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# Th13a

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Staff: Brian O'Neill - SC  
Staff Report: 8/24/2018  
Hearing Date: 9/13/2018

## STAFF REPORT: CDP HEARING

**Application Number:** 3-18-0286

**Applicant:** Kevin Smith

**Project Location:** 1355 Lighthouse Avenue, in the Asilomar Dunes neighborhood of Pacific Grove, Monterey County (APN 007-031-017-000).

**Project Description:** Construction of a 5,367-square-foot two-story single-family residence with attached garage, a 2,192-square-foot driveway, patios, and landscape restoration on a vacant parcel.

**Staff Recommendation:** Approval with Conditions.

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### SUMMARY OF STAFF RECOMMENDATION

The Applicant requests a coastal development permit (CDP) for the construction of a 5,367-square-foot two-story single-family residence with attached garage in the Asilomar Dunes. The proposed development also includes construction of a new driveway, four patios, electrical and sewer connections, and native habitat restoration.

The City has a certified Land Use Plan (LUP), but the Implementation Plan (and thus an overall Local Coastal Program (LCP)) has not yet been certified. Therefore, a CDP for the project must be obtained from the Coastal Commission and the standard of review is Chapter 3 of the Coastal Act. The policies of the LUP, however, are looked to as guidance.

The Asilomar Dunes area is considered by the Commission to be an environmentally sensitive habitat area (ESHA) because it includes plant and animal life and related habitats that are rare, especially valuable, and easily disturbed and degraded by human activities and developments.

The Applicant's parcel is comprised of this dune habitat mix and includes several sensitive plant species onsite. The Commission has a long history of protecting the Asilomar Dunes system ESHA, including through development and application of guiding Pacific Grove LUP policies that strike a balance between maximizing dune and related habitat protection and accommodating reasonable residential use on pre-existing subdivided parcels.

The total maximum lot coverage under the City's certified LUP is limited to 15 percent of the lot area for lots of the size at issue here (i.e., over one-half acre). The LUP also allows an additional maximum of up to 5 percent of the lot area for "immediate outdoor living area" that can be used for residential activities, but not otherwise covered with impervious surfaces (with structures, patios, etc.). Per the LUP, the remainder of any site must be preserved exclusively as dune habitat, including through restoration and conservation easements. In addition, the LUP requires that areas of native dune habitat be restored and maintained adjacent to the site.

The project site is an undeveloped 78,520 square-foot (or roughly 1.8 acre) parcel and is a mix of sand dune and Monterey pine forest habitats. In total, the Applicant proposes 7,084 square feet of residential development coverage, which is nine percent of the project site and therefore within the 15 percent LUP coverage limitation. The Applicant is also proposing 768 square feet of outdoor living space (approximately one percent of the project site), which will be left in a natural condition, and which is also below the LUP's coverage limits for this type of space. The Applicant has also incorporated into the project a dune and forest restoration plan for the remainder of the site that should help to improve habitat conditions overall in that area.

The Commission has in the past applied the guiding LUP coverage rule for cases where new development is proposed in Asilomar Dunes to address the Coastal Act's requirements to protect ESHA from non-resource-dependent development, while allowing development to avoid an unconstitutional taking of private property without just compensation. In this case, the proposed development has been conditioned to stay within the LUP's coverage limits, and will result in development in an area that avoids the most sensitive areas of the site. Development of the site will involve temporary impacts to areas immediately surrounding the proposed development. However, coupled with the measures to avoid existing sensitive species, restore the remainder of the site and adjacent City-owned right-of-way, and prohibit development in the remaining habitat areas, the project will not result in a significant disruption of Asilomar Dunes ESHA. Overall, approval of the project with conditions will maximize ESHA protection, while still allowing reasonable residential development.

In terms of other potential issues, the site is fairly well inland from the shoreline, and its scale and scope should appropriately fit in with the character of the area, including because of the large size of the lot in relation to the size of the proposed house, and should not significantly adversely affect public views. In terms of archeological issues, the house would be set back from identified cultural resources by some 188 feet, and conditions are included to require a conservation easement over this area and a buffer around it of 165 feet, which would be for the purpose of protecting cultural resources and allowing the local tribe, i.e. the Ohlone/Costanoan-Esselen Nation (OCEN), access for ceremonial and other passive use of the easement area. OCEN monitors would also be on site during ground disturbing activities to ensure cultural resource protection otherwise, and would guide further archaeological work on the site. Staff has worked closely with the OCEN Chairperson to identify these types of potential mitigations to address OCEN concerns as much as possible in relation to the site.

In summary, as conditioned to implement the ESHA and related habitat protections, and to address other coastal resource issues (namely visual resources, water quality and archaeological resources), the project can be found consistent with the Coastal Act.

Therefore, as conditioned, the project can be found consistent with the Coastal Act in a takings context, and staff recommends **approval** of the CDP. The motion to act on this recommendation is found on page 5 below.

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### EXHIBITS

- Exhibit 1 – Regional Location Maps
- Exhibit 2 – Aerial Photo of Project Site
- Exhibit 3 – Assessor’s Parcel Map
- Exhibit 4 – Photos of Project Site
- Exhibit 5 – Project Plans
- Exhibit 6 – Pacific Grove LUP Land Habitat Sensitivity and Shoreline Access Map
- Exhibit 7 – Pacific Grove Architectural Permit AP16-582 (Mitigation & Monitoring Plan)
- Exhibit 8 – Archeological Conservation Area

### CORRESPONDENCE

### APPENDICES

- Appendix A – Substantive File Documents
- Appendix B – Staff Contact with Agencies and Groups

## I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit 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 3-18-0286 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-18-0268 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

1. **Approved Project.** Subject to the standard and special conditions (including modifications to the project and/or the project plans required by them), this CDP authorizes implementation of the proposed project plans (prepared by Joseph Rock Architecture, dated revised December 15, 2017 and dated received in the Coastal Commission's Central Coast District Office on April 16, 2018; see **Exhibit 5**) that limit residential coverage to a maximum of 7,084 square feet and limit outdoor living space to a maximum of 768 square feet. The area within this maximum residential coverage and outdoor living space area shall be considered the building envelope, and all development, other than habitat enhancement development and temporary construction activities, shall be confined within this building envelope. The remainder of the project site outside of the building envelope shall be restored to its native habitat condition pursuant to **Special Condition 3**, and restrictions placed upon it to ensure that only development consistent with the required habitat restoration activities, placement of utilities, or ceremonial and other passive use of a portion of this area for members of the Ohlone/Costanoan-Esselen Nation may occur within this protected habitat area (see also **Specials Condition 4, 5, and 8**).
2. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two sets of Revised Final Plans for the Executive Director's review and written approval. The revised final plans shall be in substantial conformance with the proposed project plans (prepared by Joseph Rock architecture, dated revised December 15, 2017 and dated received in the Coastal Commission's Central Coast District Office on April 16, 2018; see **Exhibit 5**), and shall be modified and supplemented as follows:
  - (a) **Grading.** The Plans shall include a revised grading plan that limits all grading activities to the building envelope identified pursuant to **Special Condition 1** above with one exception: sand to be excavated to accommodate the development may be placed outside of the building envelope, pursuant to the approved dune restoration plan (**Special Condition 3**), in a manner that replicates surrounding natural dune forms, provided that it is free of impurities or previously imported soil or fill material. The grading plan shall be accompanied by a determination by a qualified biologist or landscape professional that the placement of sand or changes to existing site contours outside of the building envelope will support and enhance the restoration of natural habitat values, including by avoiding direct adverse impacts to sensitive plants. Any excess sands not used in conjunction with the native habitat restoration shall be made available for habitat enhancement/restoration use within the Asilomar Dunes area of Pacific Grove.
  - (b) **Construction Best Management Practices.** The Plans shall identify the type and location of all measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook, and shall be located entirely within the building envelope specified in accordance with **Special Condition 1** above to the maximum degree feasible. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and

temporary stockpiles of graded materials, which shall be covered on a daily basis; and provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas. The Plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated off site maintenance areas; and the immediate clean-up of any leaks or spills. The Plans shall indicate that **PRIOR TO THE COMMENCEMENT OF GRADING**, the Permittee shall delineate the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

- (c) **Post-Construction Drainage.** The Plans shall identify all measures to control drainage after construction is complete, which at a minimum shall include retaining runoff from the roof, driveway, patios, and other impervious surfaces onsite to the greatest degree feasible. Runoff shall be captured and directed into designated pervious areas, percolation pits or appropriate storm drain systems. The drainage plan shall demonstrate that the pervious areas, percolation pits, or drainage systems are sized and designed appropriately to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. In extreme storm situations (>85% storm), the Plans shall identify how excess runoff will be conveyed off-site in a non-erosive manner. Plan preparation shall be coordinated in conjunction with the Dune Restoration Plan (**Special Condition 3**) and the project biologist to determine the best suited location for percolation pits and drain systems to avoid any adverse impacts on native dune restoration activities.
- (d) **Landscaping and Irrigation Details.** The Plans shall include landscape and irrigation parameters prepared by a licensed Landscape Architect that identify all plant materials (size, species, and quantity), all irrigation systems, and all proposed maintenance. All plants used on site shall be native species from local stock appropriate to the Asilomar Dunes area. Non-native and invasive plant species shall be removed and shall not be allowed to persist on the site. The planting of non-native invasive species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, is prohibited. All plant materials shall be selected to be complementary with the mix of native habitats in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. The landscape plans shall also be designed to protect and enhance native plant communities on and adjacent to the site, including required restoration and enhancement areas. All landscaped areas on the project site shall be continuously maintained by the Permittee; all plant material shall be continuously maintained in a litter-free, weed-free, and healthy growing condition.
- (e) **Building Height.** Buildings shall be no higher than 23 feet above the finished floor elevation and no higher than 25 feet above natural grade, and the plans shall provide the detail necessary, including elevation plans that show existing natural grade, to ensure that this is the case.

