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**F22a**

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Staff: Katie Butler - SC  
Staff Report: 11/26/2019  
Hearing Date: 12/13/2019

**STAFF REPORT: CDP HEARING**

**Application Number:** 3-19-0340

**Applicant:** Monterey County Resource Management Agency – Public Works & Facilities

**Project Location:** Along Highway 1 and the Moss Landing Harbor shoreline, between Moss Landing Road and the Moss Landing North Harbor, in the unincorporated Moss Landing area of north Monterey County

**Project Description:** Construct a 0.85-mile-long and 10-foot-wide Class I pedestrian and bicycle path (also part of the California Coastal Trail and Monterey Bay Sanctuary Scenic Trail) in the vicinity of Moss Landing Harbor. Project includes a new bridge over the Harbor main channel, adjacent to Highway 1.

**Staff Recommendation:** Approval with Conditions

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**SUMMARY OF STAFF RECOMMENDATION**

Monterey County Public Works & Facilities has requested approval of a coastal development permit (CDP) for the construction of a 0.85-mile-long and roughly 10-foot-wide paved Class I bicycle and pedestrian trail in the Moss Landing area of North Monterey County. The proposed trail would be located adjacent to Highway 1 as well as integrated into the Moss Landing Harbor (Harbor) shoreline, and also includes a new bicycle and pedestrian bridge over the Harbor main channel, immediately adjacent to the Highway 1 bridge. In addition, the project includes the

installation of two rip rap revetments along the Harbor shoreline where the trail meets the water to support the new trail alignment.

The proposed project is a segment of the Monterey Bay Sanctuary Scenic Trail (MBSST) (a component of the larger California Coastal Trail (CCT)), which will ultimately stretch along the entire Monterey Bay shoreline from Lovers Point in the City of Pacific Grove on the south end to Wilder Ranch in Santa Cruz County on the north end. Completion of all proposed segments of the MBSST will ultimately result in a continuous Class I bicycle and pedestrian pathway along the entire Monterey Bay. The proposed project is a high-priority<sup>1</sup> segment given that the Moss Landing area is the only location along Highway 1 between northern Santa Cruz County and the City of Marina (a distance of approximately 50 miles) with direct visual and close physical access to the ocean. Furthermore, the only way for bicyclists and pedestrians to currently travel between the North and South Harbor areas is on the unimproved highway shoulder or on the highway itself in close proximity to vehicles traveling at high speeds. The harbor area is full of coastal-dependent uses, including commercial and recreational boating, as well as visitor-serving uses, and the construction of a multi-modal CCT is intended to provide needed public access improvements in this heavily used area.

The proposed project includes both a new trail, bridge, and two new associated riprap revetments built into the Harbor; as such, and while the project as proposed will clearly meet numerous Coastal Act objectives with respect to public access and recreation and the completion of the CCT, the project still must be evaluated for consistency with the Coastal Act's shoreline protection provisions. Coastal Act Section 30235 allows for shoreline protective devices (such as the proposed revetments) when required to serve coastal-dependent uses or to protect existing structures in danger from erosion. The Harbor was created in 1947 and is one of only six harbors located along the Central Coast. It supports commercial fishing vessels, recreational boating, marine research operations, and coastal-dependent public amenities and commercial uses (e.g., public boat launch, boat storage, marine repair, kayak rentals, and a yacht club). The North Harbor also provides an existing shoreline trail, a public wharf, and wildlife viewing opportunities, and the South Harbor includes a number of small public park spaces and harbor shoreline pathways along the main Harbor District parking lot. The Harbor was created and has been heavily developed, including with extensive armoring permitted by the Commission, to provide for coastal-dependent uses, and thus clearly meets the definition of "coastal dependent" in Section 30101 of the Coastal Act.

In this case, the proposed trail would be a fully integrated element of the Harbor itself and would provide for up-close viewing and nature study of the Harbor and Elkhorn Slough environs, including bird and marine mammal observation, and would bring visitors to the water's edge to observe and experience the area's rich fishing and boating heritage. A primary objective of this trail segment in particular (as opposed to others envisioned and proposed for other sections of the MBSST) is close connection to and interpretation of the Moss Landing Harbor and Elkhorn Slough environments. It would directly connect existing public access amenities in the South Harbor (i.e., an existing public mini-park with a picnic table and pathways that lead into the main

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<sup>1</sup> Note that this project has been awarded \$1.5 million in grant monies from the California Coastal Conservancy, reflective of its critical importance in providing multi-modal public coastal access in this access-limited area.

Harbor District parking and land facilities) to similar amenities, including the existing North Harbor shoreline trail, on the north end. As such, when integrated into this Harbor setting, it meets the Coastal Act Section 30101 definition of coastal dependent and is eligible for the proposed revetments to support its use. Furthermore, its location along the Harbor is the only one available to meet the larger statewide objective for the CCT to be in close proximity (“...within sight, sound, or at least scent...”) to the Pacific Ocean. No other possible north-south alignment exists in close proximity to the shoreline through the Moss Landing area given the presence of the open water of the Harbor and Elkhorn Slough main channels, as well as the many fingers and marsh areas of the Elkhorn Slough that extend miles inland.

In short, and as more fully explained in the report, the project is a vital link in the CCT in an area full of constraints that limit where an appropriate alignment could be located, including due to existing recreational and commercial boating infrastructure, coastal dependent infrastructure, private property, Highway 1, known archaeological sites, and general site topography. The County navigated these constraints to land at a proposed alignment that is within sight, smell, and sound of the ocean, Harbor, and Slough as much as possible. With conditions to address project impacts, including fill of coastal waters/wetlands from the proposed bridge pilings across the Elkhorn Slough channel, archaeological resources and marine water quality during construction, and parameters to fully maximize public recreational access utility, the project represents an exciting opportunity to fill a critical gap in the CCT in this heavily used area. As such, and as conditioned, the project can be found consistent with the Coastal Act, and staff recommends approval of the CDP. The motion is found on page 5.

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Exhibit 6 – Certified North County Land Use Plan Shoreline Access/Trails

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Exhibit 8 – Marine Mammal Protection Measures

### CORRESPONDENCE

## 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 3-19-0340 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-19-0340 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full-size sets of Revised Final Plans to the Executive Director for review and written approval. The Revised Final Plans shall be prepared by a licensed professional or professionals (i.e., geotechnical engineer, surveyor, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire project site, and shall include a graphic scale. The Revised Final Plans shall be in substantial conformance with the proposed plans submitted to the Coastal Commission (prepared by the County of Monterey, Resource Management Agency, Department of Public Works dated April 1, 2019, and dated received in the Commission's Central Coast District Office on April 29, 2019), except that they shall be revised and supplemented to comply with the following requirements:
  - a. Public access areas and amenities.** The Revised Final Plans shall clearly identify (and depict on a site plan) all existing and required public access areas and amenities, including the Class I bicycle/pedestrian trail, overlooks, signage, benches, and bicycle racks described herein and shall clearly identify how the trail will seamlessly connect to and transition with other existing public access improvements at both the northern and southern ends of the trail's alignment.
  - b. Bridge pilings.** The Revised Final Plans shall identify all pilings and all other structural substructure elements to be installed and/or used in association with the new public access pathway bridge spanning the Moss Landing Harbor channel adjacent to Highway 1. All piling and substructure materials, preservatives, and coatings shall be clearly described on the Plans, and shall be consistent with the following best management practices (BMPs) for such development and shall be coordinated with the construction requirements in Special Condition 3:
    - i)** Coatings and sealants shall be composed of products that are inert after they have cured and dried. Fusion Bonded Epoxy, HDPE, and polyurea products are recommended. No coal tar-based sealants shall be used unless they are themselves coated or wrapped with an inert product to isolate them from the marine environment.
    - ii)** Installation and application of epoxy, resin, or cementitious grout/fill shall be conducted when predicted weather and ocean conditions allow effective control and full containment and will remain dry until cured, in order to prevent any leaching of uncured treatment materials into coastal waters. It is preferable to perform the work in dry conditions (low tide) or off-site in a controlled-environment manufacturing facility, wherever feasible.
    - iii)** All cleaning and preparation of surfaces shall use wet vacuum techniques, containment booms or heavy mesh containment netting so that any debris, chips, dust, dirt, and fine particles are collected and disposed of in a location where they will not enter coastal waters.

- iv) Preparation of corroded concrete by chipping, v-notching, or demolition shall be conducted while using a wet vacuum or similar technique so that any debris, dust, and fine particles are collected and disposed of in a location where they will not enter coastal waters. Dip nets shall be on-site and used to retrieve debris if it accidentally falls into the water.
  - v) Methods to contain any leaks or spills of treatment materials during application shall be planned in advance, and any necessary equipment or supplies shall be readily accessible onsite. Any leaks or spills of anti-corrosion coatings, epoxy fillers, and waterproofing sealants shall be immediately cleaned up.
  - vi) All pressure-injection and gravity-feed applications of epoxy, resin, or cementitious materials shall be closely monitored visually to ensure that these materials do not leak or spill into coastal waters during application.
  - vii) Coatings and waterproofing sealants used in the field shall be carefully applied by brush or roller to limit application to the immediate surfaces intended for protection, and to prevent drips or spills into coastal waters.
  - viii) All anti-corrosion coatings, epoxy fillers, and waterproofing sealants shall be properly stored and contained so that these products will not leak or spill, or otherwise enter the coastal environment.
- c. Measures proposed to minimize the hydro-acoustic noise impacts of any pile driving shall be described on the Plans, and shall be in substantial conformance with the measures proposed by the Permittee to minimize the hydro-acoustic noise impacts associated with the driving of sheet piles for the bridge (as described in **Exhibit 8**).
  - d. **Signage.** The Permittee shall identify all public access, interpretive, and wayfinding signs and any other project elements that will be used to provide wayfinding assistance to the public or to otherwise identify public access areas. Sign details showing the location, materials, design, and text of all public wayfinding and interpretive signs shall be provided. The signs shall be designed so as to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access program "feet" logo and the California Coastal Trail emblem.
  - e. **Bicycle parking.** At least two bicycle parking racks that accommodate at least six bicycles each shall be placed in the project vicinity in locations designed to maximize their public utility but where their use by cyclists does not physically or visually obstruct the trail or other public access, or degrade public views otherwise.

- f. Drainage.** All drainage and related elements within the retaining walls and gabion basket structures, and any related energy dissipation measures shall be camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden from public view and/or inconspicuous as seen from the Harbor. All drainage elements shall be sited and designed to reduce the potential for drainage-caused erosion, and to be as inconspicuous as possible.
- g. Fencing.** All fencing shall be the minimum necessary to ensure public safety and protect public views.
- h. Surveyed benchmarks.** The Revised Final Plans shall identify an appropriate number of surveyed benchmarks, including location and elevation, to be used for future monitoring evaluations (see also **Special Condition 9**).

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 this condition and the approved Revised Final Plans. Minor adjustments to these requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; (2) would not adversely impact coastal resources; and (3) do not require a CDP amendment or new CDP.

