Act's enactment both with and without CDPs.[29] The Applicant provided a list of WWTP upgrades and redevelopment undertaken with and without CDPs dating back to the installation of the WWTP in the early 1960s (see above for more detail). It is clear that there has been significant redevelopment at the site over time. In fact, although the facility's structural walls and foundation were constructed in the early 1960s, 12 out of the WWTP's 14 primary components (or roughly 86% of the WWTP's components) have been in some form replaced or augmented/upgraded/expanded (e.g., the blower building, disinfection chamber, digester, clarifiers, aeration tanks, outfall pipe, etc., all of which are critical to its use as a WWTP) since enactment of the Coastal Act (again see **Exhibit 15** for a full list and description).[30] These modifications have also resulted in increased lifespans for the components and associated mechanical equipment, which corresponds to an increased lifespan for the now almost 60 year-old WWTP. For example, on page 5 of **Exhibit 15**, the 2016 analysis concludes that "the average component remaining life is 22 years" and that "the WWTP has a life expectancy of 20 years on average." And the District states in its June 14, 2018 letter to Commission staff that, "… the life expectancy analysis concluded in 2016 that the WWTP has at least another **20 years of usefulness [**emphasis added] – the concrete structures having more than 20 years, but mechanical equipment having less" (see page 13 of **Exhibit 20**). Without such modifications, it is likely that the WWTP would have previously reached the end of its useful life. However, the modifications to the WWTP have been accomplished without the necessary CDP review to help inform decisions about redevelopment (which is essentially treated as new development for purposes of consideration of a CDP), and it fundamentally means that the current WWTP is not the same structure that was installed in 1960s given the unique industrial context here that the components of the WWTP that have been replaced are integrally tied to the function and use of the facility as a wastewater treatment plant at all. The unique industrial context of the proposed development distinguishes this matter from more typical scenarios involving redevelopment determinations of commercial or residential structures simply based on replacement of certain structural elements like walls, roofs, etc. In this specific industrial context, the WWTP has been redeveloped since CDPs were required (and in many instances without the necessary CDPs), and

[29] While the District disagrees that all previous work required permits, the District has agreed to include the work for ATF recognition as part of this project.

[30] Specific examples of such development from the Applicant's Life Expectancy Analysis: (1) Headworks: Upgraded to add a comminutor and a new vault in 1985, and new lining of the headworks vault, which has extended the lifespan of the concrete; (2) Influent Flow Meter: Upgraded to an ABM meter in 2007; (3) Equalization Basin: In 1985, one of the return pumps was replaced, and in 2007 one of the one pumps was rebuilt (with a 3 inch diameter Gorman Rupp) with the remaining pump was rebuilt in 2014 (with a 5 horsepower pump); (4) Palmer Bowlus Process Meter: In 1986, it was replaced with a sonic meter; (5) Aeration Basins: Aeration basin 1 was part of the original construction of the WWTP. Aeration basins 2 and 3 were installed in 1972, and aeration basin four was installed in 1985. In 1985, the four concrete basins were lined. In 2000, the air piping was replaced in all of the basins. In 2007, air internals (including diffusers) were rebuilt; (6) Clarifiers: In 1986, the basin structures were lined. In 2007, gears, drives, sprockets, chains, weirs, and flights were replaced on the aeration system; (7) Sludge Tank: In 2007, the pump and air lines were replaced; (8) Aerobic Digester: In 1985, components were replaced. In 2007, similar replacements were made as was done to aeration basins 2 through 4; (9) Disinfection Contact Chamber: Upgrades in 1985, including installation of new chemical tanks. Baffles and chemical meter pumps were installed in 2007; (10) Generator: An emergency diesel generator was installed in 2007. In 2014, the District performed a major engine overhaul; and (11) Blower Building: In 1985 an electrical transformer was installed. In 2007, variable frequency drives (VFDs), electrical cabinets and wiring for the VFDs, blowers, and power were either installed or upgraded.

thus it does not constitute an "existing structure" for purposes of Section 30235. As a result, the WWTP does not qualify for shoreline armoring under Coastal Act Section 30235 tests, and for other reasons (e.g., due to coastal hazard requirements and coastal resource impacts from the armoring), the Coastal Act directs denial of this component of the project.

Danger from Erosion

As a preliminary matter, because the WWTP does not constitute an "existing structure" under Section 30235, as explained above, it thus constitutes "new development" subject to Section 30253, which requires, among other things, that new development: minimize risks to life and property in areas of high geologic, flood, and fire hazard (subsection (a)); assure stability and structural integrity (subsection (b)); and, not in any way require the construction of a protective device that would substantially alter natural landforms along bluffs and cliffs (subsection (b)).

In this case, empirical evidence from historic storm events and a number of Applicant-submitted geotechnical studies support the proposition that the WWTP is, and has been, in danger from erosion,[31] primarily due to direct ocean wave attack and from stream flow/scour from Arroyo del Padre Juan Creek. For example, Consulting Geologist R. T. Wooley concluded as early as 1982 that some locations along the bank of the creek had eroded up to 20 feet in recent years, and that "retreat of the seacliff at the western corner is very close to exposing the containment wall of the sewage treatment plant, and requires remedial action to prevent the undercutting and possible failure of the wall" (see **Exhibit 17**). According to Wooley, the plant was excavated out of the blufftop terrace deposits "to varying depths of up to fourteen feet to accommodate the tanks and working surfaces. The loose materials from the terrace gravels, and the fragments of bedrock developed from the tank excavations were dumped to the north and west to enlarge the site. This fill has been rapidly removed by wave erosion and caused the sea cliff to retreat from a former position twenty feet or so seaward." This report also indicates that whatever rock protection was placed on the site prior to 1982 had all essentially migrated away leaving only "water worn gravels and cobbles"[32] along the base of the bluff.

A 1983 storm event resulted in ocean waves striking the WWTP's boundary wall, and the Applicant constructed the revetment (without proper authorization) at that time in order to protect critical WWTP infrastructure and avoid a public health and water quality emergency. However, considering that the WWTP has since been redeveloped, as discussed above, continued retention of the WWTP in its historic location did not comply with various Coastal Act coastal hazards policies, including Section 30253(a) by not minimizing risks to life and property in an area of high geologic and flood hazard and Section 30253(b) by not assuring stability and structural integrity, but requiring the "construction" of a protective device (i.e., reliance on the unpermitted 1983 revetment) that substantially altered the natural landforms

[31] While the Coastal Act does not define the term "in danger," and while each case is evaluated based upon its own particular set of facts, the Commission has in the past interpreted "in danger" to mean that a structure would be unsafe to use or otherwise occupy within the next two or three storm season cycles (generally, the next few years) if nothing were to be done (i.e., in the no project alternative). See, for example, CDP 3-07-019 (Pleasure Point seawall); CDP 3-09-025 (Pebble Beach Company Beach Club seawall); CDP 3-09-042 (O'Neill seawall); CDP 2-10-039 (Lands End seawall); and CDP 3-14-0488 (Iceplant LLC seawall).

[32] A cobble is a type of rock defined on the Udden–Wentworth scale as having a particle size of 2.5 to about 10 inches. It is generally larger than a pebble and smaller than a boulder.

along the bluffs here (e.g., the riprap occupied the sandy beach, blocked natural passive erosion of the bluff, changed its slope, and altered the natural bluff to what it is today).

In addition, a quantitative slope stability analysis was performed in 2006 (Earth Systems Pacific, May 13, 2006) to help assess the degree of danger to the facility. The 2006 report concluded that "without a bluff protection structure, the WWTP could be undermined and flooded within a 10-year period." This analysis was updated in 2016 and 2017, with the average annual erosion rate for the bluffs adjacent to the WWTP estimated at eight inches per year, with the WWTP's clarifiers, aeration basins, chlorine contact basin, office, and equalization basin close to and only protected from the bluff edge erosion threat by the riprap revetment. These analyses concluded that while the riprap revetment may be overtopped, the revetment is necessary to provide protection for the WWTP and its continued wastewater treatment function.

In sum, these past studies and historic events have confirmed that the WWTP was historically and is currently subject to significant coastal hazards. However, since being redeveloped as (unpermitted) new development, the current WWTP clearly did not minimize risks to life and property in an area of high geologic and flood hazard (inconsistent with Section 30253(a)) and which led to "construction" of a protective device (i.e., reliance on the unpermitted 1983 revetment) that substantially altered the natural landforms along the bluffs here (inconsistent with Section 30253(b)). The WWTP is located at a low-lying area just above beach level. In fact, although the main surface of the WWTP is about 13 to 15 feet above mean sea level, its tanks extend deeper than that and are located much closer to sea level. In addition, the WWTP is located immediately adjacent to the mouth of a creek. The erosion danger is thus three-fold: erosion and flooding associated with ocean storm and wave attack and inundation, as well as from riverine scour and flooding from the adjacent Arroyo del Padre Juan Creek, and the combination of these ocean and riverine forces. Therefore, and including as determined by the Commission's Senior Coastal Engineer, Dr. Lesley Ewing, the WWTP was in danger from erosion at the time of the placement of the revetment in 1983 and continues to be today. Furthermore, because the WWTP is in danger from erosion, it does not minimize risks to life and property in an area of high geologic and flood hazards, as required by Section 30253(a). These dangers and risks compelled the District to "construct" a protective device (i.e., reliance on the unpermitted 1983 revetment) that substantially altered the natural landforms along the bluffs here, in violation of Section 30253(b). In short, the WWTP is inconsistent with Chapter 3 coastal hazards requirements, thus warranting denial of ATF approval for the revetment.

Alternatives Analysis

As previously discussed, the WWTP is not an "existing endangered structure" for purposes of the third test under 30235. Furthermore, whether a shoreline protective device is "required" under this third test of 30235 speaks to the necessity of the shoreline protective device relative to feasible alternatives evaluated. Other alternatives to shoreline protective devices typically considered include: the "no project" alternative; removal and/or relocation of the threatened structures away from coastal hazards risk; sand replenishment programs; drainage and vegetation measures on the blufftop; and combinations of each. In this case, the District analyzed the feasibility associated with a range of potential alternatives, including: 1) the no project alternative (i.e., removal of the existing rock revetment); 2) retention of the existing revetment; 3) removal of the existing revetment and installation of a vertical seawall; 4) removal of the existing revetment and full relocation of the WWTP.

With respect to the "no project alternative," this option was dismissed for the reasons described previously, in that the WWTP is located in a highly hazardous location where critical public infrastructure affecting public health and the environment would be in danger without some form of shoreline protection if the WWTP is not moved. In other words, the "no project alternative" would not ensure project consistency with the Coastal Act's marine resource (Section 30230), water quality (Section 30231), and environmentally sensitive habitat (ESHA) (Section 30240) policies; nor would the "no project alternative" protect the WWTP (if it qualified as an "existing endangered structure per 30235, which it does not, as discussed above) because the WWTP would then be subject to inundation from coastal hazards, even with the existing riprap revetment in place. Thus, the "no project alternative" is not a feasible option. The next alternatives analysis evaluated different shoreline protective devices, including retaining the existing riprap revetment as well as replacing the revetment with a more vertical seawall. The analyses concluded that the existing revetment, constructed in 1983, is nearing the end of its useful life (i.e., it was constructed 35 years ago with a then identified 50-year life expectancy) and it does not offer longer-term (i.e., 100 years) protection, including as sea level rises. Specifically, the District's consultant's analyses show that the existing/proposed revetment could be overtopped by approximately 2.4 feet during just a 10-to-20-year storm event today ("the analyses of sea wave run-up indicate that, under the conditions analyzed, the rip rap may be overtopped").[33]

Apparently however, the District disagrees with its consultant's conclusions in practicality, stating in a June 14, 2018 letter to Commission staff that, "Fortunately, the District had the benefit of witnessing a 20-year storm event in 2017 which was mixed with a super high-tide. District staff observed the storm and no overtopping occurred. Thus sea level rise and "super storms" are a reality, but they are manageable." In addition, even if there were overtopping, the District maintains that such overtopping would not necessarily adversely affect critical WWTP infrastructure operations. While certain storms of varying strength may not impact the WWTP to significant adverse effect every time, this approach does not account for larger and more frequent storm events that are likely to occur in the near future with changing climate patterns and sea level rise. This approach also brings with it grave environmental consequences if the WWTP were to be flooded in such a way now or in the near future. The Commission, including as advised by the Commission's technical staff such as Dr. Ewing (the Commission's Senior Coastal Engineer) and Dr. Joseph Street (the Commission's staff geologist), agrees with the overtopping data presented in the Applicant's consultant's reports and believes larger storms (i.e., larger than the 10-to-20-year storm discussed in those reports) would have consequential effects at and around this WWTP. And such larger storms (i.e., larger than a 20-year storm) are not uncommon on the California coast, and their effects will only be exacerbated by rising sea levels. In short, it is clear that the existing revetment in its present condition does not provide long-term protection and that a more robust shoreline protective device would be needed in the

[33] Using a maximum observed stillwater ocean level of +5.24 feet (using the NAVD88 datum where mean sea level is approximately +3 NAVD88), and the estimated wave run-up height for a 10-to-20-year storm at this location of +17.16 feet NAVD88. When the 17.16-foot wave run-up height is added to the stillwater elevation of 5.24 feet, the corresponding flood elevation is +22.4 feet NAVD88. The top of the current revetment structure is about +20 feet NAVD88, resulting in the 2.4-foot overtopping. Given that the finished grade of the WWTP site itself is about five feet lower than the top of the revetment, the potential for serious problems during such an event, including failure and sewage spills, are severe.

relative short term to provide even just limited storm protection, let alone longer-term storm protection (i.e., for 100-year storms and 100 years of safety and stability, as is more typically the standard for such critical infrastructure).

On this point, the alternatives analysis identified different height elevations needed for vertical walls, which might be able to offer the type of long-term protection needed for the WWTP. The alternatives studied included increasing the height of the facility's upper bluff perimeter retaining wall and constructing a separate vertical seawall just seaward of the enlarged retaining wall, both with and without the existing revetment.

In terms of raising the facility's perimeter wall height to provide needed protection, the Applicant's consultants estimate that this wall would have to be increased by 7.5 to 11 feet to prevent overtopping from projected 50- and 100-year wave run-up amounts if the riprap revetment were to remain, and by approximately 3 to 7 feet if the riprap revetment were to be removed. However, they concluded that removing the riprap would increase the potential for erosion and undermining of the perimeter wall's foundation, possibly resulting in failure of the wall itself. In either case, this alternative is not recommended because the existing upper bluff vertical perimeter wall was built in the 1960s and was generally built to retain fill soil and support the bluff and was not designed to withstand sea wave impact. The integrity of the wall and its foundation are currently unknown and may not have the ability to withstand the impacts of wave run-up striking the wall or any increases to its height. For these reasons, the walls would likely need to be even higher to account for such overtopping elevations, and would likely need to be augmented otherwise to address engineering concerns. Such a wall would also be significantly higher than existing ground elevations, essentially creating a "fort" of sorts on the bluff, which would raise scenic resource concerns as well. Considering this, raising the retaining wall of the existing facility would not ensure project consistency with the Coastal Act's marine resource (Section 30230), water quality (Section 30231), or ESHA (Section 30240) policies.