- (f) **Fencing Prohibited.** All permanent fencing on the site and the City road right-of-way shall be removed and any future fencing is prohibited.
- (g) **Utilities Underground.** All utility connections shall be placed underground, and shall be contained within a single corridor underlying the building envelope to the maximum extent feasible. When installing any new utility connections, care shall be taken to avoid and minimize disturbance outside of the building envelope.

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Revised Final Plans.

**3. Dune Restoration Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two sets of a Dune Restoration Plan for the Executive Director's review and written approval. The Dune Restoration Plan shall be in substantial conformance with the proposed dune restoration plans submitted with the application (prepared by Thomas K. Moss, dated December 30, 2017, and dated received in the Coastal Commission's Central Coast District Office on April 16, 2018) that provide for dune and related habitat enhancement for all areas outside the approved building envelope (see **Special Condition 1**), and shall be modified and supplemented as follows:

- (a) **Dune Contours.** Final contours of the site, after project grading, necessary to support dune restoration and development screening, shall be identified.
- (b) **Native Dune Plants.** All required plantings shall be native dune species from local stock appropriate to the Asilomar Dunes area and shall be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the restoration plan.
- (c) **Initial Planting.** Installation of all plants shall be completed prior to occupancy of the new home. Within 30 days of completion of initial native dune plant installation, the Permittee shall submit a letter to the Executive Director from the project biologist indicating that plant installation has taken place in accordance with the approved restoration plan, describing long-term maintenance requirements for the restoration, and identifying the five- and ten-year monitoring submittal deadlines (see **Special Condition 3d** below). At a minimum, long-term maintenance requirements shall include site inspections by a qualified biologist annually, or more frequently on the recommendation of the biologist, to identify and correct any restoration and maintenance issues.
- (d) **Monitoring.** Five years from the date of initial planting under the Dune Restoration Plan, and every ten years thereafter, the Permittee or his successors in interest shall submit, for the review and approval of the Executive Director, a restoration monitoring report prepared by a qualified specialist that certifies that the onsite restoration is in conformance with the approved Dune Restoration Plan, along with photographic documentation of plant species and plant coverage.
- (e) **Remediation.** If the restoration monitoring report or biologist's inspections indicate the restoration is not in conformance with or has failed to meet the performance standards specified in the approved Dune Restoration Plan, the Permittee shall submit a revised or

supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan shall be prepared by a qualified specialist and shall specify measures to remediate those portions of the original plan that have failed as identified in the restoration monitoring report or biologist's inspections. These measures, and any subsequent measures necessary to carry out the approved Dune Restoration Plan, shall be carried out in coordination with the Executive Director until the approved dune restoration is established in accordance with the Dune Restoration Plan's specified performance standards.

All requirements above and all requirements of the approved Dune Restoration Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Dune Restoration Plan.

4. **Offsite Dune Habitat Restoration Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director for review and written approval an offsite dune habitat restoration plan that provides for restoration of 16,184 square feet of dune habitat within the Asilomar Dunes system (i.e., a 2:1 ratio for the combined 8,092-square-foot area consisting of residential coverage, outdoor living space, and the driveway approach) subject to the same plan criteria as identified in **Special Condition 3** above. The City road rights-of-way near the project site are the preferred offsite mitigation areas. However, this condition does not limit the offsite mitigation to such locations only. In lieu of, or in combination with, providing for restoration of offsite dune habitat restoration along nearby road rights-of-way, the plan may be submitted with evidence that a dune restoration payment of \$2 per square foot of the required offsite dune habitat restoration (or a total of \$32,368) has been deposited into an interest-bearing account to be established and managed by one of the following entities as approved by the Executive Director: the City of Pacific Grove, Monterey County, and/or the California Department of Parks and Recreation (State Parks), for the sole purpose of financing dune habitat restoration and maintenance within the Asilomar Dunes system. All of the funds and any accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the funds being deposited into the account. Any portion of the funds that remains after ten years shall be donated to one or more of the State Parks units located in the vicinity of the Monterey peninsula, or other organization acceptable to the Executive Director, for the purpose of restoring and maintaining dune habitat. PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS ACCOUNT, the proposed use of the funds must be deemed by the Executive Director to be consistent with the intent and purpose of this condition.
5. **Open Space and Conservation Deed Restriction.** No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area (i.e., all areas outside of the approved building envelope described in **Special Condition 1**) depicted on **Exhibit 5**, except for: (1) necessary utility lines to serve the residence, to the extent such lines cannot be contained within a single corridor underlying the approved building envelope pursuant to **Special Condition 1**; (2) restoration and associated maintenance and monitoring activities conducted in accordance with the approved Dune Restoration Plan prepared for the property as required by **Special Condition 3**; and (3) pedestrian access from Lighthouse Avenue to the Archeological Conservation Easement area (as described in **Special Condition 8** and as

generally shown in **Exhibit 8**) for members of the Ohlone/Costanoan-Esselen Nation.

PRIOR TO THE ISSUANCE OF THE CDP, the Permittee shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area. The recorded document shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this CDP and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the Permittee or landowner in perpetuity.

- 6. Incorporation of City’s Mitigation Requirements.** The Mitigation and Monitoring Plan (Plan) adopted by the City of Pacific Grove for its final Mitigated Negative Declaration and for Architectural Permit AP15-459 for this project is attached as **Exhibit 7** to this CDP. Mitigation Measures BIO-1 through BIO-15 (which address the protection of biological resources) and Mitigation Measures CUL-1 through CUL-8 (which address archeological resources) are incorporated as conditions of this CDP. Any of the incorporated mitigations requiring materials to be submitted to the City and/or otherwise requiring City approval (such as Development Director approval), shall also require the same materials to be submitted to, and/or the same approvals granted by, the Executive Director under the same review and approval criteria as specified in the Plan. For future condition compliance tracking purposes, the incorporated mitigations in **Exhibit 7** shall be considered subsections of this Special Condition 6. To the extent any such incorporated mitigations conflict with these conditions (i.e., **Standard Conditions 1** through **5**, and **Special Conditions 1** through **9**), the conditions of this CDP shall apply.
- 7. Supplementary Archeological Mitigations.** PRIOR TO ISSUANCE OF THE CDP, additional archeological reconnaissance and mitigation within the area of the building envelope described in **Special Condition 1** shall be required as follows:

  - (a) Additional Subsurface Reconnaissance.** The project archeologist shall perform additional subsurface reconnaissance, in the presence of an Ohlone/Costanoan-Esselen Nation (OCEN) representative and the Applicant, comprising of six additional test units along the perimeter of the proposed building foundation to determine whether significant cultural materials are present. The supplementary archeological reconnaissance results, along with the project archaeologist’s recommendation as to whether any discovered materials should be considered significant, and the comments of OCEN, shall be submitted to the Executive Director for a determination of the significance of the discovery. If the Executive Director determines that the discovery is significant, the Permittee shall submit a CDP amendment application to the Executive Director, including a Supplementary Archaeological Plan in accordance with subsection (b) below.
  - (b) Supplementary Mitigation.** A Supplementary Archaeological Mitigation Plan shall be submitted as part of a CDP amendment application for the review and written approval

by the Commission, prepared by the project archaeologist in consultation with OCEN, which shall identify proposed mitigation measures to ensure the protection and confidentiality of any significant archeological materials discovered as part of the supplementary reconnaissance. Such proposed mitigation measures may include in-situ preservation, recovery and transfer of the materials to OCEN, and relocation/reburial elsewhere on the project site. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space.