- 2. Public Access Use Parameters.** The approved trail, bridge, and associated improvements and amenities shall be publicly available for general public pedestrian and bicycle use consistent with the terms and conditions of this CDP. Development and uses that disrupt and/or degrade this public access (including areas set aside for private uses and barriers to public access such furniture, planters, temporary structures, private use signs, ropes, etc.) shall be prohibited. All public use areas, improvements, and amenities shall be maintained consistent with this CDP in a manner that maximizes public use and enjoyment. All public access areas, improvements, and amenities shall be available to the general public free of charge 24 hours a day. All public access areas, improvements, and amenities in the approved Revised Final Plans (see **Special Condition 1**) shall be constructed and available for public use as soon as possible.

All of the public access areas, improvements, and amenities associated with the approved project shall be constructed in a structurally sound manner and maintained in their approved state consistent with the terms and conditions of this CDP, including through ongoing repair, maintenance, or relocation (if necessary to respond to shoreline erosion and/or hazards, including in conformance with Special Condition 6) of all public access improvements. Prior to any modification, movement, or replacement of access improvements, the Permittee shall obtain an amendment to this CDP to authorize such development, unless the Executive Director determines that an amendment is not legally necessary. Public use areas shall be maintained consistent with the approved Revised Final Plans and in a manner that maximizes public use and enjoyment.

All requirements above shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with these requirements, which shall govern all general public access to the areas affected by this CDP pursuant to this CDP. Minor



adjustments to the above parameters that do not require a CDP amendment or a new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

3. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include the following:
  - a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access, including public parking and public views, and other coastal resources, including by using, as feasible, inland and other areas for staging and storing construction equipment and materials.
  - b. **Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separate from public recreational use areas (including using unobtrusive fencing or equivalent measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not, to the maximum extent feasible, significantly degrade public views or marine resources during construction. Construction and staging zones shall be limited to the minimum area required to implement the approved project. The Plans shall limit construction activities to avoid coastal resource impacts as much as possible.
  - c. **Construction Timing.** Construction during weekends and/or outside of daylight hours (i.e., one-hour before sunrise to one hour after sunset), and/or lighting of the work area, is prohibited, unless due to extenuating circumstances the Executive Director authorizes such work.
  - d. **Construction BMPs.** The Construction Plan shall also identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal resources, including at a minimum the following:
    - i. **Runoff Protection.** Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into storm drains and/or harbor, slough, or ocean waters.
    - ii. **Equipment BMPs.** Construction equipment inspection and maintenance, and equipment washing, refueling, and servicing shall take place at least 50 feet inland from ocean/harbor/slough waters on an existing hard surface area (e.g., road or parking area) or an area where collection of materials is facilitated.

- iii. Good Housekeeping.** The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site, etc.).
- iv. Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.
- e. Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- f. Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.
- g. Construction Specifications.** All construction specifications and materials shall include appropriate penalty provisions that require remediation for any work done inconsistent with the terms and conditions of this CDP.
- h. Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction of the project and immediately upon completion of construction of the project.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Construction Plan. Minor adjustments to the above parameters that do not require a CDP amendment or a new CDP (as determined by the Executive

Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

#### 4. Wetland Mitigation

- a) PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit, for the review and approval of the Executive Director, a final wetland habitat mitigation and monitoring plan prepared by a qualified botanist or ecologist to mitigate for the impacts to 0.517 acres of estuarine wetland and open water habitat at a 3:1 ratio in the project vicinity.
  - i. The final habitat mitigation and monitoring plan shall demonstrate that:
    - a. Only habitat-specific, regionally appropriate native vegetation shall be used. The vegetation to be replanted shall be of local genetic stock, if available. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be installed in the mitigation area; and
    - b. Revegetation shall achieve a standard for success of at least 80 percent survival of plantings and at least 80 percent ground cover for broadcast seeding after a period of 3 years.
  - ii. The final habitat mitigation and monitoring plan shall include, at a minimum, the following components:
    - a. A map identifying the mitigation site(s) within or adjacent to existing wetlands in the project vicinity;
    - b. Specified goals of the plan, including a clear narrative description of the characteristics of the habitat type that the mitigation is intended to provide, and performance standards for evaluating the success of the mitigation goals;
    - c. A description of the existing habitat at the chosen mitigation site(s);
    - d. A planting plan accompanied by a plant list, which together show the type, size, number, source, and location of all plant materials that will be retained or installed at the mitigation site(s);
    - e. A maintenance plan (e.g., weeding, replacement planting) and monitoring plan to ensure that the specified goals and performance standards have been satisfied. Mitigation site(s) shall be monitored yearly with at least one site visit during the spring or summer months for a minimum of three years following completion of the project. All plants that have died shall be replaced during the next planting cycle (generally between late fall and early spring) and monitored for a period of three years after planting;
    - f. Provisions for submittal within 30 days of completion of the initial mitigation work a report with maps, photographs, and a narrative discussion demonstrating that the wetland mitigation work has been completed in accordance with the approved final habitat mitigation and monitoring plan; and

- g.** Provisions for submittal of a final monitoring report to the Executive Director at the end of the three-year reporting period. The final report must be prepared in conjunction with a qualified wetlands biologist. The report must evaluate whether the revegetation of the site(s) conforms with the goals, objectives, and performance standards set forth in the approved final habitat mitigation and monitoring plan. The report must address all of the monitoring data collected over the three-year period.
  
- 5. Eelgrass.** The Permittee shall be subject to the California Eelgrass Mitigation Policy (CEMP) and shall complete pre- and post-construction eelgrass surveys and mitigate for any impacts to eelgrass, including as required by the CEMP.
  
- 6. Length of Armoring Approval.** This CDP authorizes the approved armoring until the time when the segments of the public trail improvements located inland of and incorporated into the revetments are no longer present or no longer require armoring, whichever occurs first. If some portions of these trail segments are removed and/or relocated, while some portions are retained, the armoring shall be reduced and/or modified as necessary at that time so that it is the minimum necessary to protect the trail improvements that are relocated and/or retained. At such time, the Permittee shall submit a complete CDP amendment application to the Coastal Commission to remove and/or modify the approved armoring and to appropriately restore the affected areas.
  
- 7. Archaeological Protection.** The Permittee shall coordinate with the applicable legal tribal government qualified by the Native American Heritage Commission (in this case, the Ohlone/Costanoan-Esselen Nation, or OCEN) to rebury the previously uncovered remains at the appropriate location and time to be determined by OCEN. An archaeological monitor from OCEN shall be present during all project ground disturbance (including grading activities), and shall be consulted to provide recommendations for subsequent measures for the protection and disposition of artifacts of historical or cultural significance and human remains, in the event such items are discovered. In the event that any article of historical or cultural significance or human remains are encountered, all activity that could damage or destroy these resources must cease and the Executive Director, the Native American Heritage Commission, and all appropriate local tribal representative(s) must be notified so that the items may be suitably protected or flagged for future research. Mitigation measures shall be developed in accordance with Native American Heritage Commission and local tribal representative recommendations, and submitted to the Executive Director for review and approval, and such measures shall be required to address and proportionately offset the impacts of the project on such archaeological resources prior to recommencement of construction activity.
  
- 8. Other Agency Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review a copy of the U.S. Army Corps of Engineers, Regional Water Quality Control Board, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, Moss Landing Harbor District, U.S. Coast Guard, National Marine Fisheries Service, Monterey Bay National Marine Sanctuary, Caltrans, and State Lands Commission authorizations for the approved project, or evidence

that no such authorizations are necessary. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally required.

- 9. As-Built Plans.** WITHIN 90 DAYS OF COMPLETION OF CONSTRUCTION, or within such additional time as the Executive Director may grant for good cause, the Permittee shall submit two copies of As-Built Plans for Executive Director review and approval showing all development authorized by this CDP in relation to existing roadways, harbor, and other development. The As-Built Plans shall be substantially consistent with the approved Revised Final Plans project plans (see **Special Condition 1**). The As-Built Plans shall include a graphic scale and all elevation(s) shall be described in relation to National Geodetic Vertical Datum (NGVD). The As-Built Plans shall include color photographs (in hard copy and jpg format) that clearly show the as-built project, and that are accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, the photographs shall be from a sufficient number of upcoast, downcoast, inland and seaward viewpoints as to provide complete photographic coverage of the permitted project at this location.
- 10. Monitoring and Reporting.** The Permittee shall ensure that the condition and performance of the approved as-built project is regularly monitored, including that the trail, the revetments, the bridge, and all related components must be regularly monitored by a licensed civil engineer with experience in coastal structures and processes. Such monitoring evaluation shall, at a minimum, address whether any significant weathering or damage has occurred that would adversely impact future performance, and identify any structural damage requiring repair to maintain the approved as-built project in its approved and/or required state. Monitoring reports prepared by a licensed civil engineer with experience in coastal structures and processes, and covering the above-described evaluations, shall be submitted to the Executive Director for review and approval at five year intervals by June 1st of each fifth year (with an initial as-built report due upon initial construction completion) for as long as the approved project exists at this location. The reports shall identify the existing configuration and condition of the trail, the revetments, the bridge, and all other approved project components, including vertical and horizontal reference distances from the revetments and bridge to surveyed benchmarks for use in future monitoring efforts, and shall recommend any actions necessary to maintain these project elements in their approved and required state, and shall include photographs taken from each of the same vantage points required in the As-Built Plans with the date and time of the photographs and the location of each photographic viewpoint noted on a site plan. Any proposed actions necessary to maintain the approved project in a structurally sound manner and its approved state shall be implemented within 30 days of Executive Director approval, unless a different timeframe for implementation is identified by the Executive Director. In addition to the every-five-year requirements, separate and additional monitoring reports shall be submitted within 30 days following either (1) a storm event comparable to a 20-year or larger storm, or (2) an earthquake of magnitude 5.5 or greater in the Monterey Bay region.
- 11. Future Maintenance/Repair.** This CDP authorizes future maintenance and repair as described in this special condition. The Permittee acknowledges and agrees on behalf of itself

and all successors and assigns that it is the Permittee's responsibility to: (1) maintain the approved project (including the revetments, bridge, trail, and all other public access improvements (see **Special Conditions 1 and 2**) in a structurally sound manner that is visually compatible with the Harbor surroundings, and in their approved and required states; (2) retrieve any failing portion of the permitted structures or related improvements that might otherwise substantially impair the use, aesthetic qualities, or environmental integrity of the Harbor area; and (3) annually or more often inspect the revetments, bridge, trail, and other public access improvements for signs of failure. Any such maintenance-oriented development associated with the approved project shall be subject to the following:

- (a) **Maintenance.** "Maintenance" and "repair" as understood in this special condition, means development that would otherwise require a CDP whose purpose is to maintain or repair the approved state of the revetments, bridge, trail, and other public access improvements in their approved state. No expansion or enlargement of any approved project component is allowed under this condition.
- (b) **Other Agency Approvals.** The Permittee acknowledges that these maintenance and repair stipulations do not obviate the need to obtain permits and/or authorization from other agencies for any future maintenance or repair.
- (c) **Maintenance/Repair Notification.** At least 30 days prior to commencing any maintenance or repair activities, the Permittee shall notify, in writing, planning staff of the Coastal Commission's Central Coast District Office. The notification shall include: (1) a detailed description of the maintenance or repair proposed; (2) any plans, engineering, geology, or other reports describing the event; (3) a construction plan that clearly describes construction areas and methods consistent with the parameters of **Special Condition 3** above; (4) other agency authorizations; (5) any other supporting documentation describing the maintenance/repair event. Maintenance or repair may not commence until the Permittee has been informed by planning staff of the Coastal Commission's Central Coast District Office that the maintenance proposed complies with this CDP. The notification shall clearly indicate that the maintenance or repair is proposed pursuant to this CDP. In the event of an emergency requiring immediate maintenance, the notification of such emergency shall be made as soon as possible, and shall (in addition to the foregoing information) clearly describe the nature of the emergency.
- (d) **Maintenance/Repair Coordination.** Maintenance/repair activity shall, to the degree feasible, be coordinated with other maintenance/repair activity proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the public access areas. As such, the Permittee shall make reasonable efforts to coordinate the repair/maintenance activity with other adjacent property repair/maintenance activities, including adjusting their repair/maintenance activity scheduling as directed by planning staff of the Coastal Commission's Central Coast District Office.
- (f) **Restoration.** The Permittee shall restore all public access areas and all access points impacted by maintenance and repair activities to their pre-construction condition or better at the conclusion of any maintenance or repair event. Any native materials impacted shall

be filtered as necessary to remove all construction debris from the area within three days of completion of construction. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office upon completion of restoration activities to allow for a site visit to verify that all restoration activities are complete. If planning staff should identify additional reasonable measures necessary to restore the affected area, such measures shall be implemented as quickly as feasible.

- (g) **Noncompliance Provision.** If the Permittee is not in compliance with permitting requirements of the Coastal Act, including the terms and conditions of any Coastal Commission CDPs or other coastal authorizations that apply to the project area at the time that a maintenance/repair event is proposed, then the maintenance/repair that might otherwise be allowed by the terms of this future maintenance/repair condition may not be allowed by the Executive Director until the Permittee is in full compliance with the permitting requirements of the Coastal Act, including all terms and conditions of any outstanding CDPs and other coastal authorizations that apply to the subject properties.
- (h) **Emergency.** In addition to the emergency provisions set forth in subsection (c) of this special condition, nothing in this condition shall affect the emergency authority provided by Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).
- (i) **Duration of Covered Maintenance.** Future maintenance under this CDP as specified under this special condition is subject to Executive Director review and approval every five years to verify that there are not changed circumstances associated with such allowance of maintenance/repair events that necessitate reconsideration for ongoing allowance of future maintenance/repair events under this special condition without need for a CDP. It is the Permittee's responsibility to request Executive Director approval prior to the end of each five-year maintenance period pursuant to these maintenance/repair provisions. The Permittee must request an extension prior to the end of each five-year maintenance/repair period and the Executive Director may only extend the maintenance/repair term in writing. The intent of this CDP is to allow for 5-year extensions of the maintenance/repair term for as long as the approved revetments, bridge, trail, and other public access improvements remain authorized unless there are changed circumstances that may affect the consistency of this maintenance/repair authorization with the policies of Chapter 3 of the Coastal Act and thus warrant reconsideration for ongoing allowance of future maintenance/repair events under this special condition without need for a CDP. The Permittee shall maintain the approved revetments in their approved state.

**12. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this CDP, the Permittee acknowledges and agrees to all of the following:

- a. **Coastal Hazards.** that the project area is subject to extreme coastal hazards, including but not limited to episodic and long-term coastal erosion, ocean waves, tidal scour, storms, tsunamis, coastal flooding, landslide, earth movement, and the interaction of all of these, many of which will worsen with future sea level rise.

- b. Assume Risks.** To assume the risks to the Permittee and the properties that are the subject of this CDP of injury and damage from such hazards in connection with this permitted development.
- c. Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
- d. Indemnification.** To indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the CDP against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- e. County Responsibility.** That any adverse effects to property caused by the permitted project shall be fully the responsibility of Monterey County.

**13. Public Rights.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights that may exist on the properties involved. The Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist on the properties now or in the future.

**14. Future Permitting.** All future proposed development related to this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required.

### **15. Public Access Easement**

**A. PRIOR TO CONSTRUCTION,** the Applicant shall provide proof to the satisfaction of the Executive Director that: (a) Vistra Energy (owner of APN 133-181-009) has executed and recorded a public access easement document, in a form and content acceptable to the Executive Director, dedicating to the County a public access and recreational easement in perpetuity over APN 133-181-009 in accordance with the terms of the Project Description as proposed by the Applicant; and (b) the County has taken all necessary and appropriate measures to accept the public access and recreational easement document prior to recordation. The easement shall be for bicycle and pedestrian access over APN 133-181-009 and shall be located in the area shown for the trail on Sheets 8 and 9 of the project plans prepared by the County of Monterey, Resource Management Agency, Department of Public Works dated April 1, 2019, and dated received in the Commission's Central Coast District Office on April 29, 2019 (see pages 4 and 5 of **Exhibit 5**). No development, as defined in Section 30106 of the Coastal Act, shall occur within the easement area except for the following development authorized by this coastal development permit:



1. Grading and construction necessary to complete public access amenities, including vegetation removal, and maintenance and repair of approved development within the easement area(s) approved by this coastal development permit.

The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the perimeter of the easement area prepared by a licensed surveyor based on an on-site inspection of the easement area.

**B.** The direct dedication shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The document shall provide that the direct dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.

**C.** The direct dedication shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

- 16. Indemnification by Permittee/Liability for Costs and Attorneys' Fees.** By acceptance of this CDP, the Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees – including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and/or assigns challenging the approval or issuance of this CDP. The Coastal Commission retains complete authority to conduct and direct the Commission's defense of any such action against the Coastal Commission, its officers, employees, agents, successors and/or assigns.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT LOCATION AND BACKGROUND**

The proposed project is located generally between and parallel to the Moss Landing Harbor (Harbor) and Highway 1 in the unincorporated Monterey County community of Moss Landing (**Exhibit 1**). The Moss Landing area is the center point of the Monterey Bay shoreline and is characterized by the Harbor and related marine uses, the Elkhorn Slough State Marine Reserve, Moss Landing and Salinas River State Beaches, and other industrial, commercial, and residential uses. The Moss Landing area is easily identifiable from many points within the larger Monterey Bay by the twin 500-foot-high chimneys associated with the Moss Landing Power Plant (MLPP), and is the only location along Highway 1 between Santa Cruz and Marina with direct visual and close physical access to the ocean.

### 3-19-0340 (Moss Landing Pathway)

The Moss Landing Harbor is a commercial fishing harbor that also supports and provides for recreational boating and marine research operations. It occupies a portion of the Old Salinas River channel at the mouth of Elkhorn Slough, with permanent riprap jetties on both the north and south sides of the entrance channel to provide access to the Monterey Bay and protect Harbor facilities from the large tidal volume exchanged between the Pacific Ocean and Elkhorn Slough. The Harbor entrance and Elkhorn Slough's main channel divide the Harbor into two parts, referred to as the North and South Harbor. The South Harbor is occupied by commercial fishing, sport fishing, sightseeing, marine research vessels, and businesses that support these industries. The North Harbor is focused on recreational boating and visitor-serving uses, including restaurants, commercial kayaking, and the Elkhorn Yacht Club. In all, the Harbor provides 600+ boat slips for recreational and commercial vessels.

The project represents a segment of the Monterey Bay Sanctuary Scenic Trail (MBSST) (a component of the larger California Coastal Trail (CCT)) that stretches from Lovers Point in the City of Pacific Grove in Monterey County on the south end to Wilder Ranch in Santa Cruz County on the north end (see **Exhibit 1**). The primary purpose of the MBSST, as stated in the *MBSST Master Plan for Monterey County* (Transportation Agency for Monterey County (TAMC), January 2008), is to “enhance appreciation and protection of the Monterey Bay National Marine Sanctuary by promoting public use and enjoyment of its shoreline as well as provide a safe, accessible scenic trail for pedestrians, bicyclists, and other users free of automobile traffic.” Construction of all proposed segments of the MBSST corridor will ultimately result in a continuous Class I bicycle and pedestrian pathway along the entire Monterey Bay.

The existing Class I Monterey Peninsula Recreational Trail comprises the primary spine of the southern end of the MBSST and provides a continuous multi-use pathway from Pacific Grove north and inland through the City of Marina. Beyond the City of Marina, the existing trail transitions into an on-street facility northward to the community of Castroville. The MBSST Master Plan details a number of future proposed interconnected trail segments in the area between Marina and Moss Landing that would provide a variety of continuous north-south as well as shoreline access options.

At Moss Landing, the options for continuous north-south coastal trail access become limited due to various site constraints given the presence of the Harbor mouth and the main channel of the Elkhorn Slough, and the MBSST Master Plan identifies only one possible north-south alignment through this area. The Master Plan states that the Moss Landing segment would provide “unusually rich opportunities for interpretation and scenery, including exposure to Moss Landing Harbor” as well as improved pedestrian and bicycle circulation and safety for the community and visitors. The MBSST Plan also acknowledges that this segment will require significant engineering due to the need for a bridge crossing over the main channel of the Elkhorn Slough, and the presence of varied topography along the shoreline and highway. In addition, the close proximity to Highway 1 for some portions and some private property concerns, including related to the MLPP and security concerns, are noted as constraints to this segment.

The proposed Moss Landing trail is included in TAMC's *Bicycle and Pedestrian Master Plan* (2011), which identifies it in the top five priority Class I multi-use paths in the County because

of its ability to accommodate the widest range of users while satisfying the goals of the plan (namely, increasing and improving bicycle and pedestrian mobility and safety; increasing the number of bicycle and pedestrian trips; and increasing the number of high quality bike and walkway facilities). That plan also ranks the Moss Landing segment as number nine in priority out of over 400 bikeway projects in unincorporated Monterey County. It is similarly identified in the *Monterey County General Bikeways Plan* (2008) as one of six priority bikeway projects.

The proposed trail would be located partially on the former alignment and abutments of the former Highway 1 bridge over the Elkhorn Slough main channel. In the 1980s, Caltrans replaced the Highway 1 bridge, shifting it 10 to 30 feet inland and elevating it by five feet to move it above the wave impact zone and provide safer passage for boats traveling between Moss Landing Harbor and the Elkhorn Slough. The Coastal Commission CDP for that project<sup>2</sup> allowed for 5,000 cubic yards of new fill for the southern bridge approach, inland and adjacent to the existing bridge approach, and acknowledged that the existing bridge, at the southern end, was constructed on fill. The CDP required retention of this fill area of the abandoned southern bridge approach area along the Moss Landing Harbor to be improved with new trails and lateral pedestrian access, including for fishing and clamming access. The CDP also acknowledged that the abandoned bridge abutments would remain.