In terms of constructing a new vertical seawall just seaward of the facility's perimeter wall (while also retaining a riprap revetment seaward of it), required wall elevations to prevent overtopping within the next 10, 20, 50, and 100 years are estimated by the Applicant's consultants to be at least 2.7, 3.0, 7.5, and 11.2 feet higher than the existing revetment elevation, respectively. If the existing revetment were to be removed as part of this construction, required wall elevations to prevent overtopping within the next 10, 20, 50, and 100 years were estimated to be about the same as the revetment elevation for the 10- and 20-year estimates, and 2.1 feet and 6.4 feet higher for the 50 and 100 year estimates, respectively. However, the existing revetment mitigates the retreat of the bluff and provides erosion protection for the bluff. Without the revetment, the bluff retreat rate would be significant (or the revetment would not have been put there in the first place) and any wall founded on a conventional shallow footing would be very short lived. Thus, the Applicant's consultants estimate that any new vertical seawall would need to be keyed into bedrock for structural stability and would need to reach at least +26.4 feet NAVD88 in elevation (or about 10 feet taller than the elevation of the existing WWTP perimeter wall) to ensure overtopping protection from a 100-year storm. Constructing a new vertical seawall at this location also poses some identified problems by the Applicant. For example, access to this area of the site with conventional heavy construction equipment would be quite difficult, which may prohibit its construction altogether, and short-term impacts during its construction may be significant due to the necessary heavy equipment. In addition,

environmental and biological impacts to the beach and creek areas are likely to be significant and would need to be minimized and mitigated, as would the above-described "fort" effect. Additionally, construction of a new wall would not be cost effective. Thus, construction of a new vertical seawall would not ensure consistency with marine resources (Section 30230), water quality (Section 30231), or ESHA (Section 30240) policies.

Thus, based on the existing protection provided by the existing riprap revetment (again, only providing 10-to-20-year protection with as much as 2.4 feet of overtopping potential), the District's analysis concluded that should the WWTP remain in its current location immediately fronting the ocean/beach and adjacent to the mouth of Arroyo del Padre Juan Creek, some type of significant new shoreline protective device would be needed to reach levels of longer-term storm protection (i.e., for 100-year storms and 100 years of safety and stability), which does not ensure consistency of the WWTP with Coastal Act hazards policies (specifically Section 30253) as discussed above. In the interim, however, the analysis concludes as well that the existing riprap revetment height and/or geometry could be modified to prevent the estimated overtopping and flooding of the facility by 10-to-20-year storm events during the next 10, 20, and 50 years, respectively.[34]

And finally, the Applicant's alternative locations analysis evaluated the feasibility associated with relocation of the WWTP to other locations in San Simeon Acres only (see **Exhibit 14** for the Applicant's alternative locations analysis and map). In other words, while the other options evaluated the type of shoreline protective device needed to manage coastal hazards risk at the current location, this additional analysis looked toward the feasibility of relocating the WWTP, which would avoid such risks. While preliminary and not an exhaustive evaluation of all potential sites and options, the analysis offered an initial assessment of the feasibility and issues associated with various sites and general costs.[35] Nine sites were initially identified, and three of the sites were eliminated due to the potential for substantial environmental impacts (Site A (due to proximity to Pico Creek), Site F (due to proximity to the coastal bluff edge), and Site G (due to proximity to Arroyo del Padre Juan Creek). Of the six remaining sites, Sites B and C were rejected due to the number and proximity of adjacent residences and the need for significant tree removal, and Site I was rejected due to the potential for blocking public and private views of the ocean. Site H, while not completely rejected, would be located just seaward of Highway 1 and development here likely would be visible from Highway 1 when traveling northbound. The District opined that two remaining sites (Sites D and E) showed the most promise as alternative locations for relocation. In short, the District's analysis indicates that at least two sites (D and E)

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[34] However, the District, the District's consultant (Earth Systems, Inc.), and Dr. Lesley Ewing generally agree that the overall structural integrity of the now 35-year-old revetment is unknown given that there has been no maintenance work done to the revetment since it was installed, and that restacking the revetment could potentially trigger a whole range of consequences, including the need for substantial restructuring or complete replacement of the revetment.

[35] This was first undertaken in 2008 by Boyle Engineering and then more recently updated by the District in 2016 (as part of the previous and current ATF CDP applications), with criteria including sites that were within San Simeon Acres, at least 12 acres in size, located inland and away from coastal hazards risk, and LCP-designated to allow a wastewater treatment plant. In addition to these criteria, the District's analysis included an evaluation of size, topography, land use and zoning, sensitive receptors, visibility, agriculture, biological resources, and cultural resources.

have potential for relocation use (and others may have potential as well, depending on evaluation criteria applied), and further evaluation would need to be performed if the District pursued relocation.[36] Thus, although it is well understood that further insight into the costs and constraints of these potential locations is necessary and that relocation would take considerable time and financial resources, the analysis concluded that some sites were potentially feasible for WWTP relocation in the future even within San Simeon Acres.[37]

Relocation of critical public infrastructure along the coast is an important adaptation tool. One of the key findings of the Commission's 2015 Sea Level Rise Guidance is the need to ensure that critical infrastructure is located out of harm's way as a means of providing continued function and viability of such essential services in a manner that does not lead to significant adverse coastal resource impacts (e.g., on shoreline resources when armoring and other hazard responses are considered), and to ensure that public dollars are invested wisely in an era of sea level rise. The Guidance furthers this concept through its adaptation strategy recommendations, including:

> *Adaptation strategies should prioritize protection of coastal habitats and public access…. Implement natural solutions for shoreline protection, including managed retreat…Managed retreat allows shorelines to migrate inland naturally, rather than using seawalls, flood barriers, or rock revetments to anchor them in a specific location. This strategy may involve removal or relocation of residential, commercial, or industrial development and restoration of natural areas to enhance ecosystem services, make sound infrastructure investments, and provide additional protection and safety against flooding through buffering effects, as described above.*

Similarly, the California Climate Adaptation Strategy (Safeguarding California Plan: 2018 Update)[38] also includes numerous recommendations to limit siting of new development in hazardous areas and to implement retreat strategies, recommending, for example:

- *As much as feasible, avoid new development and the expansion of existing structures in at-risk coastal locations. (O-1.6)*

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[36] Relocation would also require funding. On that note, the District's estimate for the construction cost for a relocated WWTP was roughly $17 million, not including property acquisition, planning, and permitting. For comparison, the District's estimated cost to fully replace all of the WWTP components at the existing site would be roughly $7 million.

[37] In addition, the District has not explored in depth other potentially feasible alternatives, including the possibility of connecting with Cambria's WWTP, located to the south, or by investigating the feasibility of constructing a smaller package plant inland and out of harm's way, or a series of smaller package plants, or by working with the County and other communities to develop a regional plant that would serve Cambria, San Simeon, and the remainder of northern San Luis Obispo County. Some of these potential options could, if feasible, negate the need for a new WWTP at all.

[38] This is the State's roadmap for everything state agencies are doing and will do to protect communities, infrastructure, services, and the natural environment from climate change impacts. This holistic strategy primarily covers state agencies' programmatic and policy responses across different policy areas, but it also discusses the ongoing related work to coordinated local and regional adaptation actions and developments in climate impact science.

- *Use regulatory authority to reduce risk to existing property impacted by sea level rise and plan to adapt publically-owned critical infrastructure at risk from sea level rise such as highways, wastewater treatment plants, airports, ports, pipelines, and transmission lines. (O-1.8)*
  - *a. Invest in engineering and cost feasibility studies to move all vulnerable infrastructure that can be relocated to a higher or more protected area.*
  - *b. Reinforce non-moveable infrastructure at risk of sea level rise and storm surge.*
  - *c. Regularly monitor all at-risk coastal infrastructure.*
- *When feasible, use phased retreat or buyout of vulnerable property and develop incentive programs to relocate existing at-risk development. (O-1.9)*
- *Advance and develop adequate funding for the research and implementation of nature-based infrastructure projects, including living shorelines, managed retreat, wetland restoration, and related strategies. (O-2.1)*
- *Where possible, remove existing shoreline protective devices to allow coastal lands and habitats including beaches, dunes, and wetlands to migrate landward over time as the mean high tide line and public trust boundary moves landward with sea level rise. (O-2.3)*
- *Analyze the economic costs and co-benefits of managed retreat and nature-based infrastructure projects in comparison to grey alternatives, such as reduced flood risk and stormwater runoff; include market and non-market values (e.g. ecosystem services) in these evaluations. (O-2.6)*

Various reports as well, such as Stanford Law School's California Coastal Armoring Report, which identifies "retreat plans" as provisions for explaining how a structure can be relocated and/or removed when a triggering event occurs (e.g., sea level reaches a certain elevation, inundation of the property occurs one or more instances over a specific time period, etc.) are often cited by governmental agencies and others as a way for such critical development to relocate.[39]

The Commission has been recently looking very critically at post-Coastal Act, redeveloped, and/or new wastewater treatment plants and their functions in relation to low-lying areas and dealing with coastal hazards in the long-term, and in recent cases has identified mechanisms to set the stage for relocation inland. For example, in its approval of additional back-up/redundancy equipment to be installed at the South San Luis Obispo County Sanitation District's WWTP in Oceano in May 2017 (CDP 3-16-0233), the Commission's conditions identified a long-term path forward for moving the WWTP out of the way of coastal hazards risk through providing time and a methodology for pursuing necessary analysis and steps in the interim and longer term. The Commission also denied WWTP redevelopment in Morro Bay in January 2013, instead directing

[39] 2015 California Coastal Armoring Report: Managing Coastal Armoring and Climate Change Adaptation in the 21st Century. Stanford Law School, Environment and Natural Resources Law & Policy Program.

the City and the Cayucos Sanitary District to pursue WWTP facilities inland and out of harm's way.[40]

In this case, and as evidenced both empirically by historic storms, and as evidenced scientifically through geologic reports and District-provided analyses, the WWTP is located in a hazardous location that is subject to significant coastal and riverine flood and erosion risks at this time (including because the revetment only provides limited protection for these types of storm events), let alone the near future, when such risks will only be exacerbated, including as sea levels rise. The key question is what to do about this risk, including what options and tools to employ to ensure that critical public infrastructure that protects public health and the environment remains safe and operational in both the short and the long term. The alternatives analysis helped to clarify potential risk abatement options. Notably, as described above, the analysis found that the "no project" option (i.e., removing the revetment) would place the WWTP at imminent hazards risk. The analysis also concluded that simply retaining the existing revetment will only provide limited protection (i.e., up to a 10-to 20-year storm event and, even then, with some overtopping). In order to provide enhanced safety, including over the longer term if the WWTP were to remain at this location, the WWTP would require a new, substantially larger shoreline protective device to abate coastal hazards (e.g., a vertical seawall or a much larger riprap revetment), while implicating consistency issues of the WWTP with other Coastal Act policies. The District's consultant's geologic analysis recommended an adaptive management program be implemented for the existing riprap, in relationship to future weather conditions, with specific methods of protection employed in the near terms, such as increasing the riprap slope from 2:1 to 1.5:1 or 1:1. However, that analysis also states that major changes to the current revetment, including slope reconfigurations, could be infeasible or have unintended consequences given that the revetment has not been evaluated for integrity or stability.

The District, in its arguments against relocation, indicates that "armoring the bluff with additional riprap, restacking the riprap, constructing a seawall and other protective measures can be taken to adequately address erosion and sea level rise" (see **Exhibit 20**). However, as discussed above, all such options raise significant Coastal Act consistency issues, and approval of the revetment as proposed would be inconsistent with the Coastal Act, including Section 30253.

As discussed above and below in the "Marine Resources" section, while the WWTP is "in danger from erosion" that necessitates some form of shoreline protective device now if left in the current location, including to avoid severe public health and environmental damage, WWTP relocation is feasible *in the relatively near future*, but not immediately as of the time of consideration of this CDP application, and such relocation would completely avoid all coastal resource impacts associated with shoreline armoring because it avoids the need for a shoreline protective device altogether.[41] Thus, the Alternatives Analysis supports the conclusion that in the

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[40] And both the City and the Cayucos Sanitary District have heeded that direction. Specifically, the Cayucos Sanitary District's new wastewater treatment and water recycling facility is currently under construction inland and just south of Cayucos, and the City's proposed new inland wastewater treatment and water recycling facility is being considered by the Commission at the July meeting in San Luis Obispo.

[41] In addition, the expected remaining useful life of the WWTP (not counting the outfall or riprap revetment) is estimated by the District at 22 years (from 2016) without significant upgrades, all of which will require significant

short term a shoreline protective device would be required to protect the WWTP if it otherwise constituted an "existing structure" for purposes of 30235 (which it does not) because there are no feasible alternatives in the short term that are fully Coastal Act consistent; however, in the *long term*, relocation of the WWTP is a feasible alternative which will ensure full Coastal Act consistency. Since the WWTP does not constitute an existing structure for which shoreline protection is compelled under 30235, further discussion of feasible alternatives to ensure long-term consistency with the Coastal Act is discussed below.

In summary, and as explained above, the WWTP as it exists today does not constitute an "existing structure" for purposes of 30235 because the replacement and upgrade of approximately 90% of the integral components of the WWTP render it redeveloped, considering that in this specific industrial context the WWTP would have no use or function without consideration of the replaced and upgraded components. Because the WWTP is not an "existing structure," 30235 does not require a shoreline protective device to protect the WWTP, despite the fact that the WWTP is in danger from erosion and is required in the near term because there is no feasible alternative to protect the WWTP in the near term. Because the WWTP is not an "existing structure" under 30235, mitigation for sand supply impacts due to presence of a revetment is not further discussed in context of Section 30235 consistency, but is further discussed below.

Similarly, the analysis above confirms that the WWTP was historically and (as redeveloped, new development) is currently subject to significant coastal hazards that clearly did not minimize risks to life and property in an area of high geologic and flood hazard (inconsistent with Section 30253(a)) and which led to (unpermitted) construction/reliance of a protective device that substantially altered the natural landforms along the bluffs here (inconsistent with Section 30253(b)). The WWTP is located at a low-lying area just above beach level. In fact, although the main surface of the WWTP is about 13 to 15 feet above mean sea level, its tanks extend deeper than that and are located much closer to sea level. In addition, the WWTP is located immediately adjacent to the mouth of a creek. The erosion danger is thus three-fold: erosion and flooding associated with ocean storm and wave attack and inundation, as well as from riverine scour and flooding from the adjacent Arroyo del Padre Juan Creek, and the combination of these ocean and riverine forces. Therefore, the WWTP was in danger from erosion at the time of the unpermitted placement of the revetment in 1983 and the redeveloped WWTP (which for purposes of the Coastal Act constitutes new development) continues to be today and as such, the WWTP does not minimize risks to life and property in an area of high geologic and flood hazards, as required by Section 30253(a). Because of these dangers and risks, the District decided to construct a protective device without proper authorization that substantially altered the natural landforms along the bluffs here. Continued reliance on this protective device for the redeveloped WWTP, which as new development is not entitled to shoreline armoring, is inconsistent with Section

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funds (see page 5 of **Exhibit 15**). In addition, the 600-foot replacement of outfall line in 1984 has a published expected lifespan of 25 years (which has since passed), and the riprap revetment, which has had no maintenance or other work done to it since it was placed in 1983, had a then identified 50-year lifespan. Revetments such as this are well known for lasting well less than even 20 years in the coastal environment absent regular maintenance and repair. Thus, the WWTP and critical accessory development will need significant upgrades in the near term, which all have significant fiscal as well as coastal resource components, and options now need to be understood in that context as well.