- 8. Archeological Conservation Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate, to a public agency or private entity approved by the Executive Director, an easement over the archeological conservation area generally depicted in Exhibit 8, including over all areas on the Applicant's property located within 150 feet of the bedrock mortar present there (Archeological Conservation OTD). The purpose of the easement is for the protection and conservation of archeological resources, including for ceremonial and other passive use by the Ohlone/Costanoan-Esselen Nation. No development, as defined in Coastal Act Section 30106, shall occur within the easement area except for: (1) removal of nonnative vegetation, planting with native species, and related restoration measures in accordance with the approved dune restoration plan required by **Special Condition 3** of this CDP, and (2) ceremonial and other passive use of the easement area by members of the Ohlone/Costanoan-Esselen Nation.

The recorded document shall include a metes and bounds legal description and graphic depiction, drawn to scale and prepared by a licensed surveyor based on an onsite inspection of the easement area, of (1) all legal parcels subject to the CDP, and (2) the perimeter of the easement area. The OTD shall be recorded free of all prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed; 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; shall be irrevocable for a period of 21 years, such period running from the date of recording; and shall indicate that the restrictions on the use of the land shall be in effect upon recording and remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the OTD.

- 9. Water Availability.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit, for the review and approval of the Executive Director, evidence that an adequate, long-term and sustainable water supply that will not adversely impact coastal resources is available to serve the development, and that a water purveyor will serve the property with such water services.
- 10. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and written approval documentation demonstrating that the Permittee has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the Property.

The deed restriction shall include a legal description of the Permittee's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the subject property as long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION**

#### **Project Location**

The proposed project is located at 1355 Lighthouse Avenue in the Asilomar Dunes neighborhood of the City of Pacific Grove. The Asilomar Dunes neighborhood is mapped as the area bounded by Lighthouse Avenue, Asilomar Avenue, and the northern boundary of Asilomar State Park to the south, and is located in the Asilomar Dunes complex extending from Point Pinos at the Lighthouse Reservation in Pacific Grove through Spanish Bay and to Fan Shell Beach in the downcoast Del Monte Forest area (see **Exhibit 1** for regional location maps, **Exhibit 2** for an aerial photo of the project site, and **Exhibit 3** for the Assessor's Parcel Map).

The Applicant's parcel is located in an area zoned by the City as R-1-B-4, Single-Family Low Density Residential.<sup>1</sup> Development within the surrounding area is characterized by one- and two-story single-family dwellings interspersed in the dunes. This low-density zoning and development on relatively large lots is part of what gives this Asilomar Dunes residential area its open-space character. In this case, the lot is 78,520 square feet in size (1.8 acres) and is currently undeveloped (see **Exhibit 4** for photos of the project site). The site consists of a mix of sand dune and Monterey pine forest habitat. Although not native to the site, Monterey cypress trees are also present. The understory consists mostly of ice plant, non-native grasses, and a small patch of native mock heather at the northeast corner of the property.

As discussed below, the entire site is an environmentally sensitive habitat area (ESHA), as are all lots within dune habitat located in the Asilomar Dunes. This is due in part to the existence of up to ten plant species and one animal species of special concern that have evolved and adapted to the harsh conditions found in the Asilomar Dunes system. Increasing development pressure has reduced the amount of available habitat and thus the range of these species. The subject lot is adjacent to other lots that have been restored and replanted with native species conditioned as part of prior development projects. The site is also located within a highly sensitive archaeological area.

#### **Project Description**

The proposed project includes construction of a new 5,367-square-foot two-story residence with an attached garage, a 2,192-square-foot permeable driveway, and various patio areas totaling 1,276 square feet. The Applicant also proposes to include a sandy area between the proposed

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<sup>1</sup>The City's zoning has not been certified by the Commission.

driveway and front patio as outdoor living space that will be left in a natural condition (see project plans attached as **Exhibit 5**).

In terms of coverage, the proposed residence/garage, driveway, and patio areas will cover approximately 7,084 square feet<sup>2</sup> or roughly 9 percent of the project site. The Applicant also proposes a 768-square-foot outdoor living space area or roughly 1 percent of the project site. The proposal also includes installation of underground electrical utilities and sewer connections from the public sewer line, which will both be located under the proposed driveway. The project includes restoration of all portions of the property that are not a part of the above-described residential building area to its native dune and pine forest condition, as well as restoration of the City-owned right-of-way immediately adjacent to the property. Five Monterey pines would need to be removed to accommodate the project. All other existing Monterey pines and cypress trees will be retained and protected during construction. The habitat restoration plan calls for replanting 32 additional Monterey pines. Finally, the Applicant has incorporated various mitigations required by the City through the CEQA process into the project (see **Exhibit 7**). These address biological issues such as monitoring during construction activities, as well as archeological resource issues. These incorporated components are considered part of the proposed project.

## **B. STANDARD OF REVIEW**

The Asilomar Dunes portion of the City of Pacific Grove is located within the coastal zone, but the City does not have a certified Local Coastal Program (LCP). The City's Land Use Plan (LUP) was certified in 1991, but the zoning or Implementation Plan (IP) portion of the LCP has not yet been certified. The City is currently in the process of updating its LUP and developing an IP. Because the City does not yet have a certified LCP, applicants for coastal zone development must apply to the Coastal Commission directly for coastal development permits (CDPs). Although the certified LUP provides guidance during the review of such applications, the standard of review is the Coastal Act.

## **C. ENVIRONMENTALLY SENSITIVE HABITAT AREAS**

### **Applicable Policies**

Coastal Act Section 30240, states:

#### ***Section 30240 Environmentally sensitive habitat areas; adjacent developments***

- (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*

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<sup>2</sup> The residence and garage cover 3,616 square feet, the driveway another 2,192 square feet, and the patios 1,276, square feet, for total coverage of 7,084 square feet.

*those habitat and recreation areas.*

The Coastal Act, in Section 30107.5, defines an environmentally sensitive area as

***Section 30107.5**...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

As indicated previously, while Coastal Act policies are the standard of review for CDPs until the City completes its LCP, the City's certified LUP can provide guidance to the Commission as it considers proposals for development in the Asilomar Dunes neighborhood. With regards to ESHA, the LUP contains various policies designed to protect the acknowledged dune ESHA of the Asilomar Dunes area:

***LUP Policy 2.3.5.1.** New development in the Asilomar dunes area (bounded by Asilomar Avenue, Lighthouse Avenue, and the boundary of Asilomar State Park) shall be sited to protect existing and restorable native dune plant habitats, as well as the native oaks and pine forest which stabilize the inland edge of the high dunes... **No development on a parcel containing ESHA shall be approved unless the City is able to find that, as a result of the various protective measures applied, no significant disruption of such habitat will occur.** [emphasis added]*

***LUP Policy 2.3.5.1.c.** During construction of new development, habitat areas containing Menzies' wallflowers or Tidestrom's lupine or other rare and endangered species shall be protected from disturbance. Temporary wire mesh fencing shall be placed around the habitat prior to construction and the protected area shall not be used by workers or machinery for storage of materials. Compliance inspection(s) will be made during the construction phase.*

***LUP Policy 2.3.5.1.e.** If an approved development will disturb dune habitat supporting or potentially supporting Menzies' wallflower, Tidestrom's lupine or other rare or endangered species, or the forest front zone along Asilomar Avenue south of Pico Avenue, that portion of the property beyond the approved building site and outdoor living space (as provided in section 3.4.5.2) shall be protected by a written agreement, deed restrictions or conservation easement granted to an appropriate public agency or conservation foundation. These shall include provisions which guarantee maintenance of remaining dune habitat in a natural state, provide for restoration of native dune plants under an approved landscape plan, provide for long-term monitoring of rare and endangered plants and maintenance of supporting dune or forest habitat, and restrict fencing to that which would not impact public views or free passage of native wildlife. Easements, agreements or deed restrictions shall be approved prior to commencement of construction and recorded prior to sale or occupancy.*

***LUP Policy 2.3.5.1.g.** Utility connections shall be installed in a single corridor if possible, and should avoid surface disturbance of areas under conservation easement.*

***LUP Policy 3.4.4.1.** All new development shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.*

LUP Section 3.4.5.2 specifies the maximum aggregate lot coverage allowed for new development in the Asilomar Dunes area as follows:

***LUP Policy 3.4.5.2.** Maximum aggregate lot coverage for new development in the R-1-B-4 zoning districts is 15% of the total lot area. For purposes of calculating lot coverage under this policy, residential buildings, driveways, patios, decks (except decks designed not to interfere with passage of water and light to dune surface below) and any other features that eliminate potential native plant habitat will be counted. However, a driveway area up to 12 feet in width the length of the front setback shall not be considered as coverage if surfaced by a material approved by the Site Plan Review Committee. An additional 5% may be used for immediate outdoor living space, if left in a natural condition, or landscaped so as to avoid impervious surfaces, and need not be included in the conservation easement required by Section 2.3.5.1(e). Buried features, such as septic systems and utility connections that are consistent with the restoration and maintenance of native plant habitats, need not be counted as coverage.*

*The siting of each new development and the expected area of disturbance around each residence shall be individually reviewed by the Site Plan Review Committee. Such review shall duly consider the minimization of dune destabilization and disturbance to endangered plants and their habitat.*

*In special cases, up to 20% aggregate lot coverage may be allowed as a conditional use if the City specifically finds that:*

- a) An offsetting area of native dune plant habitat will be restored and maintained adjacent to the site, such that the total area which will be preserved, restored and permanently maintained under conservation easement or similar enforceable legal instrument, as provided in Section 2.3.5.1, is equal to at least 80% of the total area of applicant's lot; and,*
- b) The additional site coverage is essential for protecting public views (i.e., by maximizing front setback in the case of parcels facing Sunset Drive), or for avoiding hardships in the case of existing parcels of one-half acre or less which would otherwise suffer in comparison to adjacent similarly-sized developed parcels.*

### **Asilomar Dunes Resources**

Coastal sand dunes constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply in tandem with wind energy and direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray, and support a unique suite of plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Coastal Commission has typically found this important and vulnerable habitat to be ESHA due to the rarity of the physical habitat and its important ecosystem functions, including that of supporting sensitive species.