Currently, pedestrian and bicycle public access through the Moss Landing area is extremely limited, and those users wishing to travel in a north-south direction through the Moss Landing Harbor and beyond must walk or bike on the highway's shoulders, i.e., the highway has two vehicle travel lanes but no formal bicycle lanes, sidewalks, or ADA access (see **Exhibits 2 and 3** for aerial photos of the existing site context). Some unpaved trails and trail spurs have developed over time in the area between Highway 1 and the Harbor, but many of these are located on private property and they do not include safe, clear connection points. Pedestrians and bicyclists wishing to travel north or south through this stretch of Moss Landing must trespass on private property or use the existing Highway 1 shoulders in close proximity to vehicles traveling at high speeds.

In sum, Moss Landing is a highly used area that supports numerous Coastal Act priority uses, including recreational and commercial boating and fishing, as well as visitor-serving commercial uses, and the area is ripe for public access and recreational pathway improvements to better connect the area for non-vehicular access.

## **B. PROJECT DESCRIPTION**

### **Trail Alignment**

The proposed project is a 0.85-mile Class I paved bicycle/pedestrian trail from Moss Landing Road to the Moss Landing North Harbor. The trail would be constructed within County and State rights-of way (ROW), with the exception of a portion of the trail that would pass through the MLPP site (owned by Vistra Energy<sup>3</sup>). The proposed trail would be 10 feet wide with two-foot-

<sup>2</sup> CDP No. 3-83-228, approved by the Coastal Commission in December 1983.

<sup>3</sup> Vistra Energy has authorized this portion of the trail to be located on its property (see **Correspondence**) and the County is in the process of collaborating with Vistra regarding an easement for this portion of trail.

### 3-19-0340 (Moss Landing Pathway)

wide decomposed granite (DG) shoulders on each side, for a total width of 14 feet for the majority of the alignment. Some sections would have reduced or no DG shoulders. See Exhibit 3 for the trail alignment; Exhibit 4 for photographs of the proposed trail location; and Exhibit 5 for the proposed project plans.

The trail would begin at the curve in Moss Landing Road at the south shore of Moss Landing Harbor where it would connect to an existing mini-park with an existing picnic table and existing pathways into the Moss Landing Harbor District's parking lot.<sup>4</sup> This southerly east-west section of the trail would be located on the existing unpaved Moss Landing Road shoulder and the portion immediately adjacent to harbor waters would be built atop a 270-foot-long and 10- to 25-foot-wide engineered riprap revetment that would extend along the existing Harbor's edge. The revetment would be designed around the two existing Moro Cojo Slough culvert inlets at this location.

At Highway 1, the trail would turn north, parallel to and at the same grade as the highway, and would be located in the existing unpaved shoulder, approximately 20 feet from the edge of the highway travel lanes.<sup>5</sup> This section of trail would have standard concrete curbs.

North of the Highway 1/Dolan Road intersection, the trail would be located in a narrow strip of land between the MLPP facility and the southbound highway travel lane. The existing metal guardrail would be replaced with a permanent three-foot-high concrete barrier. In addition, a 500-foot-long soldier pile retaining wall would be constructed under and along the west edge of the trail (i.e., between the MLPP facilities and the trail) that would be topped with an eight-foot-high chain link security fence. This section would require removal of approximately 20 blue gum eucalyptus trees and a few cypress trees to provide sufficient width for the trail.

At the north end of the MLPP seawater intake facility, the trail would turn west, away from the highway and down a four percent grade. This steeper east-west trail section would be supported by an approximately 120-foot-long soldier pile retaining wall. The retaining wall would be topped with eight-foot high chain link fencing with view-obscuring slats to screen southerly views into the MLPP facility from the trail. The trail would then descend and turn north onto the existing engineered harbor shoreline where it would parallel the water's edge. This 775-foot long trail section (between the MLPP and the Elkhorn Slough main channel) would be constructed on 2,126 cubic yards of gabion baskets to achieve a level grade and elevation of 15 feet above harbor waters.

The last approximately 200 feet of this gabion-supported section of trail before it reaches the Harbor/Elkhorn Slough main channel would be located on the former Highway 1 fill embankment that was left in place when the highway bridge and its approaches were reconstructed slightly inland in the 1980s. This stretch on the former highway embankment

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<sup>4</sup> The County proposes to construct a sidewalk, curb, and gutter project from this mini-park southward to downtown Moss Landing and beyond at some point in the future once funding becomes available.

<sup>5</sup> This portion of the trail would not be located on the slope directly adjacent to Harbor waters because the owner of property in this area will not authorize the trail to be on his property (which extends from the edge of the Highway 1 right-of-way (ROW) down the slope and into Harbor waters). Thus, the only option for this portion of trail is to locate it within the Highway 1 ROW.

includes another 313-foot-long and 20- to 25-foot-wide riprap revetment. The entire trail section located between the MLPP at the Elkhorn Slough-mouth would include three to four foot high railings along the Harbor side.

Continuing north, a new 386-foot-long bicycle/pedestrian bridge would be constructed parallel to the existing Highway 1 vehicular bridge across the main channel of the Harbor and entrance to Elkhorn Slough. The bridge would connect on both ends to the embankments remaining from the former Highway 1 bridge (described above) and would generally follow the alignment of the former vehicular bridge. The new bridge would be constructed on 18 driven cast-in-steel shell concrete piles that would be aligned with the Highway 1 bridge piles with small overlooks on both the east and west sides of the bridge at each of the six rows of pilings (for 12 overlooks total). The bridge soffit elevation (i.e., the underside of the bridge) would be set at or above the soffit elevation of the existing Highway 1 vehicular bridge and the span lengths will match those of the vehicular bridge so as not to impact marine navigation (namely kayaks and other small, non-motorized craft) and movement of water and marine species between Moss Landing Harbor and the Elkhorn Slough. The distance between the new bridge and the highway bridge would vary between 13 and 33 feet. The bridge deck would be constructed with pre-cast concrete slab elements and the visually porous stainless steel and cable railings would be five feet high along both sides.

Once on the north side of the new bridge, the final approximately 100-foot-long trail segment will be constructed within the former highway alignment with connection points to the existing North Harbor shoreline public access trail and the existing CCT/MBSST segment that continues northward along Highway 1 to Jetty Road.

No lighting or trash receptacles are proposed as part of the project. Wayfinding and interpretive signage, as well as bicycle racks, would be located at various points along the trail's alignment. The mitigation measures identified in the project's California Environmental Quality Act (CEQA) document (Final Mitigated Negative Declaration, dated July 2015) have been incorporated into the project, and are attached to this report as **Exhibit 7**. The specific marine mammal protection measures are superseded by those identified in the Marine Mammal Incidental Take Authorization Application, submitted to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service in September 2019 and attached to this report as **Exhibit 8**.

### **Project Construction**

Project construction is expected to last two construction seasons, and in-water work associated with the new bridge would be limited to June 15 through October 15 of each year. Pile driving activities area expected to take place over an estimated 30-day construction period during the first season, at a rate of not more than one pile per day. Noise-generating construction activities, including pile driving, bridge construction, and the use of heavy machinery would only occur during daylight hours.

The Applicant has identified two likely land construction staging areas as well as one in-water staging area. The first land construction staging area would be located on the unpaved highway shoulder in the vicinity of the Dolan Road/Highway 1 intersection and the second would be located on the paved North Harbor parking area at the north end of the project. The in-water

staging area would be located just west of the proposed bridge in the Harbor and is expected to include up to two barges, each estimated to be 60 feet wide by 150 feet long, which would be used to transport and hold a crane, pile driver, and construction materials. These barges would be anchored in the staging area during bridge pile driving activities and construction of the bridge deck, which is expected to be for up to 120 calendar days per construction season.

Bridge construction would be staged and consist of the following steps: (1) construct piles which includes driving steel shells and placing the reinforcing steel and concrete in the shells; (2) build abutments and bent caps; (3) erect voided slabs; and (4) place concrete bridge deck. Construction of the bridge would progress from one end to the other, and one of the four openings between Bent 2 and Bent 6 will remain open at all times for boaters and recreational users to pass through the construction site between Elkhorn Slough and the Harbor. Safety measures, such as buoys and directional signage, will direct boaters to the appropriate area to pass safely through the construction zone.

### **C. STANDARD OF REVIEW**

In this case, the Coastal Commission's retained CDP jurisdiction includes the waters of the Moss Landing Harbor and Elkhorn Slough, as well as the portion of Moss Landing Road that spans the entrance to Moro Cojo Slough and the bridge support areas. The CDP jurisdiction of Monterey County includes the remaining land portions of the project. As such, the development spans the two jurisdictions. If a CDP for a proposed development is needed from both the Commission and a local government with a certified Local Coastal Program (LCP), Coastal Act Section 30601.3 allows the Commission to act on a single consolidated CDP (with the policies of Chapter 3 of the Coastal Act as the standard of review, and the certified LCP to be used as guidance), if the Commission, the local government, and the applicant agree to such consolidation and public participation will not be substantially impaired by review consolidation.

The local government (who is also the Applicant) has requested consolidated CDP review for this project in a letter to Commission staff dated July 23, 2018. The Executive Director agreed to the consolidated permit process with the County. Thus, the standard of review for this consolidated CDP application is the policies of Chapter 3 of the Coastal Act, with the certified LCP being used as guidance.

### **D. COASTAL HAZARDS**

Coastal Act Section 30235 addresses the use of shoreline protective devices:

*Section 30235. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Coastal Act Section 30101 defines "coastal-dependent development or use" as:

**Section 30101.** *Coastal-dependent development or use means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.*

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

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

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

### **Consistency Analysis**

Coastal Act Section 30235 acknowledges that structural or “hard” methods that alter natural shoreline processes are only compelled approval when required for coastal-dependent uses (as defined in Coastal Act Section 30101), or to protect existing structures or public beaches in danger of erosion (all of which are subject to the requirement that adverse impacts to local shoreline sand supply are mitigated or eliminated).

The proposed project includes both a new bicycle/pedestrian segment of the California Coastal Trail and two new associated riprap revetments within the Moss Landing Harbor. The following analysis examines Coastal Act Section 30235 requirements related to when shoreline armoring (such as the proposed revetments) are allowable, including as related to their necessity and sand supply impacts. In this case, the proposed shoreline armoring would not protect an existing structure(s) (which the Commission has interpreted to mean structures existing prior to the effective date of the Coastal Act on January 1, 1977) in danger from erosion or a public beach in danger from erosion. The armoring is proposed to support and serve *new* development (i.e., the proposed bicycle/pedestrian trail). Under Coastal Act Section 30235, the only situation in which armoring can be compelled for any type of new development is if it is *required* to serve a coastal-dependent use.<sup>6</sup> As such, the following evaluation looks at these questions: (1) is the proposed trail in this case coastal dependent? (2) is the proposed armoring required?; and (3) has the proposed armoring been designed to eliminate or mitigate adverse impacts on local shoreline sand supply, all as required per Coastal Act Section 30235?