30253(b). In short, the WWTP is inconsistent with Chapter 3 coastal hazards requirements, thus warranting denial of ATF approval for the revetment.

That being said, as described above, the District needs time in order to plan, develop, consider and implement a relocated WWTP (including securing requisite funding to do so). Given that approval of the revetment as-is to protect the WWTP does not ensure consistency with Coastal Act hazards policies *in the long term*, approval here is premised on protecting marine resources, water quality, and environmentally sensitive habitat (ESHA) (see discussion in those sections below), which would all be significantly impacted if the revetment were removed immediately. In other words, there is a Coastal Act conflict between coastal hazards and ESHA policies (Sections 30253 and 30240, specifically) which compels denial of shoreline protection to protect the WWTP in the long term with marine resource, water quality, and ESHA policies (Sections 30230, 30231, and 30240, specifically) which compel approval of the WWTP in the near term to protect water quality, marine resources, and human health in the immediate term. Resolution of this conflict is accomplished through the conflict resolution provisions of the Coastal Act (i.e., Coastal Act Sections 30007.5 and 30200(b)), a procedure that allows for resolution of conflict between a policy or policies of the Coastal Act that warrant denial (here, coastal hazards policies and, as discussed below, ESHA policies) with a policy or policies that compel approval (here, protection of marine resources, water quality, and ESHA) by taking the action which, on balance, is most protective of significant coastal resources (see "Conflict Resolution" section below for further explanation justifying approval).

So, the Coastal Act-consistent solution is essentially a two-pronged approach: require planning for WWTP relocation in the future (to ensure consistency with coastal hazards policies, including Section 30253) while, in the interim, retaining the existing revetment (with coastal resource impacts adequately mitigated for, as discussed below) to provide other necessary coastal hazards protection (including protection of marine resources, water quality, and ESHA per Sections 30230, 30231, and 30240). In this context the approval of the placement of additional riprap at the top of the revetment to provide an approximately two feet of additional height for such short-term protection can be found Coastal Act consistent. The combination of these two approaches (an interim and a longer-term solution) satisfies both Coastal Act Section 30253 requirements and the requirements of Sections 30230, 30231, and 30240, including because it authorizes a needed shoreline protective device *now* to protect critical public infrastructure while simultaneously proactively planning for and ensuring that WWTP relocation and shoreline protective device avoidance (and attendant coastal resource impacts) is carried out in the *future.*

Thus, **Special Condition 2** authorizes the revetment on a temporary 10-year basis (subject to required mitigations as described subsequently, and subject to term extension (for good cause, i.e. evidence that the Permittee has taken significant and diligent action in furtherance of implementing the approved Coastal Hazards Response Plan of **Special Condition 3**) to allow for the continued operation and function of the WWTP, including to presently protect water quality and public health, while simultaneously allowing time to plan for WWTP relocation away from coastal hazard risks. **Special Condition 1** authorizes all the above-described ATF development, including the main revetment, the creek riprap, the pipe support structure, and the outfall

replacements.[42] **Special Condition 1** also recognizes that limited measures to ensure continuing function of the WWTP may be necessary in the interim in relation to the revetment or otherwise, including restacking, augmentation, and other measures to address flooding and other coastal hazards, and that these shall be the minimum necessary to abate the identified problem, shall only be allowed if they are required to ensure the continuous operation of the WWTP to protect water quality and public health, and shall be removed and the affected area restored to its pre-construction state or better upon WWTP relocation or expiration of this CDP. And **Special Condition 4** specifically allows the placement of additional riprap along the exposed fill areas located between the top of the existing riprap revetment and the existing WWTP perimeter wall to add about two feet of height to the revetment in those areas to better protect the WWTP in the short-term period. **Special Condition 5** requires monitoring reports that evaluate the condition and performance of the revetment, including with recommendations, if any, for necessary maintenance, repair, changes, or modifications.

Special Condition 3 requires a Coastal Hazards Response Plan to build upon the work completed to date in terms of potential WWTP relocation and/or other alternatives to provide necessary wastewater functions at more inland and safer locations. The Coastal Hazards Response Plan is intended to provide a clear plan for addressing WWTP relocation, including building upon the preliminary work already done in this regard. The analysis would include funding options, expected costs of purchasing land for a relocated plant or other facilities, as well as expected costs to: decommission the existing plant and to restore the site to its natural state; provide for water recycling (including addressing the potential for joint satellite facilities and/or collaborations with nearby communities for water recycling); and include a timeline of potential major relocation events, including expected timeframes for land acquisition, planning, permitting, design, construction and eventual operation, of a relocated plant or alternative wastewater treatment solutions that avoid the significant coastal hazards that threaten the current WWTP. The Response Plan will also include a detailed evaluation of whether the use of the WWTP outfall can be eliminated and the outfall removed as part of moving wastewater functions to a more inland location. Any costs associated with new and/or upgraded outfall pipelines, pumps, and/or lift stations deemed necessary (including rerouting of sewer pipes to a relocated plant, etc.) shall also be included. The Response Plan is due in three years, but extension to the three-year deadline for submittal of the Coastal Hazards Response Plan may be granted by the Executive Director for good cause, but in no event may it be extended beyond the five-year compliance check-in required by **Special Condition 2**. The intent of all this work would then be for the District to eventually submit a CDP amendment request or new CDP application to the Commission to authorize implementation of the approved Coastal Hazards Response Plan.

In terms of recognizing and assuming the hazards risks for shoreline development, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that permittees continue to pursue development despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have

[42] Because portions of the main revetment, the creek riprap, and the pipe support structure are located on adjacent properties not owned by the District, **Special Condition 13** requires the District to submit written evidence from these adjacent property owners agreeing that such development may be retained on their properties.

resulted in public costs (through low-interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 11**).

To ensure that the District makes adequate progress towards meeting the terms and conditions of this approval, including with respect to the aforementioned plans and analyses, the Executive Director is tasked with verifying that significant and diligent progress has been made on meeting the terms and conditions of this approval, with a formal evaluation at the five-year interval (i.e., by July 11, 2024). If the Executive Director is satisfied with the progress made towards such compliance at this interval, then the authorization will continue for the remaining five-year authorization term (potentially subject to further extension by the Commission). If the Executive Director is satisfied with the progress, but determines that the District for good cause (i.e. evidence that the District has taken significant and diligent in implementing the approved Coastal Hazards Response Plan) will not be able to timely implement the Coastal Hazards Plan as intended to be proposed under the Plan, then the CDP expiration may be extended in five-year increments by the Executive Director up to ten additional years, subject to Executive Director check-ins every five years following the first check-in date of July 11, 2024. If, on the other hand, the Executive Director is *not* satisfied with the progress to date at the check-in, then prior to CDP expiration the District must submit a CDP amendment application to the Commission for consideration and potential action at a public hearing, which may include, but not be limited to, changes to the CDP authorization duration. In any event, any Commission extension of the CDP authorization duration must include an assessment of additional impacts for the additional duration and assessment of additional mitigation if the Commission concludes that the original CDP mitigations are not enough to address the impacts accruing from a longer CDP authorization duration. See **Special Condition 2**.

Sand Supply Mitigation

Given that **Special Condition 1** authorizes the revetment (both after the fact for the last 36 years it has been in place, as well as for the next 10 years), the Coastal Act requires mitigation of all impacts to shoreline sand supply from the shoreline protective device (where avoidance of impacts is not possible). Some of the effects that a shoreline structure may have on natural shoreline processes can be quantified, including: (1) the loss of the beach area on which the structure is located; (2) the long-term loss of beach that will result when the back-beach location is fixed on an eroding shoreline; and (3) the amount of material that would have been supplied to the beach if the back-beach or bluff were to erode naturally. The first two calculations affect beach and shoreline use areas, and the third is related to shoreline sand supply impacts, but all three impact public access to the beach.

With respect to the loss of beach (and shoreline area that could become beach over time) on which a structure is located, shoreline protective devices are physical structures that occupy space. When a shoreline protective device is placed on a beach area, the underlying beach area cannot be used as beach. This generally results in a loss of public recreational access and sand supply. The area located beneath a shoreline protective device, referred to as the encroachment

area, is the area of the structure's footprint. In this case, the revetment protecting the WWTP covers approximately 3,000 square feet of shoreline and beach area (the revetment is approximately 200 feet long by 15 feet wide (by approximately 12 feet tall)). Thus, approximately 3,000 square feet of shoreline and beach area has been unavailable for public use for 36 years, and an approximate same amount will continue to be unavailable to the public for at least the next 10 years under this CDP. Furthermore, the area that has been covered by the riprap for 36 years is also deed restricted for public use as part of an earlier Commission action. Specifically, the Commission's 1979 approval of CDP 199-09, which allowed for the construction of a 100,000-gallon tank, included a special condition that required recordation of a deed restriction (see **Exhibit 6**) providing for exclusive public use of the beach seaward of the WWTP property from the mean high tide line to the toe of the bluff.[43] The Applicant claims that riprap remained at the toe of, and on the bluff from the 1969 placement of riprap, and that the deed restriction was not covered over by the new riprap placed in 1983. However, as identified in the previously described Wooley report (1982 – **Exhibit 17**), and other evidence, including from Boyle Engineering, indicating in its May 7, 2008 letter to Commission staff that the "original riprap placed in 1969 had already washed away," no existing riprap was described as being located at the toe or on the bluff face, only water-worn gravel and cobble was noticed at the base of the bluff. Thus it is clear that the placement of over 650 cubic yards of riprap in 1983 at the base of the bluff covered at least a portion of the beach area required by the Commission to be deed restricted for public beach access in 1979, inconsistent with the requirements of the deed restriction, and further impacting public access to the beach in this location. In any event, the revetment currently protecting the WWTP clearly covers approximately 3,000 square feet of shoreline and beach area seaward of the toe of the bluff.

In terms of fixing the back beach, on an eroding shoreline a beach will generally exist between the ocean and inland bluffs as long as there is space available to form such a beach. As natural bluff erosion proceeds, the profile of the beach also retreats and the beach area migrates inland with the bluff. This process stops, however, when the backshore is fronted by a hard structure such as a revetment. Experts generally agree that where the shoreline is eroding and a shoreline protective device is installed, the device will eventually define the boundary between the sea and the upland. While the shoreline on either side of the armor may continue to retreat, shoreline in front of the armor eventually stops at the armoring. This effect is also known as passive erosion or "coastal squeeze." The beach area will narrow, being squeezed between the moving shoreline and the fixed backshore, and this represents the loss of a beach and shoreline as a direct result of the armor.

The passive erosion impacts, or the long-term loss of beach due to fixing the back beach, of a riprap revetment is equivalent to the footprint of the bluff area that would have become beach due to erosion and is equal to the long-term average annual erosion rate multiplied by the length of property that has been fixed by a shoreline protective device.[44] In this case, the revetment is

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[43]As discussed above in the "Coastal Commission CDP History" section, that CDP also included a condition that put the District on notice that the Commission's approval of the CDP did not include a commitment for approval of the construction of future protective devices.

[44] The Commission has in the past used the following equation for calculating this impact: the area of beach lost due to passive erosion (Aw) is equal to the long-term average annual erosion rate (R) times the number of years that the back-beach or bluff will be fixed (L) times the width of the property that will be protected (W). This can be

approximately 200 feet in length,[45] and the estimated average annual bluff retreat for this site is between six and eight inches per year. Therefore, using the more conservative estimate (i.e., eight inches per year), the impacts from fixing the back beach will be the annual loss of beach over the span of 200 feet, or approximately 133 square feet of beach annually (0.667 feet x 200 feet). The riprap revetment has been on the site for 36 years, since 1983. The Commission is also authorizing the revetment for an additional 10 years. So the revetment will have 46 years of impact (36 years that the revetment has been in place since 1983, plus authorization to retain the revetment for another 10 years) under this CDP, representing a total loss of 6,133 square feet (roughly 133 square feet of beach lost per year for 46 years) of beach/shoreline that would have been created naturally if the back beach had not been fixed by the revetment.

Thus, the revetment leads to beach and shoreline use area impacts of approximately 9,133 square feet (3,000 square feet associated with the revetment's footprint and 6,133 square feet associated with passive erosion due to fixing the back beach) over 46 years through 2029. There is no doubt that such impacts represent a significant public recreational access impact, including a loss of the social-economic value of beach and shoreline recreational access, for which the Coastal Act requires mitigation. In addition, the 1979 deed restriction, which deed restricts the beach area under the existing revetment for public use, has been at least partly inaccessible due to the presence of the riprap for 36 years now, both inconsistent with the Commission's prior approval and inconsistent with protecting the public's legally established right to use that beach area.

The most obvious in-kind mitigation for these impacts would be to create a new 9,133 square-foot area of beach/shoreline to replace what has been and will be lost over the 46-year timeframe with an identical area of beach/shoreline in close proximity to the eliminated beach/shoreline area. While in concept this would be the most direct mitigation approach, in reality, finding an area that can be turned into a beach and ensuring it does so appropriately over time is very difficult in practice. At the same time, the calculations of the affected area do provide an appropriate relative scale for evaluating commensurate alternative mitigations. In the past, the Commission has looked at several ways to value such beach and shoreline areas in order to determine appropriate in-lieu mitigation fees, including the real estate value of the land that will be taken from public use. The Commission has found that using a real estate valuation method as a basis for identifying mitigation allows for objective quantification of the value of beach and shoreline area, and is related in both nature and extent to the impact. This method requires an evaluation of the cost of land that could be purchased and allowed to erode and turn into beach naturally to offset the area that will be lost due to the revetment.

Toward this end, Commission staff identified the market value of a number of blufftop properties throughout the San Simeon Acres area as a means to identify the value of such property that could be purchased and allowed to erode and create beach. Specifically, considering the reasonableness of this approach which the Commission has taken in previous cases,[46] this review

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expressed by the following equation: Aw = R x L x W. The annual loss of beach area can be expressed as Aw' = R x W.

[45] Where this includes both westerly and northerly components, both of which are included in the calculation here inasmuch as both lead to the identified loss of beach.

[46] See, for example, CDPs 2-10-039 (Land's End Seawall), A-3-PSB-12-042 and -043 (Vista del Mar Avenue and Ocean Avenue seawalls), and 3-16-0345 (Honjo).

was conducted by looking at the sales of blufftop property in this specific area within the last several years. This value is then divided by the properties' square footage to arrive at a price per square foot.

The evaluation included three blufftop properties (i.e., three condominiums on the same property) and four properties located just inland of the blufftop along Balboa Avenue and Vista del Mar. The values range from a low of $373 per square foot for the property at 9140 Balboa Avenue to a high of $694 per square foot for one of the condominium properties at 9231 Balboa Avenue, which is directly downcoast of the WWTP.[47] The average value per square foot for these seven properties is $503 per square foot. This value represents a reasonable estimate of the market value of blufftop and near-blufftop property nearest the subject site based on actual sales data in the last several years. Applying this $503 per square-foot land value to the revetment's 9,133 square-foot impact would result in a fee of $4,593,899 (9,133 square feet x $503 per square foot) to mitigate for the riprap revetment's 46 years' worth of beach loss impacts.

The final impact calculation is with respect to the loss of sand in the larger sand supply system. Beach sand material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves; and from coastal dunes and bluffs. Bluff retreat is one of several ways that sand is added to the shoreline. Bluff retreat and erosion is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse of caves, saturation of the bluff soil from groundwater causing the bluff to slough off, and natural bluff deterioration. When the bluff is protected by a shoreline protective device, the natural exchange of material from the bluff to the beach will be interrupted and, if the shoreline is eroding, there will be a measurable loss of material to the beach.