The proposed development is located in the Asilomar Dunes complex, an environmentally sensitive habitat area extending several miles along the northwestern edge of the Monterey Peninsula. The Asilomar Dunes complex extends from Point Pinos at the Lighthouse Reservation

in Pacific Grove through Spanish Bay and to Fan Shell Beach in the downcoast Del Monte Forest area. Within Pacific Grove, this dunes complex extends through two protected areas, the Lighthouse Reservation area and Asilomar Dunes State Park, which sandwich a dune-residential community. Although this dune-residential area is often described as Asilomar Dunes more broadly, it is only a part of the larger Asilomar Dunes complex.<sup>3</sup>

The Asilomar Dunes extend inland from the shoreline dunes and bluffs through a series of dune ridges and inter-dune swales to the edge of more urban development in some cases and the edge of the native Monterey pine forest in others. The unusually pure, white quartz sand in this area was formerly stabilized by a unique indigenous dune flora. However, only a few acres of the original habitat area, which spans almost five miles of shoreline and includes the Asilomar residential neighborhood in Pacific Grove, remain in a natural state. The balance of the original habitat has been lost or severely damaged by sand mining, residential development, golf course development, trampling by pedestrians, and the encroachment of non-indigenous introduced vegetation. While a number of preservation and restoration efforts have been undertaken (most notably at the Spanish Bay Resort, Asilomar State Beach, and in connection with previously approved residential developments on private lots), much of the Asilomar Dunes complex remains in a degraded state. Even so, it remains a valuable habitat area because it supports certain rare and/or endangered plants and animals that are characteristic of this environmentally sensitive and rare habitat.

The Asilomar Dunes complex includes up to ten plant species and one animal species of special concern that have evolved and adapted to the desiccating, salt-laden winds and nutrient poor soils of the Asilomar Dunes area. The best known of these native dune plants are the Menzie's wallflower, Monterey spineflower and the Tidestrom's lupine, which all have been reduced to very low population levels through habitat loss and are Federally-listed endangered species. Additionally, the native dune vegetation in the Asilomar Dunes includes other dune species that play a special role in the ecosystem; for example, the bush lupine, which provides shelter for the rare black legless lizard, and the coast buckwheat, which hosts the endangered Smith's blue butterfly. Native Monterey pine trees that comprise the forest-front, an area where the central dune scrub plant community intersects the native Monterey pine forest community, serve to minimize environmental stresses to the interior trees of the forest, reduce tree failures that result when trees are more directly exposed to wind, and are considered critical in maintaining the stability of the landward extent of the sand dunes. Because of these unique biological and geological characteristics of the Asilomar Dunes, the Commission has a long history of identifying all properties in the Asilomar Dunes area with these dune system features, both in the City of Pacific Grove and Monterey County, as being located within ESHA. Based on this understanding, the Pacific Grove LUP certified by the Commission includes a variety of policies, relevant policies which are cited above, to protect this identified dune ESHA.

### **Site Specific Resources**

At the time of LUP development, the City of Pacific Grove conducted a comprehensive survey of existing dune resources on each parcel. At that time (1990), the Applicant's parcel was identified and characterized as Monterey pine forest with moderate sensitivity (see **Exhibit 6**). A

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<sup>3</sup> The Pacific Grove Asilomar Dunes dune-residential area is located between Lighthouse Avenue and State Parks' Asilomar Conference grounds, and between inland Asilomar Avenue and the Asilomar State Beach shoreline.

botanical survey report prepared by coastal biologist Thomas K. Moss on April 6, 2016 states that the property can best be described as a mix of highly degraded sand dune habitat and Monterey pine forest. Exotic plants and aggressive invasive species, such as ice plant, are abundant throughout the project site. Native species, including Monterey pines and mock heather, are also found on site. No individual occurrences of sensitive plant species were found, but the report concludes that the site could support sensitive dune plants. The report also noted that the black legless lizard likely occurs on the property, but the site was not searched for its presence. The black legless lizard is listed on the California Department of Fish and Wildlife's "Species of Special Concern."

Commission staff has visited the site and confirmed that the site contains dune habitat, albeit degraded with non-native plants in some areas, as well as Monterey pine forest. Therefore, based upon the presence of dune and forest habitat and the potential for special status species, and consistent with the City's LUP and prior Commission actions on other proposed development in the Asilomar Dunes, the Commission finds that the site is environmentally sensitive habitat as defined by Section 30107.5 of the Coastal Act.

### **Project Impacts**

The proposed project will impact the dune ESHA on the site in two ways: (1) it will provide for a new residential use in dune ESHA for the foreseeable future, and (2) it will contribute to the cumulative loss of the Asilomar Dunes system. Nonetheless, to avoid an unconstitutional taking of private property, the Commission must allow some beneficial economic use of the Applicant's property, considering the fact that the Applicant's entire property is located within ESHA (for which the Coastal Act normally limits development to resource-dependent uses). As discussed below, with on and offsite restoration, avoidance of sensitive dune species, and conditions to meet the coverage limitations of the LUP, the project is conditioned as much as possible to be consistent with Coastal Act Section 30240 and simultaneously satisfy constitutional standards regarding unconstitutional takings of property.

#### *Residential Use in ESHA*

The residential zoning of the existing parcel pre-dates the Coastal Act, including Section 30240, the purpose of which is to protect environmentally sensitive habitat areas. Ordinarily the Coastal Act does not allow residential uses in ESHA, absent a need to comply with Section 30010 by avoiding an unconstitutional taking of private property. Thus, the existing residential parcel in the Asilomar Dunes ESHA is in a manner of speaking "grandfathered" for purposes of compliance with Coastal Act Section 30240. Construction of a single-family dwelling within ESHA would normally be incompatible with the requirements of Coastal Act Section 30240, which expressly states that "only uses dependent on [ESHA] resources shall be allowed within those areas." Still, considering that the Asilomar neighborhood was subdivided prior to passage of the Coastal Act; the R-1-B-4 zoning designation of the Applicant's property specifically allows for single-family, low-density residential dwelling; and further considering that the Commission must allow *some* economically-beneficial use of the Applicant's property to avoid an unconstitutional taking of private property without compensation, the Commission recognizes that approval of a single-family dwelling (as proposed here) achieves the resource-protection policies underlying Section 30240 of the Coastal Act as much as possible while still allowing for residential development as contemplated by the parcel's zoning.

As proposed, the project will result in a new structure and associated residential development on the site. Although the application has not specifically addressed the life of the project, the Commission assumes that the new home will be on the site for at least 50 years, if not more. The Commission expects, therefore, that the impacts of the proposed residential use of the site will be extended into the future for as long as the new house remains on the site.

*Direct and Indirect ESHA Impacts*

The impacts of the proposed residential use on ESHA are varied. First and foremost is the direct loss of dune ESHA onsite due to the proposed development footprint of 7,084 square feet, or approximately nine percent of the 78,520-square-foot site. The proposed residence and garage would cover 3,616 square feet of the site. Another 1,276 square feet of impervious development includes three small patios at the back of the residence and one larger patio at the front, while a 2,192-square-foot driveway will be constructed with permeable pavers. The project also includes 768 square feet of outdoor living space where residential uses will be allowed, but which will be left in a natural condition.

The other significant onsite impacts to ESHA are due to the location of the residential use immediately in and adjacent to the remaining habitat, without any buffers. To implement Coastal Act Section 30240, the Commission usually requires not only avoidance of ESHA but also the use of buffering to minimize the disruption of habitats from non-compatible uses. Such impacts include light and noise; shading of dune habitat; the potential introduction of non-native plants and invasive species; direct disturbance of habitat from residentially-related activities; and potential impacts on flora and fauna from domestic animals. In the case of dune habitat, the presence of residential development also results in a general impact to the ecological functioning of the dune system, including fragmentation of habitat and the prevention of sand movement that is an ongoing feature of dune habitat systems.