### ***Proposed Trail is a Coastal-Dependent Use***

The Moss Landing Harbor was created in 1947 and is one of only six harbors located along the Central Coast. As noted in the “Project Description,” the Harbor supports both commercial fishing vessels and recreational boating; provides coastal-dependent public amenities (e.g., public boat launch, boat storage, bilge and oil pump out, and fish cleaning stations); and supports marine research operations (e.g., oceanographic research vessels and instrumentation) and

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<sup>6</sup> Coastal Act Section 30235 is in fact silent on whether a coastal-dependent use may be new or existing, and as such, it is presumed that 30235 compels armoring when required to serve both new and existing coastal-dependent uses.

various coastal-related commercial uses (e.g., marine repair, kayak rentals, and a yacht club). The North Harbor also provides an existing shoreline trail, a public wharf, and wildlife viewing opportunities, and the South Harbor includes a number of small public park spaces and harbor shoreline pathways along the main Harbor District parking lot. Direct access to both Moss Landing and Salinas River State Beaches is also provided through the North and South Harbor areas on existing sidewalks and roads. The Harbor was created and has been heavily developed to provide for coastal-dependent uses, and thus clearly meets the definition of “coastal-dependent” in Section 30101 of the Coastal Act.

Because of the manmade nature of the Harbor being located in a dynamic slough/river/ocean environment (which includes daily tidal activity and associated scour, and periodic storm surge and wave action<sup>7</sup>), the existing edges of the Harbor shoreline consist of a mix of sheet pile walls, riprap revetments, and other engineered construction that support the Harbor’s continued existence, along with unarmored areas as well. The Commission has approved a number of armoring projects within the Harbor for the purposes of protecting existing facilities, public access and coastal-dependent uses, with the intent of supporting the long-term continued use and viability of the Harbor.<sup>8</sup>

In this case, the proposed trail (where it touches the Harbor edge) would be a built-in component of this waterfront that has been created and heavily developed to provide for coastal-dependent uses, including commercial fishing, recreational boating, and public access. Like the existing trail along the North Harbor shoreline (with which it would connect), the proposed trail would be a fully integrated element of the Harbor itself and would provide for up-close viewing and nature study of the Harbor and Elkhorn Slough environs, including bird and marine mammal observation, and would bring visitors to the water’s edge. A unique, primary objective of this trail segment in particular (as opposed to others envisioned and proposed for other sections of the MBSST) is close connection to and interpretation of the Moss Landing Harbor and Elkhorn Slough environments. It would directly connect existing public access amenities in the South Harbor (i.e., an existing public mini-park with a picnic table and pathways that lead into the main Harbor District parking and land facilities) to similar amenities, including the existing North Harbor shoreline trail, on the north end. In other words, the proposed trail, though functional as part of other regional trail systems such as the MBSST as well as the California Coastal Trail (discussed below), is also properly conceptualized as a proposed component of the Harbor itself – which, as discussed above, is clearly a coastal-dependent use. As such, when integrated into this Harbor setting, the proposed trail segment meets the Coastal Act Section 30101 definition of coastal dependent.

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<sup>7</sup> The Harbor is subject to intense daily tidal movement and scour, including because of the deep Monterey Canyon (one of North America’s largest underwater canyons) just offshore and the extensive reach and size of the Elkhorn and Moro Cojo Sloughs. In recent years, tidal currents through the Harbor and in and out of Elkhorn and Moro Cojo Sloughs have increased, along with active bank erosion in the tidal slough system.

<sup>8</sup> See 3-01-016 (North Harbor Redevelopment Project), 3-11-063 (North and South Harbor Revetments), 3-18-1246-W (Maintenance dock/A-dock revetment, South Moss Landing Harbor). The North Harbor shoreline in particular, with which the proposed trail would connect, is lined with a 1,000-foot long rip rap revetment that was approved by the Commission (CDP 3-01-016) as part of the North Harbor Redevelopment to support the coastal-dependent uses (including the shoreline trail, boat trailer parking, and gangway access to transient guest docks) that were part of that project.



In addition, the proposed trail represents a critical north-south segment of the CCT. The Commission's primary definition of and goal for the CCT is that it must be a continuous walking and hiking trail *as close to the ocean as possible*. It must also maximize ocean views and scenic coastal vistas and provide an educational experience of the coastal environment.<sup>9</sup> Mirroring these objectives, the Commission's primary siting and design standard for the CCT is that it should be sited and designed to be located along or as close to the shoreline as is physically and aesthetically feasible. In 2003, the Coastal Conservancy, in conjunction with the Commission, prepared a report titled *Completing the Coastal Trail* for the California State Legislature, which provides principles for designing the CCT, the first of which is proximity to coastal waters. It states: "Wherever feasible, the Coastal Trail should be within sight, sound, or at least scent of the sea. The traveler should have a persisting awareness of the Pacific Ocean. It is the presence of the ocean that distinguishes the seaside trail from other visitor destinations." The CCT then, by definition, meets the Coastal Act Section 30101 definition of coastal dependent because it requires a site on or adjacent to the sea to be able to function as intended.<sup>10</sup>

Furthermore, there is only one possible north-south alignment for the MBSST/CCT through this area of Monterey County because of the presence of the Elkhorn Slough and the main channel of the Harbor. As shown in **Exhibit 2**, the open water of the Harbor and Elkhorn Slough main channels, as well as the many fingers and marsh areas of the Elkhorn Slough, limit north-south travel in this region to the existing Highway 1 bridge, which spans the most narrow crossing of the Elkhorn Slough and Harbor waters (including marsh areas). The next north-south accessway (for vehicles, bicycles, and pedestrians) is Elkhorn Road, a rural two-lane roadway (with no sidewalks, shoulders, or striping) located to the east of the Slough and approximately three miles inland of Highway 1. As such, options for the CCT alignment through this region that meet the primary objective of close proximity to the ocean ("within sight, sound, or at least scent of the sea") are limited to the one proposed in this project.

So, for these reasons, the proposed bicycle/pedestrian trail segment in this case is considered a coastal-dependent use. The trail would be an integral piece of the Harbor itself, which is a long-established coastal-dependent use on the Monterey Bay. Its location along the Harbor is the only one available to meet the larger statewide objective for the CCT, i.e. to be in close proximity to the Pacific Ocean. No other possible alignment exists in close proximity to the shoreline, with the next closest existing roadway located several miles to the east and away from the ocean. Along with other alignment alternatives discussed in further detail below, the development of a continuous north-south trail through the Slough itself would raise a number of additional Coastal Act consistency issues, including because of the much larger area of impact that would result from spanning the entire Slough (instead of just the much narrower entrance to the Slough), as well as the more environmentally sensitive nature of the Slough when compared to the developed Harbor. (Nor would any other locational alternatives meet the project proposal that this trail segment be an integral, functional component of the Harbor itself.) The proposed trail therefore meets both the Section 30101 definition of a coastal-dependent use and the Commission's

<sup>9</sup> <https://www.coastal.ca.gov/access/ctrail-access.html>

<sup>10</sup> And similarly, the Commission has found the CCT to qualify as coastal dependent in previous CDPs (e.g., CDP 3-16-0446 (Rockview, Pleasure Point, Santa Cruz County), approved by the Commission in February 2019).

definition of and primary objectives for the CCT, and thus meets the first eligibility test of Section 30235 because of its coastal dependent nature.

### ***Necessity of Revetments***

In terms of the Section 30235 requirement that shoreline structures, such as the two proposed revetments, be *required* to serve a coastal-dependent use, the Commission has in the past interpreted this to require an applicant for a shoreline protective device to demonstrate that there is no feasible alternative that would result in reduced significant adverse impacts to coastal resources.<sup>11</sup> The following describes the two proposed revetments and provides an alternatives analysis that evaluates trail alignment alternatives and armoring alternatives.

#### ***Revetment 1 (Former Highway 1 fill embankment)***

The first proposed 313-foot-long and 20- to 25-foot-wide revetment would be located just south of the proposed bridge adjacent to the proposed trail section atop the existing former Highway 1 fill embankment. As shown in **Exhibit 3**, this area is a small peninsula immediately adjacent to the highway that consists of the remnants of the former bridge abutment and deteriorating concrete block pieces that is likely a mix of non-engineered concrete riprap and former roadway pieces, as shown further in **Exhibit 4**. This site is directly exposed to and fronting the Harbor mouth and adjacent to the entrance to the Elkhorn Slough and, as described above, the Harbor is subject to intense daily tidal movement between the ocean and the extensive inland reaches of the Elkhorn Slough. Wave overtopping has, over time, eroded an approximate three-foot scarp in the peninsula landward of the rubble, as seen in **Exhibit 4**.

The design of the trail and the need for this proposed revetment was evaluated in the *Basis of Design for Shore Protection at Moss Landing Harbor* (prepared by Sea Engineering, Inc., March, 2011), which describes that this segment of Harbor shoreline is subject to erosion by ocean waves entering the slough from the Harbor entrance channel. This report modeled and based the design of this trail section on the following factors: stillwater level (including tides, wave conditions, storm surge and wave setup, and sea level rise) and wave runup, and calculated a 14.45-foot runup (non-overtopping) elevation for a 50-year design life of the trail. The existing elevation for this segment along the peninsula ranges from about 11 feet to 16 feet, so the proposed gabions would elevate the trail to a level 15 to 16-foot height. Concerning the desired level of protection for the trail, the report indicates that at this proposed elevation, the revetment was designed as a non-overtopping structure. The revetment was designed with a minimum five-foot clearance to the edge of the bicycle/pedestrian path. The Applicant indicated that given that this existing peninsula directly faces the Harbor entrance and experiences direct wave impact, the proposed riprap revetment is necessary to ensure protection of the proposed trail for its 50-year design life. The revetment was designed using typical engineering standards for this type and width of trail in an environment at the water's edge.

In a subsequent evaluation,<sup>12</sup> the Applicant's engineers elaborated on the need for and choice of a riprap revetment for protection of the proposed trail at this location. They indicated that the

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<sup>11</sup> Coastal Action Section 30108 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

<sup>12</sup> Monterey Bay Sanctuary Scenic Trail Shore Protection (MBSST) – Response to California Coastal Commission (CCC) Comments, dated February 27, 2014

proposed revetment is necessary to mitigate further erosion of the shoreline at this location and protect this public facility along a similar slope as the existing non-engineered rubble and debris at the site, which it would replace, and it was chosen as the best option in a harbor environment because of its ability to absorb wave impact. The Applicant indicated that revetments are typical shoreline armoring structures in this and other harbor settings, and that it was also the preferred alternative from a cost perspective.

*Revetment 2 (South Harbor/Moss Landing Road)*

The second proposed revetment would be located in the South Harbor fronting the proposed trail segment along Moss Landing Road (see **Exhibit 3**). At this location, four existing Moro Cojo Slough box culverts allow for active tidal flow under Moss Landing Road between the Harbor and Moro Cojo Slough. In 2013, the Commission approved a 130-foot-long revetment adjacent to the westernmost box culvert to protect the culvert and the existing structures and coastal-dependent uses associated with the Harbor shoreline and facilities (including the existing mini-park area) from ongoing scour and erosion.<sup>13</sup> The proposed 270-foot-long revetment would connect to this existing revetment.