In these cases, bluff sediment would be added to the beach at these locations, as well as to the larger littoral cell sand supply system fronting the bluffs, if natural erosion were allowed to continue. The volume of total material that would have gone into the sand supply system over the lifetime of the shoreline structure would be the volume of material between (a) the likely future bluff face location with shoreline protection; and (b) the likely future bluff face location without shoreline protection. Using the Commission's typical methodology to calculate this impact, the Commission's Senior Coastal Engineer, Dr. Ewing, determined that this impact is roughly equal to 28 cubic yards of sand per year.[48] Over the course of the 46-year mitigation horizon, the revetment will thus result in the loss of about 1,288 cubic yards of sand (i.e., 28 cubic yards/year x 46 years = 1,288 cubic yards) that would otherwise be added to the beach/sand supply system. Based on recent estimates of costs for beach quality sand for other projects, the cost of purchasing and delivering 1,288 cubic yards of beach quality sand is

[47] The three blufftop condominium properties at 9231 Balboa Avenue had a value of $694, $538, and $498 per square foot respectively. The property at 9140 Balboa Avenue, which is just inland of the blufftop, had a value of $373 per square foot. The properties at 279 and 289 Vista del Mar each had a value of $514 per square foot. The property at 9116 Balboa Avenue (unit 11) had a value of $392 per square foot.

[48] Sand supply loss is calculated with a formula that utilizes factors such as the fraction of beach quality material in the bluff material, the height of the armoring in relation to the bluff, and the predicted rate of retreat of the bluff during the period that the revetment would be in place (assuming no revetment were installed).

currently approximately $50 per cubic yard.[49] Thus, an in-lieu fee to address this sand supply impact would be approximately $64,400 (i.e., $50/cubic yard x 1,288 cubic yards = $64,400).

Therefore, over the 46-year mitigation timeframe, beach/shoreline and sand supply loss impacts associated with the revetment would result in a mitigation fee of $4,658,299 (i.e., $4,593,899 + $64,400 = $4,658,299).

Sand Supply Impacts Conclusion
In this case, the revetment's impacts to sand supply and associated beach recreational values/use over the 46-year timeframe has led to and will lead to a loss of nearly 10,000 square feet of beach and almost 1,300 cubic yards of sand, both finite and important coastal resources. As a means of providing an easily understood value that can be used to quantify and understand the loss of such important resources, another way of looking at this impact is that it would cost over $4.5 million to offset the impact if it were to be offset through an in-lieu fee. Although requiring such a mitigation fee would be one appropriate way to commensurately offset this project impact, another is to identify some form of offsetting and equivalent public and beach access related mitigation package. This is particularly so in the present case given the small size of the District and the significant financial cost in preparing for long-term relocation of the WWTP. Thus, on the facts here, the Commission finds it particularly appropriate to identify compensatory mitigation in terms of public and beach access value to offset impacts to coastal resources by permitting the revetment in the near term, while ensuring that the District allocates money to the long-term solution of relocation of the revetment.

As described in more detail in the "Public Access" section below, Commission staff had previously discussed with the District the option of the District constructing a pedestrian and bicycle bridge across Arroyo del Padre Juan Creek as mitigation for the riprap's past and ongoing impacts. In response to these discussions, the District previously developed and submitted to Commission staff two conceptual design plans for a pedestrian/bicycle bridge across the creek intended as a means of mitigating project impacts, including in lieu of paying a monetary mitigation fee. Such a bridge would provide lateral access from the network of blufftop trails upcoast from the project, across the creek, and through to Balboa Avenue and open space located downcoast at San Simeon State Park, effectively adding another connection, and certainly the most critical in terms of the California Coastal Trail (CCT), between north and south San Simeon Acres. The bridge would close a gap in the access system at this location (i.e., there is no creek crossing, and access users are forced to circumnavigate the creek either by walking along the beach or walking up to Hearst Drive, to get from one side to the other), and thus would facilitate a full connection of the CCT in this area, providing substantial public access benefits. However, the District indicates that the high cost of such a bridge would make such a project infeasible, and has identified a different mitigation package.

Specifically, the District now proposes to decommission, demolish, and restore the WWTP site when its functions have been relocated (as anticipated to be implemented per the Coastal Hazards Plan), and to dedicate the site in fee for public use (e.g., low-intensity public park use –

[49] See, for example, CDPs 3-14-0569 (Custom House Embankment Repairs), A-3-STC-12-011 (4th Avenue Armoring), 2-11-009 (City of Pacifica Shoreline Protection), and 2-10-039 (Land's End Seawall).

see **Exhibit 12**). Such restoration and dedication is appropriate and will provide for meaningful offsetting mitigation for project impacts at that time. In addition, and to provide meaningful mitigation in the near term to begin to offset accrued impacts, the project is also conditioned to require public access overlook improvements in San Simeon Acres area, potentially on nearby State Parks property (see **pages 4-6 of Exhibit 12**). Together, such a mitigation package is an appropriate means to offset the impacts from unpermitted armoring and development that has been in place for more than three-and-a-half decades without proper consideration of mitigation for substantial adverse impacts caused to coastal resources resulting from said armoring and development, and for continuing project access impacts over the temporary approval's horizon.

Even so, there is an argument that the full impacts (e.g., estimated at over $4.5 million) of the project are not being mitigated, and that additional mitigation could be required now (including payment of mitigation fees and additional access improvements commensurate with the calculated impacts). However, such mitigation would usurp scarce time, money, and resources the District needs in order to focus on planning for WWTP relocation out of this hazardous beachfront location, and for site restoration of the WWTP property consistent with the requirements of the Coastal Act. Fortunately, this approval structure means that additional access benefits will be realized over the longer term (e.g., revetment removal, WWTP and revetment relocation, site restoration, etc.), which will eventually offset any difference in the impacts versus the mitigation required now as part of a longer-term framework. In the short term, overlook improvements can serve to begin to meaningfully offset public and beach-related access impacts, and in the longer term, removal of the WWTP and related development (including riprap) and restoration, and dedication and use of the WWTP site for public and beach related access can serve to fully mitigate for the remainder of the project's coastal resource impacts. Therefore, the Commission finds that the overlook, when combined with the longer-term restoration and future public uses of the site (including removal and restoration associated with the riprap, leading to future elimination of all revetment coastal resource impacts), appropriately mitigates for the revetment's sand supply and public access impacts, consistent with the Coastal Act, in lieu of payment of the calculated mitigation fee.

Coastal Hazards Conclusion

The WWTP has historically been and is currently in danger from erosion and coastal hazards, based on the District's consultant's analysis that the current protection affords only limited protection at this time, let alone into the future when sea level rise is expected to make existing conditions worse. Thus the WWTP does not minimize risks to life and property in an area of high geologic and flood hazards (inconsistent with CA section 30253). As a result, the WWTP necessitated an unpermitted riprap revetment that altered the natural landforms along the bluff at this location and covered up a portion of an existing-at-the-time public access deed restriction. The WWTP and ATF approval of the revetment cannot be found consistent with the Coastal Act's hazards policies in the long term. However, on the basis of conflict resolution (discussed below), the Commission is able to approve the proposed project on a limited-term basis to protect marine resources, water quality, and ESHA in the immediate term, and the Commission accordingly conditions the approval to mitigate the revetment's sand supply and public access impacts as discussed above.

D. MARINE RESOURCES

Applicable Policies

The Coastal Act protects the marine and freshwater resources and offshore habitat located in the vicinity of this site. Coastal Act Sections 30230 and 30231 specifically state:

> ***Section 30230.*** *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.*** *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 addition, Coastal Act Section 30233(a) states:

> ***Section 30233(a).*** *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
>
> *(l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
>
> *(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
>
> *(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
>
> *(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
>
> *(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
>
> *(6) Restoration purposes.*
>
> *(7) Nature study, aquaculture, or similar resource dependent activities.*

Analysis

Unpermitted Outfall Replacement

The 600-foot-long outfall replacement (that was completed in 1984) and the 100-foot-long outfall replacement (that was completed between 2010 and 2013) both required "fill" as that term is defined in the Coastal Act,[50] and also implicate the marine resource and related water quality protection policies of the Coastal Act. The Applicant proposes to authorize these outfall replacements ATF as part of this CDP application. See **Exhibit 4** and **Exhibit 10** for the location of the outfall.

Coastal Act Section 30233 restricts the Commission from authorizing a project that requires filling open coastal waters unless it meets three tests. The first test requires the proposed activity to fit within one of seven categories of allowed uses described in Coastal Act Section 30233(a)(1)-(7). The second test requires that there be no feasible less environmentally damaging alternatives to the fill. The third test mandates that feasible mitigation measures be provided to minimize the project's adverse environmental effects. Sections 30230 and 30231 reaffirm and support these latter two tests in terms of requiring that marine resources and biological productivity of coastal waters be protected as much as possible.

In terms of the first test under 30233, or the allowable use test, Coastal Act Section 30233(a)(4) allows fill in open coastal waters for "incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines." The purpose of the proposed outfall pipe and pipe replacements, which both necessitated fill, was to improve water quality and protect public health by replacing damaged portions of the existing wastewater outfall. Therefore, the Commission finds that the proposed outfall replacements qualify as allowable uses pursuant to Coastal Act Section 30233(a)(4).

The second test of Coastal Act Section 30233 requires an assessment of whether there are feasible less environmentally damaging alternatives. A typical range of alternatives for this type of project would likely include the no-project, relocation, and full replacement alternatives. With respect to the former, the no-project alternative (i.e., not replacing the damaged portions of the outfall) would not solve the problem of potential effluent flow from the damaged outfall or allow for functioning of the outfall as intended, thus allowing the outfall to continue to function inadequately and unsafely with associated impacts to public health and water quality in ocean waters off of San Simeon Acres (in violation of Coastal Act Sections 30230 and 30231). With respect to relocation, while this option could provide short-term benefits to habitat (e.g., removing the line from its current location in an area known to contain rocky reef and kelp habitat to an area that is solely comprised of soft, sandy substrate), this option is not feasible right now, including due to the costs involved in studying the surrounding habitat and assessing the most environmentally friendly location. This is particularly so because of the need to wisely manage resources to plan for eventual relocation of the entire WWTP to ensure long-term consistency with coastal hazard policies. In addition, movement of the line to another area in the vicinity may not be allowed by the National Oceanic and Atmospheric Administration and the California Department of Fish and Wildlife because the new line would be placed in two

[50] Coastal Act Section 30108.2 defines "fill" (in relevant part) as "earth or any other substance or material … placed in a submerged area."

established Marine Protected Areas (MPAs). As discussed further below, original placement of the outfall predates designation of the current placement site as MPAs.

With respect to full replacement, the replacement of the entire outfall would surely provide an upgrade to the damaged outfall to a condition at least as good as it was in 1983 and prior. A new outfall would be built to the latest standards (including with the addition of modern day outfall diffusers) and could be placed in the most environmentally appropriate location (assuming connection to the WWTP where it is situated now) with the most environmentally appropriate length. However, the estimated cost for a new outfall built to the current design (800 feet by eight inches) would range between approximately $150,000 and $300,000, based on recent examples. Furthermore, this alternative does not address the fundamental coastal hazards associated with maintaining the WWTP at its present location in the long term and thus diverts scarce resources to an alternative that is not fully consistent with the Coastal Act and may not be allowed in the MPAs.

The above-described alternatives are either infeasible or do not resolve all project inconsistencies with the Coastal Act, especially when there is no evidence currently to suggest that the proposed replacement portions are malfunctioning. The Commission thus finds that the proposed project (i.e., authorizing ATF replacements of the majority of the outfall) at this time is the least environmentally damaging feasible alternative.

The third test under Coastal Act Section 30233 requires that the project include feasible mitigation measures to minimize adverse environmental effects. Hard substrate (especially high-relief substrate) and its associated biota are relatively rare offshore of central California and therefore any effect to them is potentially significant. Impacts to high-relief substrate in particular are significant because: (a) rocky reefs are relatively rare along the central and southern California coasts; (b) they support a diverse assemblage of epifaunal invertebrates; (c) they attract fish as a nursery ground, food source, and as shelter; and (d) epibiota residing on rocky substrates are sensitive to mechanical disturbance and increased sediment loads. Adverse impacts (e.g., crushing, scraping, and/or displacement) to hard substrate can occur during cable or pipeline installation and subsequent movement of the pipeline or cable on the seafloor due to currents and wave action. Placement of the outfall on and across rocky substrates would disrupt associated bottom communities, likely crushing and/or dislodging small, sessile or relatively sedentary invertebrates along a narrow strip. As discussed further below, although information and reports provided by the Applicant suggest that outfall is placed within sandy soft-bottom substrate, based on other evidence it is likely that the replacement portions of the outfall installed in 1984 and between 2010 and 2013 adversely impacted hard substrate environment.

Here there are several feasible mitigation measures that will minimize adverse impacts of the proposed ATF outfall development. These mitigation measures include requiring the District to assess and mitigate for impacts to substrate habitat incurred by the proposed project. By imposing the special conditions described in this report (see **Special Conditions 8** and **9**, and see further discussion of these conditions below and in the “Conflict Resolution” section below) as part of the coastal development permit, the Commission finds that the third test of Coastal Act Section 30233 has been met. The Commission therefore finds the outfall replacement projects in 1984 and those that took place between 2010 and 2013 can be found consistent with Coastal Act Section 30233.

In terms of Coastal Act Sections 30230 and 30231, the outfall, and thus the development undertaken on the outfall, is located offshore of San Simeon Acres in coastal waters that are now part of two different MPAs (i.e., the Cambria Marine Conservation Area and the Monterey Bay National Marine Sanctuary), both of which generally do not allow new outfall pipelines to be installed within their boundaries. In this case, though, the original outfall was placed in the early 1960s well before the Coastal Act and well before the origination of the two MPAs identified above.[51] However, the replacement portions that are the subject of this ATF proposal occurred in 1984 and between 2010 and 2013, subsequent to adoption of the Coastal Act (thus Sections 30230 and 30231 apply to the replacements), and subsequent to the MPA designations for the 2010 to 2013 work, and the outfall's functionality is critical to preventing significant adverse water quality degradation and resultant public health and safety impacts in the coastal environment. In light of this, the marine resources and water quality policies of the Coastal Act (Sections 30230 and 30231) affirmatively compel approval of the ATF portions of the outfall pipeline in order to protect water quality and public health and safety. However at the same time, placement of the ATF portions of the outfall resulted in its own impacts to marine resources, which have not been mitigated to date, and the critical question at this juncture is how to best mitigate for those impacts of the outfall replacement projects now, beyond its potential removal in the future as described in **Special Condition 3** (and given that, as discussed above, the outfall's function in preventing significant adverse water quality degradation and resultant public health and safety impacts in the coastal environment compels approval of the ATF portions in the near term under Sections 30230 and 30231 - see discussion in the "Conflict Resolution" section below for justification of project approval and imposition of special conditions here regarding the outfall).