As with other parcels in the Asilomar Dunes system, the direct impacts to adjacent habitat are not avoidable if a residential use of the site is allowed because the entire site is ESHA. There is no feasible location that would also buffer the ESHA. Some of the impacts could perhaps be reduced, for example by making the home design more compact (smaller) in order to minimize coverage and maximize adjacent contiguous habitat. The project plans propose total coverage that is within the LUP maximum for residential development. The design of this house is relatively compact with the exception of a long front driveway, but such a design in this case is appropriate because the proposed house has been purposefully set back from the street to avoid the more heavily forested areas of the site and will be located in an open area that is devoid of native vegetation. However, the overall impacts of the existing residential use on the dune system cannot be fully eliminated without entirely eliminating the residential use of the Applicant's property.

*Expanded Residential Use of Site*

The new residential use and development will displace areas of previously undeveloped but highly degraded dune habitat. The project includes a 5,367-square-foot two-story home with three bedrooms, two-and-half bathrooms, a three car garage, and outdoor patio areas. The size of the new residence can be expected to support a large family, pets, cars, and other typical household indicators. This generally equates to a greater amount of light, noise, and other disturbances that can impact ESHA.

*Temporary ESHA impacts*

The project will also result in direct temporary impacts to dune ESHA necessitated by the construction process. Inevitably the project will entail impacts to dune and pine forest habitat beyond the proposed final development footprint, as it is not reasonably feasible to contain all of the construction activity within the development envelope itself. Although these areas will be restored at the end of the construction process, these temporary impacts are, nonetheless, impacts to dune ESHA that must be accounted for. The project will also include utility trenching and sewer installations that will also result in a temporary disruption of ESHA, and can reasonably be expected to result in future disruption for necessary repairs and maintenance.

*Cumulative Impacts to Asilomar Dunes System*

The Applicant's project is located near the northern end of the Asilomar Dunes dune-residential area of Pacific Grove, an area now of approximately 60 acres where the dunes retain roughly their original contours. Although divided into about 95 lots and developed with approximately 75 existing dwellings, the area still contains some of the best remaining examples of the original Asilomar Dunes landform and flora.

The cumulative impacts of additional residential development, both new development and redevelopment, will have a substantial adverse impact on the unique ecology of the Asilomar Dunes, as each loss of natural habitat area within the Asilomar Dunes formation contributes to the overall degradation of this finite and extremely scarce coastal resource. This cumulative impact includes direct loss of habitat, increased fragmentation and interference with ecological processes, and intensified impacts from expanded and intensified residential development immediately within the dunes system.

**Consistency with the Coastal Act and LUP Guidance**

The Commission has a long history of protecting the Asilomar Dunes system ESHA, including through development and application of guiding Pacific Grove LUP policies that strike a balance between maximum dune habitat protection and allowance of a reasonable residential use on pre-existing subdivided parcels in the Asilomar area. To minimize disturbance to the sensitive dune and related habitats, the total maximum aggregate lot coverage (not counting outdoor living space area) under the certified LUP is limited to 15 percent of the lot area for most lots (i.e., for lots greater than one-half acre in size). In cases where a lot is one-half acre or less, up to 20 percent aggregate lot coverage may be allowed provided that: 1) an offsetting area of native habitat will be restored and maintained adjacent to the site such that the total area preserved, restored, and maintained is equal to at least 80 percent of the total area of the lot, and 2) the additional coverage is necessary to avoid a hardship in the case of existing parcels of less than one-half acre, which would otherwise suffer in comparison to adjacent slightly larger developed parcels. As defined in the LUP, this coverage includes buildings, driveways, patios, decks that do not allow for the passage of water and light to the dune surface, and any other features that eliminate native plant habitat. The LUP also allows an additional maximum of five percent of the lot area for "immediate outdoor living area" that is a dune area within which residential activities are allowed. Per the LUP, the remainder of any site (i.e., 75-80 percent, once maximum coverage and outdoor living area are accounted for) must be preserved as dune habitat, including through restoration/enhancement as necessary to ensure maximum feasible habitat value.

In this case, the proposed project is within the LUP-defined maximums, with approximately nine percent of the project site to be covered with development, and another 1 percent for outdoor living space. Thus, the proposed plans contemplate 10 percent total lot coverage (i.e., nine percent impervious coverage and one percent outdoor living space), all of which is new coverage above existing conditions but still within the established LUP maximum. The proposed residence otherwise avoids direct impacts to individual occurrences of endangered plant species<sup>4</sup> and limits tree removal to five Monterey pines by siting the proposed residence within an open flat area of the site. The project also provides for replanting of an additional 32 Monterey pines and incorporates mitigation measures to ensure the protection of all remaining pine and cypress trees, including installation of temporary protective fencing prior to construction and daily inspections by a qualified biologist. Additionally, the Applicant has incorporated into the project a dune and forest restoration plan for the remainder of the site.

The Commission has generally applied the guiding LUP 15/5 percent (or 20/5 percent for lots less than half-an-acre in size) coverage rule cited earlier for cases in Asilomar where new development is proposed on vacant lots. This is to address the Coastal Act requirements to protect ESHA from non-resource-dependent development, while avoiding a taking of private property. This intent is summarized in the Commission's 1988 findings for adoption of the LUP:

*Over a period of 14 years, the Coastal Commission has considered several dozen coastal development requests in the Asilomar Dunes area...*

*Because of this existing pattern of use, it wasn't feasible to exclude residential development from existing vacant parcels. Therefore, the Commission has emphasized preservation and restoration of remaining habitat rather than strict prohibition ... Generally, this has meant that building and driveway coverage have been limited to 15% or less of the parcel area; some flexibility has been allowed where hardships resulted from very small lot sizes or similar circumstances...*

Since certification of the LUP, the Commission has in other past instances relied on the LUP standard, with specific attention to limiting the total site coverage (excluding outdoor living space) of new residential development on vacant lots of record to 15 percent (e.g., 3-99-071 (Knight); 3-01-013 (Baldacci); 3-01-020 (Pletz)). As anticipated by the LUP, the Commission has allowed up to 20 percent coverage in cases involving smaller (less than one-half acre), more constrained lots (e.g., 3-90-123 (Naegele); 3-10-045 (DaCosta); 3-14-0981 (Carp); 3-16-0350 (St. Dennis)).

More recently, in cases where there was new dune coverage, a coverage increase within the LUP maximum, and/or a coverage decrease for a remodel that was still above LUP maximums, the Commission has also required 2:1 off-site mitigation for such dune coverage (e.g., 3-10-029 (Johnston); 3-11-020 (Goins); and 3-14-0981 (Carp); 3-14-1172 (White)).

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<sup>4</sup> This does not account for potential seed bank present below the surface of the dunes on the site, but rather is focused on individual expressed above-ground plants. Given the shifting nature of these types of dunes, including shifting seed banks etc., it is generally presumed that expressed individuals indicate that seed stock for these species is present in the general area, and that the "habitat" for these species is not necessarily confined to individual expressed occurrences. That said, it has also been the Commission's long-standing practice to avoid locations of individual sensitive plants that are identified on a site.

Another important aspect of the Commission's permitting history in Asilomar is the evolution and refinement of the application of Coastal Act Section 30240 to new residential development in dune ESHA. For example, as evidenced by the LUP finding cited above, the Commission has always been concerned with the need to provide for a residential use on existing vacant lots of record in Asilomar, notwithstanding the presence of dune ESHA. However, the Commission's more recent findings for such approvals have become more focused on the need to make such approvals to avoid a taking of private property pursuant to Coastal Act Section 30010 (e.g., 3-05-059 (Pletz) and 3-05-060 (Reinstedt); 3-14-0981 (Carp) 3-14-1186 (Griffith); 3-14-1591 (Grines); 3-16-0350 (St. Dennis)). In addition, since the *Bolsa Chica* decision in 1999,<sup>5</sup> there has been increased attention on the need to more strictly apply the resource-dependent requirement of Section 30240 to more closely conform with the legal principles regarding Section 30240 as established by case law (including *Bolsa Chica*, among others). Although the practical effect may have been similar, earlier decisions in Asilomar focus more on the need to minimize significant disruption of dune habitat and less on the fact that residential development is not a resource-dependent use.