Like the rest of the Harbor and other facilities located along the shoreline here, the site is located within historical sand dunes. Undeveloped sites within Moss Landing Harbor still display dune properties, but long developed sites, like the public boating and parking facilities and the island they are constructed on, do not generally have the outward appearance of dunes. Still, the underlying geologic substrate is sandy. These sandy soils are easily erodible and, when subject to scour and wave action or via accelerated currents near the box culvert pipe, can lead to significant shoreline loss.

In this area adjacent to Moss Landing Road and the box culvert pipes, little protection exists against shoreline scouring and undermining of the pipes and/or roadway. The daily tidal exchange between the ocean and the slough slowly erodes the unconsolidated sand material that comprises the Harbor's inner edge. In its 2013 approval of the revetment adjacent to the westernmost culvert, the Commission found that, over time, the bluff edge has slowly retreated to within a few feet of the existing harbor facilities at the "G" dock, Moss Landing Road itself, and the box culvert connection with Moro Cojo Slough – all of which were then threatened and necessitating armoring. In addition, in 2014, two of the four existing culvert tide gates at this location began leaking saltwater from the Harbor into Moro Cojo Slough, threatening to contaminate potable wells and damage Moss Landing Road and underground utilities. The County repaired the tide gates under an emergency CDP from the Commission.<sup>14</sup>

The Applicant indicated that given the narrow land area where the trail is proposed between Moss Landing Road and harbor waters, the highly erodible nature of this area of the Harbor, and the history of erosion around the existing box culverts, the proposed riprap revetment is necessary to ensure protection of the proposed trail for its 50-year design life. The revetment was designed using typical engineering standards for this type and width of trail in an environment at

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<sup>13</sup> Coastal Commission CDP Number 3-11-063, approved October 2013.

<sup>14</sup> Coastal Commission emergency CDP Number G-3-14-0039, issued November 18, 2014

the water's edge and, like Revetment 1 discussed above, was chosen primarily for its ability to absorb wave impact in the harbor environment.

#### *Alternative Bridge Alignments*

The Moss Landing area is uniquely constrained by a number of factors related to Harbor waters and navigation channels: Elkhorn Slough and Moro Cojo Slough marsh and open waters; private property; Highway 1; known archaeological resources; and existing development. As described above, the presence of the Elkhorn Slough and the main channel of the Harbor greatly restrict options for the north-south alignment of the MBSST/CCT through this area of Monterey County. Any proposed north-south trail would need to cross over the Elkhorn Slough/Harbor main channel, either on the existing highway bridge or a new bridge.

In addition to the existing highway bridge area, the only other possible location for a bridge over the Harbor main channel would be from the "Island" (or Sandholdt Road) across the Harbor mouth to Jetty Road and Moss Landing State Beach. As shown in **Exhibit 3**, although this location is closer to the sea than the proposed alignment, such a bridge crossing over this portion of the harbor mouth would be physically infeasible given the bridge height that would be needed to allow boats, including large fishing and marine research vessels, unimpeded access into and out of the Harbor. Furthermore, a bridge at this location would have significant visual impacts given its prominence at the main Harbor entrance, would likely have significant dune and other habitat impacts, as well as engineering and permitting challenges related to the existing Harbor jetties.

Similarly, any new bridge farther inland from the Harbor would need to cross over the Elkhorn Slough proper and would have significant engineering and cost constraints as well as coastal resource (habitat, visual, etc.) impacts given the extensive width of Elkhorn Slough (including associated marsh and wetland areas) located inland of Highway 1. And as described above, the next nearest existing roadway inland of the Elkhorn Slough is several miles from the ocean and any trail here would be disconnected from the larger CCT alignment.<sup>15</sup> Thus, the location of the proposed pedestrian/bicycle bridge in the vicinity of the existing vehicular bridge is the only feasible option for getting across the Harbor and Elkhorn Slough entrance channels and, as such, options for the alignment of the trail that will connect south of this bridge are limited, as discussed below. Moreover, an inland alternative bridge alignment would not achieve the purpose of the proposed trail segment to function as an integral component of the Harbor itself.

#### *Trail Alignment Alternatives South of the Bridge*

In this vicinity, alternative alignments for the segment of the trail located south of the proposed bridge are limited to the area from the edge of Highway 1 to the Harbor waters, a roughly 50- to 200-foot-wide area (shown in **Exhibit 3**). This area consists of several parcels in private ownership, as described below. The area north of the MLPP facilities (between the water and the highway) also contains a highly sensitive archaeological site (described below under 'Archaeological Resources') and, as such, the potential area for the trail is limited to that which

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<sup>15</sup> Since these alternate water crossing locations were dismissed early on in the MBSST planning process, no evaluations were ever done to determine if they would or would not require any sort of shoreline armoring for any other portions of the trail that would connect to these crossings. So it is unknown whether or not they would result in more, less, or the same amount of armoring as is proposed.

is proposed.

A segment of the proposed trail would be located on an MLPP parcel (APN 133-181-009) owned by Vistra Energy, who has authorized this segment of the trail to be developed on its property (see **Correspondence**).<sup>16</sup> This location on the Vistra property is the only location deemed feasible by Vistra for trail use given existing infrastructure, public safety concerns, and Vistra’s general concerns related to security and protection of its facilities.

South of the Vistra property, the trail will extend up the slope and be sited within the County’s road right-of-way (see **Exhibit 3**). The County initially proposed that the trail would pass through the parcels in the general location of the trees shown in **Exhibit 3** (APNs 133-173-005 and 133-173-002), but that property owner (i.e., Moss Landing Commercial Park LLC) rescinded permission to locate the trail on these properties. An option to locate the trail on piers over the water in this area was evaluated but was dismissed because, as shown in **Exhibit 3**, APN 133-173-005 extends out into the Harbor waters. While the Moss Landing Harbor District (District) Harbormaster has indicated that efforts to renegotiate a lease with this property owner are underway and ongoing, at this time the District does not own, control, or otherwise have a right to the base or “mud” portion of this property, but instead only has a right to use the water for boating purposes.<sup>17</sup> Both the Applicant and the District concur that this property owner, having rescinded permission to site the trail on the land portion of their property, would not be expected to grant permission to use any other portion of these properties site (i.e., in or along the water’s edge, or on piers over the water). The Applicant, i.e. the County, has indicated that given the time and cost involved, it is not able to pursue eminent domain in order to locate the trail on this property outside of the County’s right-of-way. Furthermore, even if permission to locate the trail within the water (on piers) in this area could be obtained from the landowner, the primary navigation channel in and out of the southeast Harbor is narrow (approximately 30 to 40 feet wide) and it may not be physically feasible to site a new 10 to 14-foot-wide pathway (what would essentially be a new pier) in the water parallel to the Harbor shoreline while maintaining adequate navigation space. Finally, an existing seawater intake structure (also owned by Moss Landing Commercial Park LLC) that extends out into the water also presents challenges to siting the trail over the water here.

#### *Revetment Alternatives*

In terms of alternatives to the proposed revetments themselves (neither of which would be

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<sup>16</sup> This parcel contains the MLPP’s two existing seawater water cooling intake structures and related infrastructure. MLPP has been and continues to undergo various changes to modernize and upgrade its facilities, and is currently seeking approvals from the County for a battery energy storage system expansion. The northern cooling seawater intake structure serves MLPP’s generating units 1 and 2, which as of the date of this staff report, are the only units still in operation at the plant, generating natural gas-fired electricity. The southern intake most recently served generating units 6 and 7, which were “mothballed” in 2016.

<sup>17</sup> The State Lands Commission granted sovereign salt marsh, tide and submerged, and swamp and overflowed lands in trust to the Moss Landing Harbor District in 1947 for the majority of the current-day Harbor for the establishment, improvement and conduct of a harbor and for the construction, maintenance, and operation of wharves, docks, piers, slips, quays, and other utilities, structures, facilities, and appliances necessary or convenient to promote and accommodate commerce and navigation. The southeastern corner of the current-day Harbor, however, was not part of the area that was granted to the District, and the District has to-date operated this area under lease agreement(s) with the landowner.

located on these properties just described above), the Applicant evaluated the following:

Seawall (gravity wall): According to the Applicant's engineers, seawalls at the two locations proposed for armoring would be problematic for two primary reasons. First, the optimal foundation for a seawall is hard sediment or rock, and substrates in the Harbor are mostly sandy material, easily erodible by the effects of waves, tides, and currents. Erosion of the foundation material would lead to instability of the wall, unless the elevation of the toe of the wall was significantly below the influence of scour. Installation of a seawall in this Harbor setting would require substantial excavation and potentially complicated construction methods, and installation of the toe of the wall would require a very large volume of fill in Harbor waters. Second, unlike riprap, seawalls have a tendency to reflect waves back into the water, leading to potentially unsafe navigation for vessels traversing Harbor waters. In addition, refracted waves may exacerbate erosion elsewhere as the wave energy is reflected and travels to other locations in the Harbor before dissipating. Finally, from a cost perspective, seawalls are generally high cost when compared to other armoring options such as riprap.

Bulkhead (sheetpile wall): Bulkheads are typically built using steel, precast concrete, timber, or composite (plastic) sheet pile. Like seawalls, bulkheads are impermeable structures that have a tendency to reflect waves, leading to potential navigation and erosion issues. Bulkheads are typically common in low- to intermediate-impact situations (based on fetch, body, and wave height), such as along riverfronts and other inshore waterways, or in protected areas of bays and harbors. The two existing steel sheetpile bulkheads at the remaining north and south bridge abutments (where the proposed new bridge would connect) appear to have been installed primarily to hold back fill and support surcharge loads from the previous bridge structure. These existing abutments are not typically subject to the full strength of harbor waves, as they are parallel to the dominant wave action. However, two segments of the proposed trail *are* subject to the full strength of harbor waves as these segments are perpendicular to the dominant wave action, and thus the riprap is necessary along these segments to dissipate the wave action. Finally, like seawalls, the cost of bulkheads is high when compared to riprap revetments.

Soft structures: The Applicant evaluated soft structures (such as vegetative berms or beach nourishment) and determined that such structures are typically utilized in low impact (fetch, body, and wave height) situations, such as within coastal marshes or along inshore waterways like lakes and reservoirs. Soft structures thus would not be suitable for the Harbor shoreline, particularly near the Harbor's main channel, where wave action, scour, and tidal surges are strong. As discussed above, the Harbor's shoreline edge is made up of mostly sandy soils and unconsolidated earthen materials that are easily and quickly eroded, and under these circumstances, any soft alternatives would require constant maintenance to remain effective. Although soft structures typically have minimal impacts on tidal exchange, sediment transport, and aesthetics, and are also relatively low cost, the Applicant determined that soft structures would not adequately protect these segments of the proposed trail.