In terms of quantifying these impacts, available habitat mapping data from MPA monitoring efforts and the District's own monitoring reports (per Waste Discharge Requirements Order No. R3-2013-0021/National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047961, which officially expired on February 1, 2019)[52] have been analyzed. According to the District's most recent monitoring inspection reports (in 2016, 2017, and 2019), the outfall is located in mostly sandy soft-bottom substrate, either laying on top of sand or buried underneath it in parts. However, these reports are very brief and were undertaken during times of high turbidity/low visibility, and do not include descriptions for the entire 800 feet of outfall line. Additionally, it is not clear what type of habitat or habitats into which the replacement portions of the outfall were installed in 1984 and between 2010 and 2013 (i.e., whether these went through a rocky reef or kelp habitat and more recently became buried in sand) given that no surveys of the offshore area were undertaken at those times. While the District's recent monitoring inspection reports indicate that the shoreward 700 feet or so of the outfall line is partially or fully buried, this may be the result of recent trends in sand movement. Further, based on available baseline habitat mapping and survey data that has been collected as part of MPA monitoring efforts, as well as aerial photography from Google Earth and oblique imagery from

[51] The Monterey Bay National Marine Sanctuary was established in 1992 and the Cambria Marine Conservation Area was established in 2007.

[52] According to Peter Von Langen at the Regional Water Quality Control Board (RWQCB), the District submitted an application to renew the NPDES permit on March 20, 2018. The previous NPDES permit is on "administrative extension" until a new NPDES permit is adopted by the RWQCB.

the California Coastal Records Project, the seaward portion of the outfall (i.e., about the last approximately 325 feet of the outfall nearest its offshore termination point) appears to pass through an area known to include rocky outcrops/reefs and kelp beds (see **Exhibit 10** for aerial imagery showing this area). As such, there appears to be a strong likelihood that at the time that portions of the line were replaced in 1984 and between 2010 and 2013, that this was done within and through an area of sensitive marine habitat (both hard and soft substrate)[53] and therefore resulted in some level of non-insignificant adverse impacts to that habitat. Those impacts likely persisted until burial of the outfall occurred due to sand movement and would likely occur again if and when the outfall line and reef are exposed in the future due to potential futures changes in sand movement.

Although one can identify with some precision the square footage of hard bottom habitat adversely impacted by a project, it is difficult to create new underwater hard bottom habitat to mitigate for the adverse impacts of a project to this habitat type. The Commission has, however, approved enhancement of underwater habitats as appropriate mitigation for these types of impacts. One form of habitat enhancement is the removal of derelict fishing gear and other marine debris from hard bottom habitat. UC Davis has an established program, its Wildlife Health Center's California Lost Fishing Gear Recovery Project that removes derelict nets and gear from submerged reef habitat (see **Special Condition 8** and discussion in the "Conflict Resolution" section below for justification of project approval and imposition of special conditions here).[54] Derelict fishing gear is found in the water along the entire coast of California. The gear is potentially hazardous to divers and an array of wildlife including seabirds, turtles, sea otters, and other marine mammals. Derelict fishing gear affects the marine environment in several ways: it can continue to "catch" fish and marine animals, which become enmeshed or trapped, and it can damage the habitat upon which it becomes entangled or upon which it rests. It is also a visual blight on the seafloor, diminishing the natural aesthetic quality of the seafloor and rocky habitat. Currently, the SeaDoc Society, a marine ecosystem health program of the UC Davis Wildlife Health Center, is focusing gear recovery efforts within the State's network of MPAs and near the Channel Islands.

Commission staff recently examined data on completed compensatory mitigation work to quantify the acreage of compensation that could be achieved for the funds provided to the Recovery Project for this purpose. In total, between 2009 and 2015, the Recovery Project has received $801,193 in compensatory mitigation funds to mitigate impacts to a collective total of 24,325 square feet of hard bottom habitat from seven fiber optic cable projects and two pipeline

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[53] Hard substrate is exposed rocky seafloor that provides habitat for a diverse group of plants and animals. Along much of the California coast, hard substrates, including exposed bedrock, rock outcroppings, and rock crevices, provide habitat and shelter for numerous sessile organisms, fishes, and mobile invertebrates such as lobsters and crabs.

[54] Started in 2005 by the SeaDoc Society, the primary purpose of the Recovery Project is to remove commercial fishing gear that is accidentally lost or intentionally discarded in California's marine environment. The Commission has previously found contributions to the Recovery Project to be an acceptable form of compensation for unavoidable adverse impacts to substrate habitat and the organisms it supports. For example, recently, in combined CDP/Consistency Certification Number E-08-021/CC-005-09, the Commission accepted AT&T's offer of $100,000 to the Recovery Project as adequate to compensate for potential project-related impacts to 5,500 square feet of hard substrate and its biota.

removal projects. With these funds, the Recovery Project was able to collect 1,301 items of derelict fishing gear over 105 field days, resulting in the enhancement of an estimated 64,702 square feet of bottom habitat. These data show that the Recovery Project was able to achieve enhancement of marine habitats at a mitigation ratio of 2.7 to 1 and for a cost per area of $12.38/square foot. When this cost per acre figure is adjusted to present dollars using the Consumer Price Index, the result is $13.80/square foot.

Thus, to mitigate for the impacts of the replacement of 600 feet of outfall in 1984 and the replacement of 100 feet of outfall between 2010 and 2013[55] in accordance with the requirements of Sections 30230, 30231 and 30233 as discussed above, and based on the GPS coordinates for the end of the outfall, it is estimated that approximately 325 linear feet of line passes through an area known to support rock outcrops/reef and kelp beds (see **Exhibit 10** for aerial imagery showing the outfall termination point). Recent Commission actions (e.g., CDP 9-16-0160) provided for a habitat mitigation fee to be calculated by applying a 3:1 mitigation ratio to the total square footage of impacted hard substrate and then multiplying that area by a compensation rate of $13.80 per square foot, and then adding an additional 5% administrative fee (calculated from the mitigation fee amount) to ensure that all of the actual mitigation fee is applied to direct habitat enhancement efforts. Thus the fee, in this case, would equate to $2,991.84 (216.8 square feet x $13.80) plus administrative costs of $149.59 (5% of $2991.84) for a total of $3,141.43.[56]

This mitigation is also warranted because of the location of the outfall in MPAs. On April 13, 2007, the California Fish and Game Commission voted unanimously to adopt 29 MPAs covering many of those areas identified as particularly important through the Marine Life Protection Act Initiative process in the Central Coast study region. The District's proposed ATF outfall replacement would involve the placement of outfall pipeline portions within the Cambria Marine Conservation Area and the Monterey Bay National Marine Sanctuary, both of which constitute MPAs. Coastal Act Section 30230 requires special protection of areas of special biological significance, such as MPAs. The replacement of the outfall in these MPAs caused impacts in the MPAs as identified above. **Special Condition 8** will also ensure the enhancement of the marine environment along California's central coast in and around these MPAs, thereby ensuring that the special protection of these areas required by Section 30230 and 30231 is provided (see discussion in the "Conflict Resolution" section below for justification of project approval and imposition of special conditions here).[57]

Further, because the outfall has failed as recently as 2010, an integrity assessment would be required in order to ensure that the outfall line is not leaking or in danger of failure, including close to shore, to ensure resource protection consistent with Coastal Act Sections 30230 and

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[55] The 100-foot section was replaced in the same footprint, and thus separate mitigation is not required.

[56] This value is based on an estimated 216.8 square feet (325 linear feet x 0.666-foot outfall width) of pipeline transit through sensitive marine habitat and the resulting potential habitat loss, damage, displacement and disturbance.

[57] The Applicant has suggested that the outfall mitigation fee be paid to the San Luis Obispo Marine Mammal Center. However, the direct impacts from the outfall are to ocean substrate and thus the mitigation fee is more appropriately paid to an entity that will directly enhance marine substrate by removing derelict fishing gear from same. Removal of such gear will also benefit marine mammals by reducing the risk of their entanglement in derelict fishing gear.

30231. Although the District's diver survey team suggested that the line be dredged to facilitate this type of inspection, less invasive methods may also be used to evaluate the line (such as internal video surveys or remote sensing equipment that can be operated within the line or from the surface of the sand above it). Thus, **Special Condition 9** requires the District to develop an Executive Director-approved plan to carry out an integrity assessment of the outfall line. Once approved, the Plan would need to be implemented as approved. **Special Condition 9** also requires that if the assessment shows that the line is leaking, the diffuser is not functioning as designed, or portions of the line are at risk of failing, the District will be required to submit a complete permit amendment application within 30 days to address the compromised condition of the line (see discussion in the "Conflict Resolution" section below for justification of project approval and imposition of special conditions here).

Unpermitted Riprap Revetments
As mentioned above, the WWTP is located in a low-lying area immediately adjacent to the Pacific Ocean and Arroyo del Padre Juan Creek. This area currently experiences flooding events, primarily during winter storms that produce large swells from the ocean and heavy flows down the creek. Because of its location in this flood prone area, San Luis Obispo County has included this site within its Flood Hazard (FH) combining designation or overlay zone (see **Exhibit 5** for the FH map, which is part of the County's LCP, for San Simeon Acres).

As discussed above, the primary purpose of the proposed ATF retention of the revetments (both the main revetment fronting the WWTP and extending along the bank of Arroyo del Padre Juan Creek, as well as the additional riprap located in the creek) is to protect the WWTP and associated critical infrastructure, including the pipe support structure and its abutments.

In terms of the main revetment, however, (and also as described above), this existing revetment does not provide the level of protection typically required for critical coastal public infrastructure such as this facility (i.e., protection against a 100-year storm event as well as for 100 years of safety and stability). Recently, and according to a June 14, 2018 letter to Commission staff (see **Exhibit 20**), the District now proposes to add about two feet of additional riprap to the top of the existing revetment to provide additional protection at this time. However, as proposed, and even with the additional riprap, the Commission cannot find that the proposed project will adequately protect marine and freshwater resources and water quality, because even with the added riprap the revetment would only provide protection against a 10-to-20-year storm. Thus, even with the proposed addition of riprap, the revetment cannot be relied upon to avoid water quality and public safety impacts in the long term. Thus, if the WWTP were to experience a 100-year storm event, major damage, including wastewater spills, would likely occur.[58]

Typically, the Commission would require protection to be adequate to protect the existing critical infrastructure for the longer term, such as protection against a 100-year storm and safety and stability over 100 years, and thereby adequately protect water quality. Conditions to remove the inadequate shoreline protection would be required as would conditions to replace the inadequate

[58] It is worth noting that immediate removal of the revetment to address project inconsistency with Coastal Act hazards policies, including Section 30253, would implicate the same marine resource and water quality concerns in that the WWTP would be at risk of a 100-year storm event, which would likely result in major damage and wastewater spills, given that there is no immediately-available feasible location to relocate the WWTP.

protection with adequate protection (e.g., a vertical seawall). However, as described above, ATF approval of the revetment cannot be found consistent with Coastal Act hazards policies in the long term. Therefore, as discussed below (see discussion in the "Conflict Resolution" section below), this approval is structured as a temporary approval, in which the District will retain the existing revetment and creek riprap, install additional riprap between the top of the existing revetment and the WWTP's existing perimeter wall for additional coastal hazard protection in the 10-year authorization period (via new riprap, or by using existing riprap on the beach in order to return as much public beach property to the public as possible), until such time as the ATF-approved revetment is removed or until the 10-year limited authorization expires (or is extended), whichever occurs first (**Special Condition 2** and **Special Condition 4**). The Commission finds that this limited-term authorization for the continued placement of the revetment to allow the District adequate time to fund, study, and pursue relocation efforts for the WWTP (which if relocated will ultimately ensure greater protection of water quality and habitat) adequately mitigates for potential impacts of the proposed development consistent with Sections 30230 and 30231.

Special Condition 4 also requires submission of a Construction Plan that includes best management practices required by the Commission in the past to protect water quality and marine resources during construction (including maintaining good construction site housekeeping controls and procedures, the use of appropriate erosion and sediment controls, requiring any equipment washing, refueling, or servicing at the site to be done at least 50 feet from the site's perimeter fence, etc.). To further protect marine resources and offshore habitat, **Special Condition 4** requires construction documents to be kept at the site for inspection, and also requires a construction manager to be available to respond to any inquiries that arise during construction.

In terms of the riprap revetment placed in the creek to protect the pipe support structure and its abutments, the majority of this riprap has been buried over time by creek sediment and beach sand and has been further covered over by riparian and nonnative invasive vegetation. According to the Applicant's biological assessment, little riprap is visible in the creek today. The integrity of this riprap is thus unknown at this time and it is not clear that this riprap provides adequate protection of the pipe support structure and the abutments necessary to protect water quality in the case of a 100-year storm. However, the riprap may provide a lower degree of protection (i.e., less than 100-year storm) of the pipe support structure and the abutments, and thus immediate removal of the creek riprap would potentially have impacts to marine resources and water quality if such removal led to undermining of the pipe support structure. Again, this conclusion is further informed by the fact that there is no immediately available feasible location to relocate the entire WWTP at this time in order to entirely avoid potential impacts resulting from failure of the pipe support structure. For this reason (and as discussed in the "Conflict Resolution" section below), this approval is structured as a temporary approval, in which the District may retain the existing riprap in the creek during the 10-year authorization period until such time as the riprap is either removed or until the 10-year limited authorization expires (or is extended), whichever occurs first (**Special Condition 2**). The Commission finds that this limited-term authorization for the continued placement of the creek riprap to allow the District adequate time to fund, study, and pursue relocation efforts for the WWTP (which if relocated would entail removal of the pipe support structure, abutments and riprap, ultimately ensuring protection of water quality in the

long term) adequately mitigates for potential impacts of the proposed development, consistent with Sections 30230 and 30231.

Conclusion
Thus, for the reasons outlined above and as conditioned, the project is consistent with Coastal Act Sections 30230, 30231, and 30233 regarding protection of marine and freshwater resources and offshore habitat. (See discussion in the "Conflict Resolution" section below for justification of project approval and imposition of special conditions here.)

E. SCENIC AND VISUAL RESOURCES

Applicable Policy
Coastal Act Section 30251, cited below, protects the aesthetic and visual quality of coastal areas:

> ***Section 30251.*** *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.*

Coastal Act Section 30251 thus requires that scenic and visual qualities of coastal areas be considered and protected as a resource of public importance. New development must be sited and designed to protect public views to and along the ocean and in scenic coastal areas, and where feasible to restore and enhance visual quality in visually degraded areas. The proposed project includes after-the-fact development located at the WWTP site that is in the public view from a variety of vantage points.

Analysis
First, with respect to views from Highway 1, the District's WWTP is located in a small developed area of the north coast of San Luis Obispo known as San Simeon Acres (see pages 3-4 of **Exhibit 1**). Highway 1 is a National Scenic Byway in this location and public views from Highway 1 are protected along this stretch of coast as required by the County's LCP and Coastal Act, and great care has been taken over the decades to protect such views of the coast and ocean in this general location. The proposed project includes the ATF authorization of a riprap revetment and related development near the immediate shoreline, but none of this development is visible from Highway 1 due to the presence of other intervening development located between Highway 1 and the WWTP site. Thus the proposed project will not have any visual impacts to coastal views from Highway 1.

However, with respect to coastal views from other locations, the project site is on and adjacent to a popular beach recreation area, and is near a series of coastal paths, including the beach access path immediately upcoast of the site, in which the WWTP and the revetment are in view (see photos in **Exhibit 3**). This beach is an important coastal access destination for residents and

visitors to the area alike. The riprap revetment is an anomaly inasmuch because there is virtually no armoring upcoast and downcoast at this location and in the overall San Simeon Acres beach area.[59] Thus the beach remains a relatively pristine area with a mostly natural, unarmored shoreline. Although the District contends in its June 14, 2018 letter (see **Exhibit 20**) that the riprap and the WWTP are "necessary visual distractions in the civilized world that we live in" and that "the riprap actually blends in naturally to its surroundings," the proposed project would authorize an unnatural artificial looking and highly visible structure (i.e., the riprap revetment) in this significant public recreational viewshed, including as seen from the beach and from nearby trails. And the District's proposal to add two feet in height to the revetment will only exacerbate such public view impacts.