The case at hand involves a vacant, residentially-zoned lot and thus allowing this dune-residential parcel to enjoy the same limited benefits of some residential development in ESHA, below the maximum coverage allowed by the LUP certified by the Commission, is permissible if ESHA impacts are minimized and appropriately mitigated. In this case, the proposed residence is sited in the least sensitive area of the site, is relatively compact in design, and avoids expressed sensitive plant species. The proposed project would thus leave approximately 90 percent of the site undeveloped and restored to high quality habitat. The design includes significant open space behind and in front of the house, which would allow for the transfer of sand and seed, as well as allow for the passage of wildlife, including deer. The development will necessarily involve some impacts to areas immediately surrounding the building envelope, but such impacts will be minimal and temporary. Recognizing the unique circumstances of dune protection in the Asilomar system, including the LUP guiding policies that clearly establish a maximum coverage limit and which the Commission has relied upon in the past, the project can be found as consistent as possible with Section 30240 if conditioned to address the direct, indirect, and cumulative impacts of the development. To assure maximum protection and thus minimize significant disruption of ESHA, and to mitigate new direct and cumulative impacts to ESHA, as required by both the Coastal Act and the LUP, onsite and offsite restoration of dune habitat is also necessary.

Special conditions have been attached to this permit that limit development in conformance with the submitted plans and that identify the maximum impervious residential site coverage and outdoor living space to be no more than 7,084 square feet and 768 square feet, respectively (see **Special Condition 1**).

To best protect remaining dune habitat, special conditions are also attached to ensure that outdoor living areas immediately abutting native dune restoration areas are planted with native species from local stock appropriate to the Asilomar Dunes area. Specifically, **Special Condition 2(d)** requires the submittal of final landscaping plans that, among other things, prohibit the planting of non-native, invasive species, require all plant materials to be complementary to the

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<sup>5</sup> *Bolsa Chica Land Trust v. Superior Court*, 71 Cal. App. 4th 493 (1999).

native habitats in the project vicinity (i.e. Central Coast Dune Scrub and Monterey Pine Forest), prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. **Special Condition 2(a)** allows sand excavated during development to be placed outside of the building envelope in a manner that replicates surrounding natural dune forms, provided it will support and enhance the restoration of natural habitat values.

**Special Condition 2(f)** prohibits fencing on the site, so as to ensure the maximum natural exchange of sand and seed stock and wildlife corridor continuity, thereby helping to facilitate continuous dune resource values. Although fencing consistent with protecting habitat preservation areas may be appropriate for a short time during construction, any other fencing for this site is not appropriate and must be removed (if existing) and not installed otherwise. This condition does allow for temporary exclusionary fences to protect habitat areas outside of the building envelope during construction, which are a necessary mitigation measure and are required to assure protection of these environmentally sensitive habitat areas.

Because the project will adversely impact sensitive dune habitat areas in the manner described above, mitigation is required to offset these impacts. Specifically, dune habitat areas must be enhanced and protected over the long term to offset impacts to these areas from a non-resource-dependent residential use and for the temporary impacts associated with the construction of the residence. The Applicant's proposed dune restoration plan can form the basis for such long-term enhancement and protection. Accordingly, this approval requires a qualified biologist to prepare and implement a native dune restoration plan for the site (**Special Condition 3**) that includes performance standards, and long-term maintenance and monitoring of the undeveloped portions of the property. In addition, the restoration area must be made off-limits to other than habitat-related development and uses; thus this approval prohibits development outside of the approved development envelope, other than restoration and utilities, and pedestrian access to the cultural resources located on the site (see discussion in the "Archaeological Resources" section below), and it requires protection and restoration of all of these areas through an open space restriction (see **Special Condition 5**). In order to ensure that future owners are aware of these prohibitions and to ensure the protection of these areas, the Commission also requires that a deed restriction be recorded against this property that will include all of the conditions of approval, including the habitat restoration plan and prohibition on development outside of the building envelope, as restrictions on the use of this property (see **Special Condition 10**). Defining a building envelope will help reduce adverse impacts to the environmentally sensitive habitat area, as well as minimize disruption to the sand dunes, throughout the life of the development.

The subject lot in this case is entirely undeveloped and thus the entire residential development footprint will result in the direct displacement and permanent loss of ESHA, which must be mitigated. The project will result in the direct displacement and permanent loss of 8,092 square feet of ESHA, which includes 7,084 square feet of residential coverage, 768 square feet of outdoor living space, and 240 square feet for the driveway approach that is located within the City right-of way. The Commission has found that offsite restoration is frequently not entirely successful, however, so that mitigation at a 1:1 ratio is not sufficient to fully mitigate the impacts from lost habitat. Thus, **Special Condition 4** requires that, prior to construction, the Applicant submit an offsite dune habitat restoration plan that provides for restoration of 16,184 square feet of dune habitat within the Asilomar Dunes system (mitigation for 8,092 square feet at the ratio of

2:1).<sup>6</sup>

In past cases, the Commission has required that offsite restoration be done on the road right-of-way area directly adjacent to an Applicant's property. However, the Applicant's property does not abut a large enough right-of-way area to complete the required offsite restoration. The Applicant currently proposes to restore the 8,735-square-foot right-of-way, which falls 7,449 square feet short of the 16,184-square-foot off-site mitigation requirement. **Special Condition 4** thus allows the Applicant to submit to the Executive Director evidence that a dune restoration payment of \$2/square-foot<sup>7</sup> for the required 2:1 dune mitigation (i.e., two times the calculated area (in square feet) of dune habitat converted to residential uses) has been deposited into an interest-bearing account to be established and managed by one of the following entities as approved by the Executive Director: the City of Pacific Grove, Monterey County, and/or the California Department of Parks and Recreation (State Parks), for the sole purpose of financing dune habitat restoration and maintenance within the Asilomar Dunes system. All of the funds and any accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the funds being deposited into the account. Any portion of the funds that remains after ten years shall be donated to one or more of the State Parks units located in the vicinity of the Monterey Peninsula, or other organization acceptable to the Executive Director, for the purpose of restoring and maintaining sensitive habitat. As described above, 16,184 square feet (8,092 square feet x 2) of off-site dune mitigation or a corresponding dune mitigation payment of \$32,368 (16,184 x \$2 = \$32,368 ), or a combination of both (for example 8,735 square feet of right-of-way restoration and a dune mitigation payment of \$14,898 (7,449 x \$2 = \$14,898)), would be required.

To assure compliance with the native dune restoration plan, an environmental monitor must observe the site daily during earth disturbing activities and at least weekly during construction. Experience has shown that weekly monitoring helps ensure that workpeople and materials stay out of sensitive natural habitat areas. The City has required this monitoring as part of its Mitigation Monitoring Plan, consistent with LUP Policy 2.3.5.1(c) regarding compliance inspections during the construction phase, and **Special Condition 6** incorporates the Mitigation Monitoring Plan as part of this CDP.

Although none were found during project surveys, the site contains potential habitat for black legless lizards. To assure no adverse impacts to these lizards during construction activities, the City has adopted a pre-construction lizard survey and **Special Condition 6** incorporates this as a requirement of this CDP.

In addition, **Special Condition 2(b)** requires implementation of best management practices during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. **Special Condition 2(g)** requires all utilities to be installed in a single corridor underlying the building envelope, consistent with LUP Policy 2.3.5.1.g.

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<sup>6</sup> The extra area of restoration provides a contingency buffer in the event the entire offsite restoration is not successful.

<sup>7</sup> The amount of \$2 per square foot, or \$87,120 per restoration acre, is based on the Commission's understanding of the current cost of restoration in the Asilomar Dunes based on recent examples (e.g., the dune restoration recently undertaken at the Great Tidepool site).

### **ESHA Conclusion**

As conditioned to: limit the development footprint to an aggregate of 7,084 square feet of residential coverage and 768 square feet of outdoor living space; require implementation of a native dune restoration plan; record an open space deed restriction clearly identifying the requirements for restoration and maintenance of natural habitat for the rest of the site; incorporate the City's mitigation measures; prohibit all fencing; and prohibit any future development in the restored area outside of the coverage area, the proposed development is consistent with the certified LUP as guidance. Given the unique context of development within the Asilomar Dunes area, in which the Commission's certification of the LUP included an assessment of Coastal Act ESHA policies and established long-term planning policies that protect the dune ecosystem as a whole in this area, taking into account development potential of existing residentially designated legal lots, the project is also as consistent as possible with the Coastal Act's sensitive habitat policies while also allowing for the scale of residential development the Commission contemplated would be allowed when it certified the LUP for this area.