No armoring: The Applicant determined that, at the proposed armoring location just south of the bridge, a "no armoring" alternative would not adequately protect the proposed public trail

at this location for any significant length of time. This determination was made given the deteriorated condition of the existing rock and concrete rubble at this site, which are the effects of ongoing erosion due to wave action and tidal flow and scour. Without riprap, it is unknown how long the trail could persist at this location while being consistent with required uniform building and safety standards, absent some sort of protection given its immediate proximity to the shoreline. At the second armoring location, along Moss Landing Road, it is similarly unknown how long the trail could persist at the edge of the Harbor without armoring, particularly given the history of erosion at the existing Moro Cojo Slough culverts and the volume of water that moves through this system on a daily basis, let alone during winter storms. Although the “no armoring” alternative would have no impacts on aesthetics, sediment transport, and tidal exchange in the short term, the risks and impacts with respect to public safety and potential damage and loss of the trail from erosion, scour, and tidal surges make this option unacceptable to the Applicant.

In sum, some type of shoreline protection for the proposed CCT is needed due to the highly constrained nature of the area, including with respect to the infrastructure present of a working waterfront/harbor, private property, archaeological constraints, and general site topography. And the proposed revetments are appropriate and necessary to support two segments of the proposed new trail because, like most of the Harbor shoreline, the highly erodible underlying sandy substrate of the Harbor, combined with daily scour and wave action, necessitate this type and level of protection. The revetments will protect these trail segments, will help define the edge of Harbor, and have been sized and designed similar to riprap revetments located elsewhere within the Harbor, and will ensure an appropriate level of protection of the trail and visual continuity. As discussed above, the evaluated alternatives were deemed to be infeasible (all of them) and/or not any less environmentally damaging (seawall/gravity wall and bulkhead/sheetpile wall) than the proposed revetments. Therefore, the project as proposed is the least environmentally damaging, feasible alternative.

### ***Sand Supply Impacts***

In terms of the Section 30235 requirement that shoreline structures, such as the proposed revetments, mitigate for adverse impacts to local shoreline sand supply (primarily for public beach retention reasons), the maintenance of the Harbor requires regular dredging, the spoils of which are used for beach replenishment for area beaches. Thus, when evaluated as part of the Harbor itself, any adverse impacts of the proposed revetments on sand supply are self-mitigated by the Harbor District’s ongoing maintenance dredging program (CDP 3-16-0325) and the Army Corps of Engineers dredging of the Federal (main) channel, which redistributes sand that would otherwise inhibit use of the Harbor to appropriate locations for the purpose of augmenting local shoreline sand supply. Furthermore, because the proposed project is located in a harbor setting, it will not adversely impact beach space used for public recreational purposes, and is a new public access project, and would provide a valuable new public amenity for both residents and visitors along the Monterey Bay and Moss Landing Harbor shorelines. The project is therefore self-mitigating in this respect (*i.e.*, the public access aspect of adequate local shoreline sand supply) as well. Thus, the proposed revetments can be found consistent with this requirement of Section 30235 of the Coastal Act.

In sum, much of the existing developed Harbor shoreline is comprised of either revetments or sheet pile walls for the protection of the Harbor; thus, the shoreline protection at issue here is implicated by all of the structures that define the form of, and support the function of, the Harbor itself. As such, while the proposed project includes the installation of armoring in coastal waters, the proposed armoring would serve the purpose of protecting the proposed trail, which as described above, would be part of the larger coastal-dependent Harbor that relies on such armoring for its continued functioning. The sandy substrates in the Harbor and the ability to absorb and not refract wave energy make revetments a preferred solution to secure the Harbor shoreline. Such revetments would be the least impactful to Harbor operations and the project inherently mitigates for adverse sand supply impacts. As such, the project as a whole satisfies the sand supply protection requirement of Coastal Act Section 30235.

#### ***Duration of Armoring Authorization***

The Coastal Act compels shoreline protection devices only necessary to serve a coastal-dependent use or protect an existing structure in danger of erosion, and therefore shoreline protective devices are no longer compelled after the existing structures or coastal-dependent uses they protect are no longer present or no longer require armoring. Although in this case it is likely that the public pathway within the confines of the Harbor (i.e., the structure being protected by the revetments) will be in place for many years, it is unclear how sea level rise and other coastal hazards may affect the Harbor over time, so it is still necessary to ensure that the shoreline protection as constructed is not allowed to outlast the public trail it is designed and approved to protect.<sup>18</sup>

**Special Condition 6** thus limits the duration of this armoring approval to the time when the public accessway is no longer present or no longer requires armoring, whichever occurs first. If some portions of the public trail and related improvements are removed, while some portions are retained, the armoring is required to be reduced or modified so that it is the minimum necessary to protect the public trail improvements that are retained.

#### ***Long-Term Stability, Maintenance, and Risk***

The proposed trail and associated components are new development, and therefore must meet the standards imposed by Coastal Act Section 30253, which requires that new development must minimize risks to life and property in areas of high geologic and flood hazard. The Commission's experience in evaluating proposed development in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to both long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) amounting to tens of millions of dollars. As a means of allowing continued development in areas subject to these hazards while also avoiding placing the economic burden for possible future damages onto

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<sup>18</sup> Monterey County, TAMC, the Elkhorn Slough Foundation, Association of Monterey Bay Area Governments, The Nature Conservancy, and others, in concert with Coastal Commission staff, are actively engaged in long-range planning for the Moss Landing area to address adaptation of Highway 1 and the Harbor and its various uses in response to expected sea level rise-related impacts. These efforts are ongoing with the ultimate goals of determining the appropriate outcomes for Moss Landing and the highway in this area consistent with the Commission's guidance on this issue to date.



the people of the State of California, applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Such a condition is appropriate under these circumstances, and this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 12**).

In terms of assuring long-term stability and structural integrity, if the revetments were damaged in the future (e.g., as a result of wave action, storms, etc.), this could lead to a degraded public access condition. In addition, such damages could adversely affect Harbor uses and nearby recreational areas by resulting in debris within the Harbor and/or creating a hazard to the public using the Harbor. Therefore, in order to find the proposed project consistent with Coastal Act Section 30253, the project must be maintained in its approved state. Further, in order to ensure that the Applicant and the Commission know when repairs or maintenance are required, the Applicant must regularly monitor the condition of the revetments, particularly after major storm events. Such monitoring will ensure that the Applicant and the Commission are aware of any damage to or weathering of the armoring and other project components, and can determine whether repairs or other actions are necessary to maintain the armoring and trail in their approved state before such repairs or actions are undertaken. To assist in such an effort, monitoring plans should provide vertical and horizontal reference distances from armoring structures to surveyed benchmarks for use in future monitoring efforts.

Thus, to provide long-term structural stability and ensure that the proposed project is properly maintained, **Special Conditions 9 and 10** require the submission of as-built plans and monitoring and reporting at five-year intervals. Such monitoring provides for evaluation of the condition and performance of the proposed project, and allows for any necessary maintenance, repair, changes or modifications to be timely identified. **Special Condition 11** requires the Applicant to maintain the project in its approved state, subject to the terms and conditions identified herein. Future monitoring and maintenance activities must be understood in relation to the approved final project plans (see **Special Condition 1**).

## **E. MARINE RESOURCES AND SENSITIVE HABITAT**

The Coastal Act protects the marine resources and habitat offshore of this site. Coastal Act Sections 30230 and 30231 provide:

*Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

*Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water*

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

In addition, Section 30233 addresses filling of coastal waters and provides (in relevant part):

**Section 30233.** *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

*(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

*(7) Nature study, aquaculture, or similar resource-dependent activities.*

The Coastal Act defines fill as follows:

**Section 30108.2.** *"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.*

The Coastal Act also provides strong protections for sensitive habitat, such as wetlands:

**Section 30240.** *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

### **Consistency Analysis**

The Moss Landing Harbor provides the vital link between the tidal waters of Monterey Bay and Elkhorn Slough. Marine mammals, fish and seabirds make use of both the aquatic and terrestrial environments provided within the Harbor, the Slough and the Bay. Harbor seals and sea otters make their way through the Harbor to established haul-outs in Elkhorn Slough, and they are frequently observed in the vicinity of the project site. Pelicans and other shorebirds have also been observed resting or foraging in the vicinity. The tidal marsh and mudflats that fringe the northernmost area of the Harbor also serve as resting and foraging grounds for harbor seals, sea otters, and various shorebirds. Whereas environmentally sensitive habitats still exist in the North Harbor (including tidal flats, eelgrass beds, sandy beaches and sandy dune areas), the South Harbor area as well as the main channel and bridge area has been heavily used by recreational boaters since the opening of the Harbor in the mid-1940s, and has lost much of the fringing salt marsh and benthic environments that once

existed. The North Harbor has had relatively little development over the same time period, and so has retained at least some of the natural habitats that existed in the area prior to the opening of the harbor entrance channel, and the related introduction of increased tidal currents that now flow in and out of Elkhorn Slough.

#### *Water Quality and Noise*

The proposed project involves significant construction in and over coastal waters, which can cause water quality impairment from sediment disturbance and runoff, equipment leaks, and spills of construction materials into Harbor waters. Additionally, pile driving can negatively impact marine wildlife by generating significant underwater noise. The prospect of both increased underwater sound and diminished water quality due to project activities are of particular concern as they relate primarily to southern sea otters, which are known to occur in Harbor waters, as well as other marine taxa.

The proposed project will additionally include the placement of new pilings in Harbor waters to support the proposed new bicycle/pedestrian bridge. **Special Condition 1(b)** requires Final Plans to identify all new pilings to be installed in association with the bridge, and that all piling materials, preservatives, and coatings be consistent with the requirements of the Commission's standard best management practices (BMPs) for such development.

With respect to the potential water quality impacts of overwater construction, **Special Condition 3** requires the Applicant to provide a Construction Plan that requires incorporation of the Commission's standard best management practices for work over water (including maintaining good construction site housekeeping controls and procedures, the use of appropriate erosion and sediment controls, a prohibition on equipment washing, refueling, or servicing over coastal waters, etc.) during project construction. To further protect marine resources and offshore habitat, **Special Condition 3** also requires construction documents to be kept at the site for inspection, and also requires a construction coordinator to be available to respond to any inquiries that arise during construction. The proposed construction timeline (June 15 to November 30) minimizes the likelihood that storm events will cause runoff contaminated by construction materials or sediment to enter Harbor waters.

The Applicant proposes to use low impact methods (i.e., a vibratory hammer) for setting the cast-in-steel shell piles rather than an impact hammer to help reduce the overall sound and exposure levels in the Harbor and Slough. The Applicant also proposes to employ noise attenuation measures, which either further reduce hydro-acoustic noise impacts or discourage fish and marine mammals from entering the area where hydro-acoustic disturbance will be most pronounced.<sup>19</sup> To further address the noise impacts of pile driving, the proposed project includes marine mammal and fish protection measures that involve underwater acoustic monitoring, daily limits on the number of piles that can be driven (no more than one per day), marine mammal buffer/safety zone and monitoring by a qualified biologist, and compliance with all other National Marine Fisheries Service and U.S. Fish and Wildlife requirements for

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<sup>19</sup> Specifically, the Applicant proposes soft starts (when initial driving strikes use low hammer energy and, consequently, produce less noise) and a bubble curtain (a wall of bubbles that acts both as a deterrent to fish and marine mammals and as a sound screen that reduces the transmission of noise outside the work area).

such work (see **Exhibit 8** for the full suite of these measures which have been incorporated into the project). **Special Condition 1(b)** requires that the project plans include these methods as well as the Commission's standard BMPs during installation of the proposed bridge pilings.