In terms of views from the beach and nearby trails (including the vertical accessway on the north side of the creek), the revetment fronting the WWTP is visible from these locations and has been for 36 years (i.e., since 1983). Through this authorization, the revetment (including the additional two feet of rock) would continue to be present and highly visible from the beach and trails for an additional 10 years (pursuant to **Special Condition 2)**. As mentioned, the beach in this location is highly popular and well used, especially in the summer, when increased numbers of visitors descend on San Simeon Acres to explore San Luis Obispo County's rural north coast and visit Hearst Castle. Many of these people stay in the area's multitude of lodging options and take advantage of the beach in front of the WWTP. The revetment thus presents an artificial distraction in its present state to a multitude of people, and has been adversely impacting public views for decades. In addition, only the top of the riprap revetment is currently being screened from view by vegetation (see photos of the site in **Exhibit 3**). While vegetation growth on the top of the revetment has helped mitigate some of the visual impact over time by screening the riprap, photographic evidence of the revetment soon after its placement shows an imposing and unnatural (compared to the natural bluff landforms upcoast and downcoast of the project site) riprap façade covering a portion of the back beach and natural bluff area. In addition, even though this vegetation is providing some relief, the covering is a variety of mostly nonnative invasive vegetation (e.g., *Myoporum* and iceplant), which has been fostered over time by the riprap itself, leading to additional visual and habitat impacts.

Other aspects of the proposed project also cause public view impacts as seen from the beach and trails, including the pipe support structure (which was fully replaced in 1999) and remnant riprap that is still visible in the creek mouth.

Thus, the proposed project has adversely affected, and will continue to adversely affect, the public viewshed and aesthetic of the area for (at least) another 10 years by retaining and expanding the riprap revetment along the back beach and bluff area of the project site, and other proposed development within the creek area, in an area of coastline that is otherwise mostly unarmored. The riprap revetment is prominently visible in public views from vantage points on the beach and the vertical accessway located directly across the creek from the WWTP, detracting from and degrading views from these areas. In short, the project as proposed is inconsistent with the Coastal Act's visual resources policies, specifically 30251, because the

[59] The exception to this is a small amount of riprap located at the base of the Pico Avenue beach access stairway, located about 1,000 feet to the north of the WWTP.

visual impact caused by the riprap revetment and associated development is significantly adverse considering the generally otherwise-unarmored nature of this area.

Therefore, to reduce/mitigate the revetment's identified significant adverse visual impacts, several options could be recommended. The first is to require a different shoreline protective device that would better blend into the area's natural aesthetic. For example, the District could be required to, at least, remove the riprap revetment fronting the WWTP and install a vertical wall, which could be colored, contoured, and textured to mimic natural bluffs. This would provide a visual improvement over the riprap, while still providing protection for the WWTP. In addition, the top of the vertical wall could be planted with native bluff landscaping that would cascade down the wall's face, which would further help soften its visual impact. Another recommendation would be to fully revegetate the existing riprap revetment fronting the WWTP (including removal of all nonnative species and revegetation with native, drought-tolerant, and seaside-friendly vegetation) to provide effective vegetative screening. Restoration within the creek would also provide for some visual mitigation to soften the impacts identified above.

However, as described previously in this report, while mitigating the revetment's coastal resource impacts *could* include substantial measures now to address impacts in the short term (e.g., replacement of the revetment with a vertical wall that mimics the natural bluff form, and/or impact fees, etc.), such mitigation would divert scarce time, money, and resources the District needs in order to focus on what is ultimately the only way to find the revetment consistent with the Coastal Act in the long term (i.e., relocation of the WWTP out of this hazardous beachfront location, followed by removal of the revetment and nonnative vegetation, restoring the WWTP site to a safe and level configuration that roughly matches the surrounding areas, and performing habitat restoration in the creek; see discussion in the "Conflict Resolution" section below for justification of project approval and imposition of special conditions here). Again, the eventual relocation of the WWTP, and restoration of the site as noted above, is the long-term solution for Coastal Act consistency. When authorization for the riprap revetment expires, the District will in all likelihood need to relocate the WWTP, and thus the revetment will likely be removed and the site rehabilitated (and the revetment's visual resource impacts, which heretofore could only be mitigated for, will also be eliminated permanently as well), consistent with **Special Conditions 2** and **3**. As discussed below in the "Conflict Resolution" section, the revetment can only be found consistent with the Coastal Act for an interim period to protect the existing WWTP while the District undertakes efforts to relocate the WWTP outside of this hazardous location.

Thus, in the interim, this approval is conditioned accordingly (see **Special Conditions 4 and 6**) to ensure riprap protection is allowed for the next 10 years, and the adjacent creek area is restored as much as feasible for the life of the 10-year authorization (see further discussion of creek restoration in the "Biological Resources" section below). These components of the required Mitigation Plan will help to ensure that the project's visual resource impacts are addressed as much as possible consistent with the visual resource protection policies of Coastal Act Section 30251 for the limited 10-year duration of this permit. Therefore, as conditioned, the proposed project can be found consistent with the Coastal Act.

F. PUBLIC ACCESS AND RECREATION

Applicable Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road (Highway 1). Coastal Act Section 30210 requires maximization of public access consistent with public safety needs, and Coastal Act Section 30211 requires that development not interfere with the public's right to access the sea. Coastal Act Sections 30212(a)(1) and (a)(2) require new public access in development projects located between the nearest public roadway to the shoreline and along the coast except where it is inconsistent with public safety, etc., and where adequate access exists nearby. Section 30213 requires that lower-cost visitor and recreational facilities be protected, and provided where feasible. And, finally, Sections 30221 and 30223 protect oceanfront land and upland areas for recreational uses, respectively:

> ***Section 30210.*** *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 30211.*** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*
>
> ***Section 30212(a)(1)(2) (in relevant part).*** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby…*
>
> ***Section 30213 (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 30221.*** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*
>
> ***Section 30223.*** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Public Access Background

Permitting History

The Commission has approved two CDPs on the District's WWTP site previously: CDP 199-09 and CDP 4-85-180. Specifically, on March 9, 1979 the Commission approved CDP 199-09, which allowed for the construction of a 100,000-gallon flow-balancing tank. This CDP was conditioned to require recordation of a deed restriction binding the Applicant and any successors in interest to allow the public the right to use that portion of the beach on the District's property

from the mean high tide line to the toe of the bluff (see **Exhibit 6** for the recorded Deed Restriction dated December 8, 1981). In other words, before the revetment was installed in 1983, the beach it was installed on was already required by the Commission to be dedicated to public beach use, not riprap revetment use.

On June 26, 1985, the Commission approved CDP 4-85-180, which allowed for an increase in the sewage treatment capacity from 150,000 gallons per day (gpd) to 200,000 gpd by installing aeration and clarifier tanks. This CDP included a special condition that required the District to accept and agree to maintain any outstanding vertical and lateral access offers of dedications (OTDs) in the area. The District, however, did not comply with this special condition requirement. Notwithstanding the District's lack of compliance with the condition and lack of due diligence to accept the OTDs before they expired, however, since that time the Commission worked to ensure that such OTDs did not expire, and independent of the District was able to reach agreements with other public entities (i.e., San Luis Obispo County and the State Coastal Conservancy) to accept the totality of outstanding public access dedications in the area. These include lateral public access dedications between the mean high tide line and the toe of the bluff[60] and vertical access dedications from the blufftop to San Simeon beach.[61] See **Exhibit 7** for the locations of these public access dedications.

Overview of Existing Access in San Simeon Acres

In addition to the beach area seaward of the WWTP that was deed restricted for public beach use in 1979 (now partially covered by the unpermitted revetment) described above, public access to and along the beach within the San Simeon Acres area exists in several places. For example, existing lateral and vertical access is available north of the project site. The primary vertical access in this area is a stairway that is located about 1,000 feet north of the WWTP at the end of the cul-de-sac on Pico Avenue. The stairway, which has recently been repaired, provides public access from the end of the cul-de-sac to the beach. Free and ample vehicular parking is available at the end of the cul-de-sac as well. Also, on the Cavalier Oceanfront Resort property (which is about 300 feet north of the WWTP), a recorded deed restriction requires public access from the mean high tide line to the toe of the bluff (as required by CDP 4-81-242). While this deed restricted access area is technically on the beach, the resort property and the adjacent Sands-by-the-Sea hotel property contain an informal blufftop trail adjacent to the blufftop's edge and a more formalized series of pathways between the blufftop and the hotels that are also used by the general public, and which also include a series of benches and lookouts. These trails then connect to a sidewalk that extends along San Simeon Avenue, where the sidewalk then meets a partially paved trail that extends down along the northern side of Arroyo del Padre Juan Creek and terminates on the beach. See **Exhibit 7** for these access points that are located north of the project site.

Directly to the south of the WWTP, there are not any lateral blufftop trails per se, primarily due

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[60] Including as required by CDPs 4-81-242 (Cavalier Acres, Inc.), 4-82-566 (Cohen et al.), 4-82-380 (Western California Investments), 4-85-175 (Sansome et al.), 418-28 (Sessa) and 4-86-236 (Midland Pacific Building Corporation).

[61] Including as required pursuant to CDPs 4-81-242 (Cavalier Acres Inc.), 4-82-566 (Cohen et al.), 4-85-175 (Sansome et al.), and 42-02 (Stinson – which expired).

to intervening residential development that is located seaward of Balboa Avenue, and access is along the street in this area. With respect to vertical access from Balboa to the beach, there are two accepted vertical OTDs[62] south of the WWTP, but these accessways have not been formally developed or opened to date. However, an informal vertical accessway exists at the intersection of Balboa Avenue and Vista Del Mar Avenue, with free street parking available. Here, an unimproved dirt path, just upcoast of San Simeon State Park property, connects the road to the blufftop, and an informal path down the bluff provides access to the beach.[63] This path is well used by the public. See **Exhibit 7** for the location of the two accepted OTDs and for the informal vertical access path.

In conclusion, there are two existing vertical access points to the beach north of the project site and one to the south providing the public a means to get to the beach. Regarding lateral access, while lateral access is available on the beach and lateral blufftop access exists north of the project site, there is no lateral bridge connection across Arroyo del Padre Juan Creek to connect to Balboa Avenue and Vista del Mar, which are located adjacent to or south of the project site.

Analysis

This entire stretch of coast, including the beach located seaward of the WWTP site (which, as previously mentioned, was restricted by the Commission for public access, and the unpermitted revetment is currently encroaching upon a portion of this restricted area), is very popular with residents and visitors alike and is heavily used by the public, especially in the summer as visitors take an opportunity to enjoy the coast to surf, fish, sunbathe, walk, and swim. As discussed further above in the "Coastal Hazards" section, shoreline structures can have a variety of negative impacts on coastal resources, including adverse effects on beaches and sand supply, which ultimately result in the loss of the beach with associated impacts to public recreational access. The proposed project has impacted beach public access here for the last 36 years without proper authorization (and will continue to impact this critical coastal resource for at least the next 10 years under this approval until the WWTP is anticipated to be relocated and the revetment is removed pursuant to **Special Condition 2**).[64] This impact to public access has resulted from encroachment of the revetment onto approximately 3,000 square feet of beach that the Commission previously restricted for public access, and the resultant loss of beach creation due to passive erosion (over 6,000 square feet of beach) and the loss of sand that would be supplied to the shoreline system from erosion if the bluffs were not armored (nearly 1,300 cubic yards) since then and for the initial 10-year authorization term. For these reasons, the proposed project is inconsistent with the public access policies cited above, which require: 1) that public recreational access opportunities be maximized (Section 30210); 2) that development not

[62] These OTDs, which were required by CDPs 4-82-566 (Cohen et al.) and 4-85-175 (Sansome et al.), have been accepted by the State Coastal Conservancy.

[63] San Simeon State Park is located just south of this informal trail. A segment of the California Coastal Trail runs along the blufftop in this area.

[64] As discussed in the "Conflict Resolution" section below, **Special Conditions 1 and 2** allow the revetment, and thus the WWTP, to remain in place during an interim 10-year period (subject to extensions) while the District undertakes efforts to relocate the WWTP outside of this hazardous location. Upon expiration of this approval, the riprap revetment will also need to be removed, which will require removal of the encroachment on the beach (thus freeing up the underlying lateral access easement area), will eliminate passive erosion impacts, and will allow for the bluff to naturally retreat.

interfere with the public's right of access, including to the beach (Section 30211); 3) that development located between the sea and first public road provide access to and along the shoreline (Section 30212); and, 4) the protection of lower-cost visitor recreational opportunities (Section 30213) (see discussion in the "Conflict Resolution" section below for justification of project approval and imposition of special conditions here). As further discussed in the "Coastal Hazards" section above, these public access impacts can and have been quantified in monetary terms based on a real estate valuation method, and further factoring in loss of beach due to fixing of the back beach, passive erosion, and loss of sand supply. Strictly in terms of monetary value, these public beach access impacts (including loss of usable beach) total more than $4.5 million.

To address the public access impacts of the revetment that have occurred over the past 36 years and will continue until the WWTP is relocated and the revetment is removed, aside from payment of the more than $4.5 million mitigation fee due to the lag time between payment of such fees and realization of the intended mitigation, a pedestrian/bicycle bridge over Arroyo del Padre Juan Creek was initially discussed with the Applicant. The bridge would fill a much needed gap in the California Coastal Trail (CCT) along this area of coast by providing a lateral access connection between upcoast trails and the downcoast areas of Balboa Avenue, Vista del Mar, and San Simeon State Park, and effectively connecting north and south San Simeon Acres and CCT components therein. In discussions with Commission staff regarding potential mitigation packages to offset the above-described coastal resource impacts, the District originally prepared and submitted two conceptual design options for the access bridge (see **Exhibit 11**). The idea was that the bridge could both mitigate for these impacts and further the District's then-stated goal of constructing such a bridge connection. The bridge would provide lateral access from the network of blufftop trails upcoast from the project, across the creek, and through to Balboa Avenue and open space located downcoast at San Simeon State Park, effectively adding another connection, and certainly the most critical in a CCT sense, between north and south San Simeon Acres. The bridge would close a gap in the access system at this location (i.e., there is no creek crossing, and access users are forced to circumnavigate the creek either by walking along the beach or walking up to Hearst Drive, to get from one side of the creek to the other) and thus facilitate full connection of the CCT in this area, providing substantial public access benefits. However, the District indicates that the cost of such a bridge would make such a project infeasible, and has identified a different mitigation package.

Specifically, the District now proposes to decommission, demolish, and restore the WWTP site when its functions have been relocated, and to dedicate the site in fee for public use (e.g., low-intensity public park use – see **Exhibit 12 and Special Condition 10**). Such restoration and dedication is appropriate, and provides for meaningful offsetting mitigation for project impacts at that time. In addition, and to provide meaningful mitigation in the near term to begin to offset accrued impacts, the project is conditioned (**Special Condition 7**) to require public access overlook improvements in San Simeon Acres, potentially on nearby State Parks' property, subject to State Parks' concurrence (see **pages 4-6 of Exhibit 12**). Together, such a mitigation package is an appropriate means to offset the impacts from unpermitted armoring and development that has been in place for more than three and a half decades without proper consideration of mitigation for substantial adverse impacts caused to coastal resources resulting from said armoring and development, and for continuing project access impacts over the temporary approval horizon.