## **D. VISUAL RESOURCES**

### **Applicable Policies**

Section 30251 of the Coastal Act states:

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

The City's certified Land Use Plan, which is advisory in this case, also contains the following relevant policies:

**LUP Policy 2.5.2.** *... Coastal area scenic and visual qualities are to be protected as resources of public importance. Development is required to be sited to protect views, to minimize natural landform alteration, and to be visually compatible with the character of surrounding areas.*

**LUP Policy 2.5.5.4.** *New development on parcels fronting Sunset Drive shall complement the open space character of the area. Design review of all new development shall be required. The following standards shall apply; ... Residential structures shall be single story in height and shall maintain a low profile complimenting the dune topography. In no case shall the maximum height exceed 18 ft. above natural grade within the foundation perimeter prior to grading.*

**LUP Policy 2.5.5.5.** *Landscape approval shall be required for any project affecting landforms and landscaping. A landscaping plan, which indicates locations and types of*

*proposed plantings, shall be approved by the Architectural Review Board.*

***LUP Policy 2.5.5.6.*** ...Utilities serving new single-family construction in scenic areas shall be placed underground.

***LUP Policy 3.1.1.2.*** New buildings shall be limited to two stories (25 ft.) in height unless otherwise specified by the Plan...

***LUP Policy 3.4.4.1.*** All new development in the Asilomar Dunes area shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.

### **Consistency Analysis**

Both the Coastal Act and the LUP require that new development be compatible with and subordinate to the character of this important Asilomar Dunes viewshed. This viewshed is to be protected as a “resource of public importance.” The LUP provides guidance in this respect, including by limiting overall height to 18 feet for residences along Sunset Drive, 25 feet elsewhere, and by requiring that development maintain a low-profile that complements the dune topography. The subject lot is located three parcels inland of Sunset Drive. The proposed project will add a 5,367-square-foot 23-foot-tall two-story residence on a vacant lot, which appears to be consistent with the LUP’s height limit. The proposed development is similar in size to recent residences within the Asilomar Dunes that were approved by the Commission (e.g. 4,437-square-foot two-story residence at 1498 Pico (3-14-1186 (Griffith)) and a 4,845-square-foot two-story residence at 1359 Lighthouse Avenue (3-14-1591 (Grines))), yet this project’s 1.8-acre parcel is three times the size as the parcels in those recent approvals and thus the proposed residence occupies a much smaller percentage of the site. Thus the mass and scale of the proposed project is similar to other surrounding residential development in the Asilomar Dunes area and the project conforms with (or is below) all Pacific Grove municipal code requirements regarding bulk and scale. The second-story is stepped back from Lighthouse Avenue to create a larger public view corridor and includes an articulated roof so as not to appear as a solid wall and domineer over adjacent development. Because it does not front Sunset Drive and is located inland among other similarly sized two-story residences, the proposed project will be compatible with surrounding development, will generally fit into the dune-residential landscape, and should not significantly adversely affect public views. As proposed, the residence would not block views of the ocean from public viewing areas defined in the LUP’s Shoreline Access Map (see **Exhibit 6**) and would not be visible from Sunset Drive and the adjacent recreational coastal trail. When combined with the restoration requirements, the project should appropriately blend into the established Asilomar aesthetic.

Accordingly, as conditioned, the proposed design is consistent with the visual protection provisions of Section 30251 of the Coastal Act and of the LUP. **Special Condition 2(e)** recognizes the Applicant’s proposal to limit the overall ridge height of the project to 23 feet above finished first floor elevation and requires confirmation that the building height is a maximum of 25 feet from natural grade. **Special Condition 2(g)** also requires all utilities to be undergrounded and placed within a single corridor underlying the building envelope, consistent with the LUP.

Final architectural approval was granted for the design by the City's Architectural Review Board on February 27, 2018 (see **Exhibit 7**). As previously described, all areas outside of the building envelope will be excluded from development by an open space restriction (**Special Condition 5**), which is required to protect the environmentally sensitive habitat on the remaining undeveloped portion of the property. This condition, and **Special Condition 3**, also will help to ensure visual consistency by maintaining the natural dune landform and Monterey pine forest as much as possible in a restored state that will help offset the dichotomy of residential development in the dunes/forest by ensuring that it is subordinate to the dune/forest setting. As conditioned for habitat purposes, the project results in the maximum allowable site coverage for this site, and no future additions will be allowed that would increase the total aggregate site coverage or create additional view impacts. Again, this is also necessary to find visual consistency as additional development outside the development envelope would lead to inappropriate viewshed impacts. Thus, these conditions are also required for viewshed protection.

### **Visual Resources Conclusion**

The proposed project should blend effectively within the dune aesthetic, including through restoration of the remainder of the site to help subordinate the residential development to the dune landscape in which it is located. The project will not block any ocean views from LUP-defined public viewing areas and will fit within the surrounding residential development. Given its size and setting, the approved project will be compatible with its surroundings and will generally fit into the dune-residential landscape. A special condition limits overall height to 23 feet, and the required habitat conditions limit the total development area of the site, protecting visual resources as well. Accordingly, the project can be found consistent with Section 30251 of the Coastal Act and the LUP's visual resource policies.

## **E. ARCHAEOLOGICAL RESOURCES**

### **Applicable Policies**

Section 30244 of the Coastal Act states:

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

Land Use Plan Policy 2.4.5.1 also provides guidance on this topic as follows:

***LUP Policy 2.4.5.1.*** *Prior to the issuance of any permit for development or the commencement of any project within the areas designated on Figure 3, the Archaeological Sensitivity Map, the City in cooperation with the State Historic Preservation Office and the Archaeological Regional Research Center, shall:*

- (a) Inspect the surface of the site and evaluate site records to determine the extent of the known resources.*
- (b) Require that all sites with potential resources likely to be disturbed by the proposed project be analyzed by a qualified archaeologist with local expertise.*

- (c) *Require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist be submitted for review and, if approved, implemented as part of the project.*

### **Consistency Analysis**

Both the Coastal Act and the City's LUP require development to implement reasonable mitigation measures to protect identified archaeological or paleontological resources. The LUP further requires a site survey, report, and mitigation plan to be completed by a qualified archeologist for projects within an archaeologically sensitive area.

The site is located within an archaeologically sensitive area where potentially significant archaeological resources and artifacts have been discovered in the past, and thus an archaeological survey and report (Report) were required by the City through the local process (conducted and prepared by Gary S. Breschini, report dated July 29, 2015). The Report indicates that the site is located within one kilometer of 24 previously recorded archaeological sites, including one identified archeological site that is located within the property lines of the subject parcel. Specifically, a bedrock mortar is located on the western edge of the property and shellfish remains are scattered throughout the site. Bedrock mortars are circular depressions in naturally occurring rock that signify their use for grinding of food products, which many living tribe members consider to be sacred objects that signify their direct ancestors' use of an area. The Report determined that the project may impact archeological resources due to the close proximity to this recorded resource. To ensure that archeological resources are protected, the Report recommends that: a 50-foot area on all sides of the bedrock mortar should be placed into an easement; a qualified archeologist should monitor all earth disturbing activities; and construction work should be suspended and a mitigation plan developed, to include data recovery and analysis, if additional archaeological materials are found.

The Monterey Bay region is represented by the Ohlone/Costanoan-Esselen Nation (OCEN), which is comprised of over 600 enrolled tribal members of Esselen, Carmeleno, Monterey Band, Rumsen, Chalon, Soledad Mission, San Carlos Mission (Carmel) and/or Costanoan Mission Indian descent. The City consulted with OCEN throughout the local approval process and met and discussed the project with tribal representatives on at least six different occasions. Commission staff similarly had several phone calls and exchanged emails with the OCEN tribal chairperson. OCEN has voiced an objection to any disturbance or development of the project site due to the presence of culturally significant items. OCEN believes that any development or ground disturbing activities within their known ancestral lands throughout the Monterey Bay area (i.e., not just the project site, but also including the entire dunes area that is currently developed) would destroy their sacred ancestral sites and should be denied. Moreover, OCEN believes that the prior archeological survey was inadequate, the recommended buffer around the bedrock mortar is too small, and requests that any significant cultural materials unearthed during construction be returned to the tribe.

Denial of the proposed project would raise other issues (such as taking issues), and it is not clear that denial would be warranted for archeological reasons. In this case, the closest proposed development on the site is located 188 feet away from the bedrock mortar, well outside the 50-foot buffer recommended in the archeological Report. The City, in its local action, required that a 75-foot area surrounding the bedrock mortar be potentially subject to an easement to protect

these resources. The bedrock mortar is also already within approximately 70 feet of residential development on the adjacent parcel to the west, and within 60 feet of Lighthouse Avenue. The entire Asilomar Dunes residential area is developed, albeit at low densities, and there is a patchwork of undeveloped dunes. In a case like this, particularly where the property in question is relatively large, a very large buffer to the sensitive bedrock mortar area is possible, and provides a means to find an appropriate balance between development and archeological protection of this feature. In addition, the City incorporated other archeological mitigation measures, which were identified in the Report and during the tribal consultation process, into its local permit conditions, and these are incorporated into this CDP through **Special Condition 6**. These mitigation measures include holding an educational meeting led by a representative of OCEN prior to the commencement of construction activities, having a qualified tribal cultural resources monitor approved by OCEN onsite during earth disturbing activities, and monitoring and data recovery if further cultural resources are discovered. Although the habitat restoration activities described in **Special Condition 3** will occur within the 50-foot buffer recommended in the Report, these restoration efforts do not require excavation. The proposed mitigation measures and the structural development buffer are adequate to protect the archeological site during construction.