As conditioned to require this mitigation package, and as discussed in the "Conflict Resolution" section below to require removal of the revetment upon expiration of this approval, the project can be found consistent with the Coastal Act public access policies identified above because the project and its mitigation package (i.e., the overlook and the restoration (including riprap removal and restoration), dedication, and public beach access use of the WWTP in the longer term) will: 1) provide maximum public access and recreational opportunities consistent with public safety needs (Section 30210); 2) facilitate the public's right of access to the sea, including the use of dry sandy beaches (Section 30211); 3) provide access from the nearest public roadway to the shoreline and along the coast (Section 30212); 4) provide a lower-cost recreational facility (i.e., the overlook (Section 30213); 5) protect oceanfront land for recreational use (Section 30221), and 6) provide an amenity in an upland area (i.e., the overlook) that will support recreational uses (Section 30223).

G. BIOLOGICAL RESOURCES

Applicable Policies

Coastal Act Sections 30230 and 30231 state:

> ***Section 30230.*** *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****. 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 groundwater supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Coastal Act Section 30240 requires that development within and adjacent to ESHA be sited and designed to prevent impacts to such areas, and states:

> ***Section 30240.***
>
> *(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.*

Analysis
As described earlier, the proposed project includes after-the-fact placement of an up to 450 cubic yards of riprap in two revetments within Arroyo del Padre Juan Creek that occurred in 1995 (with associated vegetation clearing and bank grading activities), and the after-the-fact placement of a more than 650-cubic-yard riprap revetment along the face of the low coastal bluff and along the WWTP's west and north sides. These revetments were placed directly in the creek and riparian corridor, as well as adjacent to it.

The general area of both revetments includes a seasonal beach barrier lagoon and riparian corridor, and beach and tidal wetlands that support species characteristic of saltmarshes and coastal dunes. A District-submitted biological report from 2006[65] describes the saltmarsh flat as dominated by "salt grass and ice plant, with beach silver weed, beach bur, seaside daisy, and bulrush." Salt grass is a species characteristic of both salt marshes and coastal dunes while beach bur is characteristic of beaches and coastal dunes.[66] A more recent 2016 report[67] concludes similarly that the area within the creek contains both seasonal wetlands as well as a variety of riparian vegetation (see **Exhibit 8** for the Applicant's habitat map for this area). The Commission's Ecologist, Dr. Laurie Koteen, has evaluated the relevant project materials and concluded that the portion of the riprap placed near the pipe support structure abutments was placed directly in environmentally sensitive habitat area (ESHA) and the main riprap revetment covers a portion of the upper beach. Currently, the riprap placed in ESHA is essentially completely buried and covered with a variety of native and nonnative vegetation, and the riprap around the WWTP is covered at its top with nonnative invasive *Myoporum laetum* and nonnative invasive ice plant. In summary, the revetments cover an area of beach, wetlands, beach lagoon, and riparian habitat, some of which constitutes ESHA under the Coastal Act.

The California Department of Fish and Wildlife's Natural Diversity Data Base reports that California red-legged frogs, tidewater goby, and steelhead (federally listed as threatened, endangered, and threatened, respectively) have been recorded in Pico Creek, about a half-mile north of Arroyo del Padre Juan Creek. Other special status species identified in the general north San Luis Obispo County coastal region include western snowy plovers, western pond turtles, and two-striped garter snakes. In terms of the beach environment here, beach wrack is seasonal and ephemeral, but may be an important beach foraging and habitat resource at different times of the year. The California Coastal Records Project website (see, e.g., the photos in **Exhibit 2**) shows a generally narrow sandy beach dotted with a moderate amount of wrack that forms a recognizable wrack line and that lacks large cobble/aggregate. Although the area does not appear to be suitable for nesting by shore birds, it appears to provide foraging habitat in the summer and fall when sand is present. The small barrier beach lagoon, salt marsh, and riparian habitat of Arroyo del Padre Juan Creek appear to represent only marginal habitat for the steelhead, tidewater goby, red-legged frog, western pond turtle, and two-striped garter snake.

If any of these species are periodically present, the riprap that lines the coastal bluff around the

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[65] By David Wolff Environmental and dated May 27, 2006.

[66] Hickman, J.C. 1993. The Jepson Manual of Higher Plants of California. University of California Press, Berkeley, CA. 1424 pp.

[67] By Kevin Merk Associates and dated May 23, 2016.

WWTP is unlikely to affect their use of the area. However, the riprap within the creek certainly can affect the natural processes of the creek and its habitat functions. The presence of the riprap can cause significant negative ecological impacts on the riparian corridor, seasonal beach lagoon, and wetland areas (all of which constitute ESHA), including because the placement of the riprap can prevent the establishment of coastal bluff native vegetation and disrupt the natural habitat for sensitive species. All of these impacts raise questions of consistency with Coastal Act Sections 30230 and 30231, which require protection of these creek and related resource values. In addition, riprap is not an allowed use in ESHA under the Coastal Act. Thus, the Coastal Act's ESHA and creek-related policies would direct denial of the riprap in Arroyo del Padre Juan Creek, and its removal.

Clearly, full removal and restoration of the areas affected, including the creek area and the beach and bluff surrounding the WWTP, would be the most Coastal Act-consistent project in the long term. At the same time, and for similar reasons as articulated in the "Marine Resources" section of this report, such riprap (both in the creek and around the WWTP) is protecting against immediate problems that accrue to the WWTP and its associated infrastructure by virtue of its low-lying and creek/creek mouth location, and complete removal now would put the WWTP at significant risk, including risk of additional impacts to these affected habitats (including in the case of potential release of contaminated materials). In other words, immediate removal of the revetments would result in greater inconsistency with Section 30240 than simply allowing it to remain in place over the next 10 years. As discussed below in the "Conflict Resolution" section, to reconcile this conflict in policies, the Commission here provides a 10-year limited-term authorization (which may be extended) for the existing revetment and riprap (which has been in place for 36 years and for which impacts to ESHA have already occurred) and allowing for interim measures to mitigate for those past and present/ongoing impacts to biological resources (see discussion below), and complete site restoration upon removal of the revetment and relocation of the WWTP, thus resulting in full consistency with Section 30240 at that time. Thus, this approval is conditioned on removal of the riprap revetments and restoration of the affected areas in the same time frame as applies to the relocation of WWTP functions to a more inland location. **Special Conditions 2 and 10** require full removal of the riprap revetments and restoration at such time as the riprap revetments is no longer in existence at this location or the CDP expires, whichever occurs first. Only in this way can the project be found consistent with the above Coastal Act requirements in the long term.

At the same time, and in the interim, it is also clear that the Applicant can take measures that will limit ongoing impacts on the creek and its related habitats to mitigate impacts to ESHA in the near-term via a program for non-native and invasive removal and native species replanting. The intent in this regard is not a full restoration of the affected area at this time, as that would necessarily entail more significant work, including disturbing existing habitat and removing the riprap itself. Rather, the intent is to eradicate the most significant of the adversely-impacting vegetation and implement a focused revegetation effort, including monitoring and performance criteria, to help offset project impacts over the interim 10-year approval period (as well as the previous 36-year period that the revetment has been in place in and near the creek without proper authorization). Thus, this approval is conditioned for such an effort in the area nearest to where the riprap was placed, along both sides of the creek, as shown generally on the plan sheets shown in the yellow and green areas in **Exhibit 9** (see **Special Condition 6**). It is noted that although the *Myoporum* and ice plant covering the top of the revetment nearest the beach are fairly

virulent invasive nonnative plant species, they are also effective in screening some of the riprap and softening its impact on the public view. This area is also the farthest from the more inland creek-related habitats, and thus has the least impact on them, relatively speaking. While the Commission would normally require removal of these nonnatives and revegetation with native vegetation in this area, this nonnative vegetation is allowed to remain in this case for the 10-year authorization period (which may be extended), after which full restoration of this area with native plant species will be required per **Special Conditions 2 and 10**. As conditioned, the project can be found consistent with Coastal Act Sections 30230, 30231, and 30240.

H. CONFLICT RESOLUTION

Applicable Policies

Coastal Act Sections 30007.5 and 3020(b) state:

> ***Section 30007.5.*** *The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.*
>
> ***Section 30200(b).*** *Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.*

Analysis

As noted previously in this report, the proposed project is inconsistent with a series of Coastal Act policies related to coastal hazards (in particular Section 30253) and coastal resource protection (and particularly in relation to Section 30240 related to ESHA) *in the long term*. However, as noted previously and as further explained below, denying the proposed project to eliminate these inconsistencies would lead to nonconformity with other Coastal Act policies, namely Sections 30230 and 30231 (marine resources and biological productivity) and Section 30240 (ESHA), which warrant protection *in the immediate term*. In situations such as these where there may be conflicts between Coastal Act policies, here where a proposed project is inconsistent with a Chapter 3 policy and denial or modification of the project would be inconsistent with other Chapter 3 policies, Section 30007.5 of the Coastal Act provides for resolution of such a policy conflict in a manner that is most protective of coastal resources. In past resolution of conflicts through application of Section 30007.5 the Commission has implemented the following seven analytic steps:

1. The project, as proposed, is inconsistent with at least one Chapter 3 policy;

2. The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources;

3. The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement;

4. The project, if approved, would result in tangible resource enhancement over existing conditions;

5. The benefits of the project are not independently required by some other body of law;

6. The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to "create a conflict"; and,

7. There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

The proposed development meets all of the above criteria for applying conflict resolution, as follows:

Step 1
First, for the Commission to apply Section 30007.5, a proposed project must be inconsistent with an applicable Chapter 3 policy. Approval of the revetment would be inconsistent with the Coastal Act's hazard policies (in particular Section 30253) in the long-term. The ongoing placement and protection of the WWTP in its current low-lying, oceanfront location does not minimize risks to life and property in an area of high geologic and flood hazard, as exacerbated by sea-level rise (Section 30253(a)). Nor does reliance on the revetment to allow continued, long-term operation of the WWTP assure stability and structural integrity of the site (Section 30253(b)). To the contrary, by seeking ATF approval of the revetment at this specific site, the WWTP requires construction of a protective device that substantially altered the natural landform along the bluffs and cliffs at this location (inconsistent with Section 30253(b)). The revetment is also inconsistent with other Coastal Act coastal resource protection policies as articulated in the findings above, perhaps most fundamentally because the revetment and associated riprap is partially placed within ESHA inconsistent with Section 30240.

Step 2
Second, the project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources. A true conflict between Chapter 3 policies results from a proposed project that is inconsistent with one or more policies, and for which denial or modification of the project would be inconsistent with at least one other Chapter 3 policy. Further, the policy inconsistency that would be caused by denial or modification of a project must be with a policy that affirmatively mandates protection or enhancement of certain coastal resources.

As discussed above, the proposed project is inconsistent with Coastal Act coastal hazard and coastal resource protection policies (particularly Sections 30253 and 30240), which warrant denial of the project. However, Coastal Act Sections 30230 and 30231 affirmatively require the Commission to maintain and restore marine resources and the biological productivity and the quality of coastal waters for, among other things, protection of human health. Here, denial of the

proposed project on the basis of the above-described inconsistencies would require removal of the revetment, which would subject the WWTP to flooding, erosion, and other coastal hazards identified above (due to lack of an immediate feasible location to relocate the WWTP), as exacerbated by sea-level rise, and would result in significant risk of adverse impacts to marine resources and water quality if the WWTP integrity was compromised. Thus, at least in the immediate term, Sections 30230 and 30231 affirmatively compel approval of the revetment to *maintain* and *restore* marine resources and the biological productivity and the quality of coastal waters for *maintenance* of optimum populations of marine organisms and for the *protection* of human health.

Furthermore, though placement of the revetment results in long-term inconsistency with ESHA policies (Section 30240), by the same token, given that the revetment has been in place protecting the WWTP for so long, removal of the revetment (on the basis of the above-described Coastal Act inconsistencies) would subject the WWTP to the same flooding, erosion, and coastal hazards identified above, as exacerbated by sea-level rise, and result in significant risk of adverse impacts to ESHA if the WWTP integrity was compromised. Thus, in the immediate term, Section 30240 affirmatively compels approval of the revetment to *protect* ESHA against any new and significant disruption of habitat values.

Step 3
Third, the project, if approved with conditions as recommended by staff, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement. For denial of a project to be inconsistent with a Chapter 3 policy, the proposed project would have to protect or enhance the resource values for which the applicable Coastal Act policy includes an affirmative mandate. That is, if denial of a project would conflict with an affirmatively mandated Coastal Act policy, approval of the project would have to conform to that policy. If the Commission were to interpret this conflict resolution provision otherwise, then any proposal (no matter how inconsistent with Chapter 3) that offered a slight incremental improvement over existing conditions could result in a conflict that would allow the use of Section 30007.5. The Commission concludes that the conflict resolution provisions were not intended to apply to such minor incremental improvements.

The revetment, if approved as proposed to be conditioned herein, would be consistent with Sections 30230 and 30231 of the Coastal Act, which affirmatively mandate resource protection. As described above, the Commission's approval here of the revetment is only for a limited 10-year term to provide adequate protection of the WWTP and marine resources, water quality, and ESHA in the immediate-term while the District continues studying, evaluating, and developing a plan to ultimately relocate the WWTP from its current location, to ensure long-term consistency with coastal hazards (particularly Section 30253) and coastal resource protection (particularly Section 30240) policies. In fact, the limited authorization for the revetment here, as conditioned, ensures full consistency with Sections 30230 and 30231 because, upon development and implementation of a relocation plan, protection of marine resources, water quality, and ESHA will be assured in the long term because relocation of the WWTP pursuant to the plan (including decommissioning the plant, removing it, restoring the site to natural conditions, and dedicating it for public beach access related uses) will entirely avoid risk of adverse impacts to marine resources, coastal hazards, or ESHA in the long term by the WWTP.

Step 4
Fourth, the project, if approved with conditions as recommended by staff, would result in tangible resource enhancement over existing conditions. This is the case here for several reasons. First, portions of the WWTP, the revetment, outfall pipeline, and outfall structure as they currently exist are unpermitted development in violation of the Coastal Act. By approving the project as herein recommended by Commission staff (including requiring compensatory mitigation), the development will become legitimized in a manner that takes into account appropriate coastal resource protection, including mitigation for impacts.

Furthermore, as discussed throughout this report, the 10-year approval for the in-place development is the outcome most protective of coastal resources because it balances both short-term and long-term concerns regarding coastal resources. Namely, that uninterrupted and ongoing shoreline protection is necessary to protect marine resources (Section 30230) and water quality (Section 30231) from significant adverse impacts to the WWTP and associated infrastructure if the revetment were not in place to protect them. However, at the same time, in the long-term the revetment (and existence of the WWTP at its current location) are untenable because they cannot be found consistent with coastal hazards requirements (particularly Section 30253) and coastal resource protection (particularly Section 30240) policies on an extended timeframe. Thus, the 10-year approval (**Special Conditions 1 and 2**) provides protection for coastal resources in the near term (including compensatory mitigation) but also directs the District to continue developing a hazards response plan (**Special Condition 3**) to determine a feasible location where the WWTP and its functions can be relocated that will avoid the potential for any coastal resource impacts in the long-term.