However, OCEN believes that the prior archeological survey conducted for this project was inadequate because only two auger holes were excavated to determine whether subsurface cultural materials were present. OCEN is concerned that monitoring during construction excavation will be too late to adequately protect potential cultural resources because any such materials may be irreparably damaged as a result of intense excavation activities. To ensure that adequate archeological reconnaissance is completed, **Special Condition 7** requires additional subsurface reconnaissance in the form of six additional test units around the perimeter of the proposed home, which must be performed in the presence of an OCEN representative and the Applicant prior to issuance of the CDP. This condition further requires submission of a CDP amendment application to propose a Supplementary Archeological Mitigation Plan if significant cultural materials are discovered during the additional archeological survey. The plan shall identify, in consultation with OCEN, proposed mitigation measures to protect any significant materials including returning such materials to OCEN, in-situ preservation, recovery and/or relocation/reburial elsewhere on the project site, or project redesign (see **Correspondence** pages 1-4 for email correspondence between the Applicant, the Applicant's representative, and the OCEN representative).

The Report further recommends that an easement be placed on the property to provide for the long-term protection of the bedrock mortar archeological resource. The City's approval notes that an easement to a third party to protect an area 75 feet around the bedrock mortar *should* be granted, but does not require the Applicant to take affirmative steps to complete the conveyance. Moreover, OCEN states that a 75-foot easement area is inadequate to properly protect this culturally significant area and has requested the area be increased to 150 feet to allow ample space for the tribe to access the bedrock mortar. To ensure that the Applicant offers an easement to adequately protect sensitive archeological resources, **Special Condition 8** requires the Applicant to record an irrevocable offer to dedicate to an acceptable third party an easement over the archeological conservation area, as generally shown in **Exhibit 8**, specifically for the protection and conservation of archeological resources. The Big Sur Land Trust, a non-profit dedicated to conserving land within Monterey County, has submitted correspondence indicating

its willingness to potentially accept such an easement (see **Correspondence** pages 5-6). The archeological conservation easement shall apply to all areas on the Applicant's property that are located within 150 feet of the bedrock mortar generally depicted in **Exhibit 8**. The purpose of the easement is for the protection and conservation of archeological resources, including ceremonial and other passive use by members of the Ohlone/Costanoan-Esselen Nation. Allowable uses within the easement are native habitat restoration and access for members of OCEN.

As conditioned, the proposed development is consistent with Section 30244 of the Coastal Act and the LUP's archaeological resource policies.

## **F. PUBLIC SERVICES**

### **Applicable Policies**

With regard to adequate public services, Section 30250(a) of the Coastal Act states:

*New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

The LUP also has policies specific to the availability and allocation of water to serve new development, including:

*LUP Policy 4.1.4.1. When the allocation for a particular planning area is exhausted, no additional development which would increase water use shall be approved in that planning area. Exceptions will be allowed for coastal priority uses when, by transferring water allocations from other coastal zone planning areas, sufficient water can be found to support such development.*

### **Consistency Analysis**

A guiding principle of the Coastal Act and the City's LUP is to permit new development only when adequate public services are available, and specifically only when a project's water demand is consistent with available supply. The City receives water services from the California American Water (Cal-Am) Company. The Monterey Peninsula area, including the City, is currently experiencing a severe water shortage. Due to illegal withdrawals from the Carmel River Basin that have adversely impacted the River's habitat, Cal-Am is limited in its ability to provide new water meter connections by a 2009 Cease and Desist Order (CDO) issued by the State Water Resources Control Board (SWRCB). Because the project site is currently vacant and without a water meter, adequate water is not currently available to serve the project and Cal-Am will be unable to provide a new water connection unless and until the alternative water sources that do not adversely impact the Carmel River Basin are secured and the SWRCB lifts the CDO on new water connections.

Therefore, to carry out the Coastal Act and LUP standards above, approval of the development has been conditioned to require the Applicant to show (prior to issuance of the CDP) that the

project can be served by an identifiable, adequate, long-term water supply that will not have an adverse effect of coastal resources (**Special Condition 9**). Only with this condition is the project consistent with Coastal Act Section 30250(a) and LUP Policy 4.1.4.1.

## **G. WATER QUALITY/MARINE RESOURCES**

### **Applicable Policies**

Sections 30230 and 30231 of the Coastal Act 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.*

Similarly, LUP Policy 2.2.5.2 states:

*To reduce the potential for degradation of the ASBS/Marine Gardens, the City shall require, where necessary, drainage plans and erosion, sediment and pollution control measures as conditions of approval of every application for new development.*

### **Consistency Analysis and Conclusion**

As recognized by the LUP, the rich and diverse marine habitat along the Pacific Grove Shoreline is an Area of Special Biological Significance (ASBS) designated by the State Water Resources Control Board. The project site is located just uphill from these marine habitats. Drainage and stormwater runoff from the site, both during and after construction, have the potential to degrade coastal water quality and diminish biological productivity by contributing sediments and pollutants.

Therefore, to carry out the Coastal Act and LUP requirements above, approval of the development has been conditioned to require drainage and erosion control plans that minimize site disturbance, prevent erosion, contain sediments and pollutants, and that retain, filter, and treat stormwater runoff on site to the maximum degree feasible (**Special Condition 2(c)**). Only with this condition is the project consistent with Coastal Act Sections 30230 and 30231 and LUP Policy 2.2.5.2.

## **H. LOCAL COASTAL PROGRAMS**

Section 30604(a) of the Coastal Act states:

*Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for that conclusion.*

Although the northern Asilomar Dunes area was originally included in the work program for Monterey County's Del Monte Forest Area LUP (approved with suggested modifications, September 15, 1983), the area was annexed by the City of Pacific Grove in October 1980, and therefore is subject to the City's LCP process. Exercising its option under Section 30500(a) of the Coastal Act, the City in 1979 requested the Coastal Commission to prepare its Local Coastal Program. However, the draft LCP was rejected by the City in 1981, and the City began its own coastal planning effort. The City's LUP was certified on January 10, 1991, and the City is currently working on both an LUP update and associated implementing ordinances. In the interim, the City has adopted an ordinance that requires that new projects conform to LUP policies. At this time, however, the standard of review for CDPs, pending LCP completion, is conformance with the policies of the Coastal Act.

The LUP contains various policies that are relevant to the resource issues raised by this CDP application, particularly with respect to protection of environmentally sensitive habitat and scenic resources (see previous findings). Additional measures to more clearly articulate coverage and outdoor living space standards in order to address ongoing residential uses within ESHA are currently being discussed by Commission and City staff during the LCP update process. The City's action on the project and this conditioned CDP generally accounts for the existing and proposed LUP policies.

Therefore, as conditioned, the proposed development is consistent with the policies contained in Chapter 3 of the Coastal Act and will not prejudice the ability of the City of Pacific Grove to prepare and implement a complete LCP.

## **I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit 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 that would substantially lessen any significant adverse effects which the activity may have on the environment.

On February 27, 2018 the City of Pacific Grove, acting as the lead CEQA agency, completed a

mitigated negative declaration for the project that concluded that, with the addition of mitigation measures, the project would not have significant environmental impacts. The mitigation measures, as discussed above, include both long-term and short-term protections for biological resources, cultural resources, and utilities and service systems. The City incorporated said mitigation measures into its February 27, 2018 approval of the project.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. This report has discussed relevant coastal resource issues with the proposal including impacts to environmentally sensitive habitats, visual resources, archeological resources, public services, and water quality; and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All above findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, 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<sup>8</sup>**

- *Botanical Survey Report Kevin and Linda Smith Residence*, Thomas K. Moss. December 27, 2017.
- *Habitat Restoration Plan Kevin and Linda Smith Residence*, Thomas K. Moss. December 30, 2017.
- *Preliminary Archeological Assessment of Assessor’s Parcel Number 007-031-017, Pacific Grove, Monterey County, California*. Gary S. Breschini, PH.D. July 29, 2015.
- *1355 Lighthouse Avenue Initial Study and Mitigated Negative Declaration*. City of Pacific Grove. January 16, 2018.
- *Architectural Permit and Tree Permit 16-582 for a property located at 1355 Lighthouse Avenue*. City of Pacific Grove Community Development Department – Planning Division. February 27, 2018.

## **APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS**

- City of Pacific Grove Planning Staff
- Ohlone/Costanoan-Esselen Nation Chairperson Louise J. Miranda Ramirez

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<sup>8</sup> These documents are available for review in the Commission’s Central Coast District office.