Finally, as discussed above in this report, the proposed project can be found consistent with other resource policies of the Coastal Act, as mitigated and conditioned, which will result in tangible resource enhancement over existing conditions. This is especially so considering that the proposed riprap revetment here has been in place for 36 years without proper authorization and without proper consideration of mitigation requirements for significant adverse impacts to coastal resources resulting from that ongoing placement. These resource enhancements include:

Special Condition 6, which requires removal of nonnative and invasive species and further replanting of native species on and around the revetment in the creek area to limit ongoing ESHA impacts on the creek during the 10-year limited-term authorization for the revetment provided here. The intent of this mitigation is not full restoration of the affected area, but rather eradication of the most significant of the adversely-impacting vegetation and implementation of focused revegetation efforts, including monitoring and performance criteria, to help offset project impacts over the interim 10-year approval period (as well as the preceding period of unauthorized placement).

Special Condition 10 implements the District's proposed mitigation package and requires the District to decommission, demolish, and restore the WWTP site when its functions have been relocated, and to dedicate the site in fee for public use (e.g., low-intensity public park use). Such restoration and dedication is appropriate, and provides for meaningful offsetting mitigation for project impacts at that time relating to past and ongoing public access and sand supply impacts caused by past and limited-term retention of the revetment at the WWTP site. In addition, and to

provide meaningful mitigation in the near term to begin to offset accrued impacts, **Special Condition 7** requires public access overlook improvements in San Simeon Acres. Together, the mitigation package is an appropriate means to offset the impacts from the unpermitted armoring and development that has been in place for more than three and a half decades without proper consideration of mitigation for substantial adverse impacts caused to coastal resources resulting from said armoring and development, and for continuing project access impacts over the temporary approval horizon.

Special Condition 8 requires a $3,141.43 payment to UC Davis Wildlife Health Center's California Lost Fishing Gear Recovery Project to mitigate the project's marine resource impacts. The Lost Fishing Gear Recovery Project removes derelict nets and gear from submerged reef habitat, which will result in habitat enhancement of hard bottom habitat, which is difficult to mitigate for through replication, as is the case here.

Special Condition 9 requires an ocean outfall assessment to ensure that the outfall is not resulting in unforeseen adverse impacts to the marine environment.

Step 5
Fifth, the benefits of the project are not independently required by some other body of law. The benefits that would cause denial of the project to be inconsistent with a Chapter 3 policy cannot be those that an applicant is already being required to provide pursuant to another agency's directive under another body of law. In other words, if the benefits would be provided regardless of the Commission's action on the proposed project, the applicant cannot seek approval of an otherwise un-approvable project on the basis that the project would produce those benefits. That is, the applicant does not get credit for resource enhancements that it is already being compelled to provide.

Here, the proposed project's benefits of protecting marine resources and water quality through continued placement of the riprap revetment for a limited 10-year period, while a long-term hazards response plan for the WWTP is developed, are not required by another agency under another body of law.

Step 6
Sixth, the benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to artificially create a conflict. A project's benefits to coastal resources must be integral to the project purpose. If the project is inconsistent with a Chapter 3 policy, and the main elements of the project do not result in the cessation of ongoing degradation of a resource the Commission is charged with enhancing, the applicant cannot "create a conflict" by adding to the project an independent component to remedy the resource degradation. The benefits of a project must be inherent in the purpose of the project. If this provision were otherwise, applicants could regularly "create conflicts" and then request that the Commission use Section 30007.5 to approve otherwise un-approvable projects. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and easily manipulated process, and were not designed to barter amenities in exchange for project approval.

Here the identified benefits of the proposed project (protection of marine resources, water quality, and human health through continued use of the WWTP and the revetment) directly stem from the main purpose of the project, which is to allow continued placement of the revetment to provide protection to the WWTP and associated infrastructure from coastal hazards, and to provide upgrades to better treat wastewater. In other words, the entire purpose of the upgraded WWTP and the revetment that protects the WWTP and associated infrastructure is to prevent the types of marine resources, water quality, and human health impacts which would result if the WWTP were not upgraded and the revetment were not in place (due to breaching of or catastrophic failure of the WWTP resulting from lack of protection from coastal hazards).

Step 7
Seventh, there are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies. In this case, as discussed in the "Coastal Hazards" section above, there are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies. Specifically, this report analyzed the following potential alternatives: (1) no-project alternative (removal of existing revetment); (2) retention of the existing revetment; (3) removal of existing revetment and installation of vertical seawall; and (4) removal of existing revetment and full relocation of WWTP.

Regarding the no-project alternative, removal of the revetment would result in greatly increased risks of operational damage to the WWTP and associated infrastructure resulting in grave impacts to marine resources, water quality, and public health due to the hazardous location of this existing critical public infrastructure. Regarding retention of the revetment, the revetment in its present condition does not provide long-term protection, as discussed in this report, and would necessitate raising of the WWTP facility exterior wall and additional and more substantive armoring. However, the WWTP's exterior wall was built to retain fill soil and support the bluff and was not designed to withstand sea wave impact. Regarding installation of a new vertical seawall, the elevation of the seawall would have to be significantly higher than the revetment in order to prevent overtopping within the next 50 to 100 years. Furthermore, construction of a new vertical seawall would require heavy construction equipment that may result in additional environmental and biological impacts to the beach and creek. Ultimately, this alternative is not feasible. Finally, removal of the revetment and relocation inland of the WWTP does ensure the most consistency with coastal resources, but is not feasible *in the short term*. However, as is recommended here for a 10-year limited-term authorization for the revetment while requiring the District to develop a hazards response plan for the WWTP, this alternative is feasible (and required) in the long term.

Conflict Resolution Conclusion
Based on the above, the Commission finds that the proposed project presents a conflict between Coastal Act policies related to coastal hazards (in particular Section 30253) and coastal resource protection (and particularly ESHA, Section 30240) on the one hand, and Sections 30230 and 30231, on the other, which must be resolved through application of Section 30007.5, as described above. With the conflict among several Coastal Act policies established, the Commission must resolve the conflict in a manner which on balance is the most protective of significant coastal resources. In reaching this decision, the Commission evaluates the project's tangible, necessary resource enhancements over the current state (i.e., baseline conditions are 36

years of unpermitted development for which compensatory mitigation has not been properly considered) and whether they are consistent with resource enhancements mandated in the Coastal Act. In the end, the Commission must determine whether its decision to either deny or approve a project is the decision that is most protective of significant coastal resources.

In this case, the Commission finds that the impacts on coastal resources from not allowing ATF approval of the project, as conditioned, would be more significant in the short term than by providing a 10-year limited-term authorization to protect against impacts to marine resources, water quality, and human health while requiring the District to develop a hazards response plan which will ensure avoidance of significant adverse impacts to coastal resources (including from coastal hazards and to ESHA) in the long term. Denying the proposed project because of its above-described Coastal Act inconsistencies now would result in significant increased risk of operational damage to the WWTP and its associated infrastructure from coastal hazards, resulting in increased risk of significant adverse impacts to marine resources, water quality, and human health. In contrast, approving the development as proposed for a limited 10-year term would allow adequate protection of those resources during an interim period in which the District must develop a hazard response plan to relocate the WWTP and its associated infrastructure to a more appropriate inland location that avoids long-term issues relating to coastal hazards and ESHA consistency, thus ensuring maximum Coastal Act consistency in the long term. To ensure that all potential future development at the site and/or related to the WWTP and/or this CDP is appropriately evaluated at that time in light of the terms and conditions of this approval and is consistent with Coastal Act requirements, such future development shall be required to be processed through a CDP amendment by the Coastal Commission subject to the Coastal Act (see **Special Condition 12**).

Finally, the test for approval is not for the project to be “more” protective of significant resources; it must be “most” protective. In order for that finding to be made, the adverse coastal resource impacts caused by the project have to be avoided, minimized and mitigated to the maximum feasible extent. As discussed above, the 10-year limited term authorization for the ATF development, the implementation of the short-term mitigation plan and the longer-term removal and restoration of the site, and concurrent requirement for the District to develop a hazard response plan for the WWTP ensures that this approval is the most protective of coastal resources in the long term.

I. VIOLATION

Violations of the Coastal Act exist on the subject property including, but not limited to: placement of over 650 cubic yards of riprap at the bluff fronting the WWTP property in 1983; replacement of a majority of the WWTP’s ocean outfall line in 1984 and between 2010 and 2013; placement of riprap to protect the District’s pipe support structure crossing Arroyo del Padre Juan Creek (including associated grading and vegetation clearing in the creek) and repair and maintenance of the structure in 1995, and full replacement of the pipe support structure in 1999; and various miscellaneous development undertaken to WWTP components over time. See **Exhibit 18** for the Commission’s violation letters.

Commission staff and the District have engaged in ongoing conversations and efforts to resolve

the violations at this site for some time, beginning in 2001 when staff was first made aware of the unpermitted placement of riprap at this location. Ultimately, following an enforcement investigation (that identified even more unpermitted development, as identified above), the District submitted an ATF CDP application, including furnishing multiple studies, reports and additional information as requested by Commission staff. The application was then scheduled for hearing in 2009, but the District withdrew the application at that time in order to further discuss staff's recommended conditions, including the requirement to remove the revetment and to construct a vertical seawall. Additional conversations followed the District's withdrawal, including staff providing the Applicant with a list of additional application materials (e.g., updates to older reports and studies, etc.) that would be needed prior to any submittal of a new application.

Ultimately, following additional violation noticing in 2015, the District applied for the current project, seeking recognition and retention of all of the work previously done on the site without benefit of a CDP that is the subject of Enforcement Case No. V-3-01-028 (CDP Application No. 3-15-2114). Commission staff worked very closely with District staff and its representatives over the years on a project description that included all of the work identified above, so that the District could move forward with a clean slate and resolve the violations. Ultimately, however, when the CDP application was heard by the Commission in October 2018 in San Diego, the District withdrew their CDP application at the hearing, resulting in all of the aforementioned development that is the subject of Enforcement Case No. V-3-01-028 remaining unpermitted. The District subsequently reapplied for the same project, and it is again before the Commission for action (CDP Application No. 3-19-0020) at the Commission's July 2019 meeting in San Luis Obispo. Commission staff continues to take the position that because all of the identified unpermitted development above requires ATF recognition, the now-proposed project will justifiably resolve the entire scope of work undertaken on the site that is the subject of Enforcement Case No. V-3-01-028, if approved as recommended to be conditioned by staff.

Approval of this CDP will recognize the work done previously on the site without the benefit of a CDP, including a variety of upgrades, replacements, and expansions of key WWTP components done over the years (as described in **Exhibit 15**), and will allow the riprap revetment placed around the WWTP and around the pipe support structure to remain on the site for up to 10 years (which is the duration of this authorization, subject to extensions), pursuant to **Special Conditions 1 and 2**. This approval is structured for anticipated relocation of WWTP functions to a safer inland location, as well as restoration of the site and affected area (including dedication of the project site for public use as a park (see **Special Conditions 3 and 10**). The Applicant will also be required to mitigate in the interim for significant adverse project impacts to coastal resources, including temporarily adding to the riprap for increased coastal hazard protection, nonnative and invasive plant removal and native revegetation in Arroyo del Padre Juan Creek, and construction of overlook improvements (see **Special Conditions 4, 6, and 7**). The Applicant is also required to maintain the revetment and the pipe structure in their permitted state (see **Special Condition 5**), to mitigate for offshore impacts via a mitigation payment (see **Special Condition 8**) and through verification of outfall integrity (see **Special Condition 9**), to perform construction activities in a manner designed to have the least impact on coastal resources (see **Special Condition 4**), to assume all risks for the approved development and to indemnify the Commission (see **Special Conditions 11 and 16**), and to provide other necessary authorizations from adjacent property owners and other agencies (see **Special Conditions 13 and 14**). Finally,

this CDP authorizes the project as modified by the special conditions. Any project changes, including with respect to any Executive Director-approved plans required pursuant to the special conditions, shall require an amendment to this CDP, unless the Executive Director determines that no amendment is legally necessary (**Special Condition 15**).[68]

Issuance of the CDP and compliance with all of the terms and conditions of this CDP will result in resolution of the aforementioned violations of the Coastal Act on the subject property.

Although development has taken place prior to submission of this CDP application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this CDP does not constitute a waiver of any legal action with regard to the alleged 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 CDP. In fact, approval of this CDP is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this CDP and of the Coastal Act. Accordingly, the Applicant remains subject to enforcement action just as it was prior to this CDP approval for engaging in unpermitted development, unless and until the conditions of approval included in this CDP are satisfied.

Failure to comply with the terms and conditions of this CDP may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned can the proposed development be found consistent with the Coastal Act.

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of 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 that the activity may have on the environment.

The Applicant was granted an exemption (Section 15302 (c)) from CEQA requirements by the San Luis Obispo County Department of Planning and Building Department on May 26, 2016 for the riprap revetment. The Coastal Commission's review and analysis of CDP applications has been certified by the Secretary of the State's Natural Resources Agency as being the functional equivalent of environmental review under CEQA pursuant to Title 14 Section 15251(c) of the California Code of Regulations. The preceding CDP findings discuss the relevant coastal resource issues with the proposed project, and the CDP terms and conditions identify appropriate modifications to avoid, and mitigation to lessen, any potential for adverse impacts to a level of less-than-significant for said resources.

[68] Note that **Special Condition 15** can be justified in Commission CDP approvals to account for the needed minor refinements and changes that commonly occur as projects are being built out. This operational flexibility is important, particularly for large and complicated public works projects like this one.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Geologic Conditions, Beach Embankment at Plant, San Simeon Community Services District (R.T. Wooley, July 23, 1982)
- Analysis of Potential Erosion at Wastewater Treatment Plant, San Simeon (Cleath & Associates, July 17, 2002)
- Bluff Protection Alternative Analysis (Earth Systems Pacific, May 16, 2006);
- Biological Assessment for the San Simeon Community Services District Wastewater Treatment Plant Rip Rap Erosion Protection Project (David Wolff Environmental, May 27, 2006)
- Response to Comments (Boyle Engineering, dated May 7, 2008)
- Response to Comments (Earth Systems Pacific, March 27, 2008)
- Alternatives Analysis for Relocation of the San Simeon Community Services District Wastewater Treatment Facility (Rincon Consultants Inc., April 18, 2008)
- Biological Resources Assessment Update for the Unpermitted Rip Rap Violation Project at the San Simeon Community Services District's Wastewater Treatment Plant, San Simeon, San Luis Obispo County, California (Kevin Merk Associates LLC, May 23, 2016)
- Response to California Commission Comments, San Simeon Wastewater Treatment Plant, San Simeon, California (Earth Systems Pacific, June 16, 2016)
- Response to California Commission Comments, San Simeon Wastewater Treatment Plant, San Simeon, California (Earth Systems Pacific, January 19, 2017)
- Added Response to California Commission Comments, San Simeon Wastewater Treatment Plant, San Simeon, California (Earth Systems Pacific, July 20, 2017)

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- San Simeon Community Services District (Charlie Grace, District General Manager) and Representative (Jeff Oliveira, Oliveira Environmental Consulting LLC)
- Regional Water Quality Control Board (Katie DiSimone and Shelia Soderberg)
- Monterey Bay National Marine Sanctuary (Sophie De Beukelaer)
- California Department of Fish and Wildlife (Becky Ota)
- San Luis Obispo County Department of Planning and Building (Steve McMasters)