#### *Fill of Coastal Waters*

Additionally, the proposed project involves filling of coastal waters for the purpose of installing pilings to support the new bicycle/pedestrian bridge in the Harbor. Under Coastal Act Section 30233(a), such fill can be allowed for certain purposes where there is no feasible less environmentally damaging alternative, provided that any adverse environmental effects are mitigated. Coastal Act Section 30233(a)(3) allows fill for public recreational piers that provide public access and recreational opportunities. In this case (and as discussed above), the proposed bridge is essential to connecting the north and south segments of this proposed public trail over the open waters of the Harbor and Elkhorn Slough. In addition, fill of coastal waters is allowed under Coastal Act Section 30233(a)(7) for nature study or similar resource-dependent activities.<sup>20</sup> The proposed bridge will have expansive views of the Harbor, Pacific Ocean, and Elkhorn Slough, providing an up-close experience of this area. In addition, the proposed interpretive signage along the trail will encourage an understanding and appreciation of the natural environment here. Thus, the proposed project meets the limitations of Coastal Act Sections 30233(a)(3) and (a)(7) regarding allowable purposes for fill of open coastal waters.

In terms of feasible less environmentally damaging alternatives, Commission staff discussed several potential alternatives to the proposed bridge with the Applicant. One potential alternative is a freespan bridge or a reduced number of pilings to support the proposed bridge to eliminate or reduce the amount of fill. The Applicant indicated that the proposed bridge has been designed to meet all current seismic and safety standards and that any reduction in the number of pilings would introduce design and cost considerations that could render the project infeasible. Another potential alternative discussed with the Applicant that would eliminate the need for new pilings was a cantilevered bridge connected to the side of the existing Highway 1 bridge. The Applicant indicated that the existing highway bridge was not designed to accommodate the load of an additional 14-foot wide cantilevered concrete structure along its entire length, and that significant retrofitting or augmentation of the existing bridge would likely be necessary. Similar to the freespan or reduced pilings alternative, such an option would be cost prohibitive and would likely preclude construction of the trail. Finally, a no bridge alternative would either mean that the trail as envisioned would not be possible, or that bicyclists and pedestrians would need to continue using the Highway 1 shoulder over the existing bridge. Such an option would not meet project objectives to provide a safe, separated trail from the vehicular travel way, and is therefore considered by the Applicant to not be feasible. The proposed project therefore appears to be the least damaging feasible alternative, and environmental impacts from the bridge pilings are expected to be minimal due to the small area to be filled (240 square feet, or 0.0055 acre) and the highly engineered and heavily modified nature of the Harbor area itself. Thus, the proposed project meets the two requirements of 30233(a) that the project be the most feasible, least environmentally damaging alternative.

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<sup>20</sup> Nature study and public access is also a permissible use in wetland ESHA pursuant to Section 30240.

*Marine and Wetland Habitat*

The proposed project would result in a total of 0.517 acre of permanent impacts to jurisdictional estuarine wetland and open water habitat in the Harbor. The majority of this area is open water habitat, with a small percentage being upper tidal marsh margins of the Harbor at the two revetment sites, between the mean high tide and high tide lines. These areas are mostly disturbed Harbor mudflats (with existing concrete rubble at Revetment Site 1) but do exhibit some halophytic vegetation (inland saltgrass and woody pickleweed). Specifically, the bridge pilings and two revetments would have a permanent footprint impact of 0.415 acre in estuarine wetland and open water habitats, and the new bridge would result in 0.102 acre of permanent indirect impacts through shading of habitat beneath the bridge.

To mitigate for the permanent loss of wetlands, the County proposes to restore an area within the Elkhorn Slough area at a 3:1 replacement ratio. Because the County's proposal does not identify specific location(s) for the compensatory habitat or include provisions for monitoring or remediating to ensure that sufficient habitat will be restored to compensate for the proposed direct impacts to wetland habitat, **Special Condition 4** requires the Applicant to submit a final wetland habitat mitigation and monitoring plan for the Executive Director's review and approval prior to permit issuance.

In addition, with respect to eelgrass, recent (2018/19) survey data from the Elkhorn Slough Foundation indicates that eelgrass is present along the North Harbor shoreline near the public wharf. Project construction (specifically related to the proposed barges) has the potential to impact eelgrass in this area. As such, **Special Condition 5** requires the Applicant to undertake pre- and post-construction surveys and mitigate for impacts consistent with the California Eelgrass Mitigation Policy (CEMP). This requirement is consistent with what the Commission has approved in the past to protect eelgrass from the impacts of in- and over-water construction in areas of known eelgrass (including in such areas as the Morro Bay waterfront), and the project's eelgrass protections can similarly be found consistent with Coastal Act Sections 30230 and 30231.

Finally, the project includes other coastal resource protection measures, including as related to the construction barge and prevention of invasive aquatic species movement (if the barge is being transported from areas with such species). Specifically, the barge ballast tanks will be emptied and cleaned prior to moving them to the Monterey Bay National Marine Sanctuary/Elkhorn Slough area and the hulls will be inspected for non-native species above and below the waterline by divers (see **Exhibit 7**). Therefore, as proposed and conditioned, the project can be found consistent with Coastal Act Sections 30230 and 30231 regarding protection of marine resources and habitats, and with Section 30233(a) pertaining to fill of coastal waters.

## **F. PUBLIC ACCESS AND RECREATION**

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road (Highway 1). The following Coastal Act Sections specifically protect public access and recreation at the project location:

*30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

*30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

*30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

*30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

*30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

*30223. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

The LCP (which is guidance) identifies a future proposed trail through Moss Landing and requires that the system of trails shown in LUP Figure 6 (attached to this report as **Exhibit 6**) be established. In addition, the Moss Landing Community Plan chapter of the LUP states that the small scale of the Moss Landing community encourages walking, but a lack of sidewalks exists:

***LUP Policy 5.2.2.E. Pedestrian Access.** Access improvements to and along the Shoreline within the Moss Landing Community Plan area are described in Chapter 6 and are shown on Figure 6. ... The small scale of the central community area generally encourages walking, although the lack of sidewalks on Moss Landing Road or Sandholdt Road require caution on the part of pedestrians and drivers. It will be desirable to require sidewalks to be installed on Moss Landing Road as part of future development, because this will continue to be the primary focal point of visitor oriented commercial development. ...*

***LUP Policy 6.3.3.** To provide public access to and along the shoreline and to enhance general recreational opportunities, a system of trails shall be established as shown in Figure 6. This system shall include the existing Bicentennial Bike Route, trails proposed in the County's Recreational Trails Plan, and the use of public tidelands, recreational areas and roads, and easements across private properties.*

These overlapping policies clearly protect access to and along the shoreline and to offshore waters for public access and recreation purposes, particularly free and low cost access. The Moss Landing Harbor area provides significant recreational opportunities for residents and visitors, but

currently no north-south bicycle/pedestrian access around the Harbor or through this area of the Monterey Bay shoreline exists. Bicyclists and pedestrians are forced to use the unimproved Highway 1 shoulder to travel from one end of the Harbor to the other to connect to other existing segments of the CCT and the Monterey Bay Sanctuary Scenic Trail. This results in limited public recreational access utility and potentially dangerous conflicts with vehicular traffic along the highway, not to mention a lack of Americans with Disabilities Act (ADA) access around the Harbor. The proposed project is needed to improve the public access that currently exists, and ensure the longevity and stability of the improvements now and into the future.

As designed to meet Caltrans Class I multi-use trail design standards and ADA design standards, the proposed trail will expand Harbor shoreline access for a variety of users including bicyclists, walkers, hikers, runners, skaters, wildlife viewers, nature educators, persons in wheelchairs, and other non-motorized outdoor users. The trail will provide a key connection in the Monterey Bay Sanctuary Scenic Trail and the CCT, will promote coastal access, and will contribute to a larger overall network of pedestrian and bicycle trails through the region and the State. The trail will also provide access to the Harbor and the adjacent Elkhorn Slough marshlands for wildlife viewing and a variety of other recreational and educational activities. The project also includes public access and recreational amenities (i.e., benches, interpretive signage, and bike racks) along the Harbor's edge.

As stated above, the trail will be integrated into existing available public access in the Harbor and will also constitute a segment of the larger CCT and MBSST. The proposed 0.85-long trail is located within County and Caltrans rights-of-way, and on private property. To ensure that the trail safely functions as a coordinated and integrated continuous public access route, **Special Condition 2** identifies the public access use parameters for the trail. Specific requirements include: the entire trail shall be available for shared public use 24 hours a day; development or uses that disrupt or degrade public access are prohibited; and all project components shall be constructed in a structurally sound manner and maintained over time consistent with the terms of this CDP. As conditioned, the trail will function as a coordinated and integrated continuous public access route, consistent with the access provisions of the above cited Coastal Act Sections.

Because a portion of the proposed trail will occur on private property owned by Vistra Energy (APN 133-181-009), but Vistra Energy is not an applicant for this CDP, **Special Condition 15** requires that, prior to CDP issuance, the permittee shall provide evidence that Vistra Energy has executed and recorded, in a form and content acceptable to the Executive Director, a public access easement (deed restriction) that assures protection of the scope and manner of public use along the trail and assures that future purchasers of the property are notified of the scope and manner of public use along the trail. Such notification of future purchasers will eliminate expectations on the part of the purchasers that they may be able to exclude the public from the trail property.

Finally, with respect to construction impacts, this project will: require the movement of large equipment, workers, materials, and supplies in and around the Harbor shoreline area and public access points; include large equipment operations in these areas; result in the temporary loss of public access use areas to a construction zone; and generally have temporary impacts to the aesthetics, ambiance, serenity, and safety of the recreational experience at these locations. These

public recreational use impacts have been (through the Applicant's proposed BMPs) and can be mitigated through construction parameters that limit the area of construction, limit the times when work can take place (to avoid both weekends and peak summer use months when recreational use in the Harbor is highest), clearly fence off the minimum construction area necessary, keep equipment out of coastal waters, require off-beach equipment and material storage during non-construction times, clearly delineate and avoid to the maximum extent feasible public use areas, and restore all affected public access areas at the conclusion of construction. A construction plan is required to implement these measures (see **Special Condition 3**). In addition, to provide maximum information to the public during all construction, the Applicant must maintain copies of the CDP and approved plans available for public review at the construction sites, as well as provide a construction coordinator whose contact information is posted at the sites to respond to any problems and/or inquiries from the public that might arise (see **Special Condition 3**).

Therefore, the Commission finds that the proposed project as conditioned, which includes substantial new public access, is consistent with the public access and recreation policies of the Coastal Act, as well as with the LUP's specific direction on trail access in Moss Landing.

## **G. VISUAL RESOURCES**

Coastal Act Section 30251 states:

*Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The LCP (which is guidance) tracks the requirements of the Coastal Act with respect to visual resource protection. It specifies that views through Moss Landing from Highway 1 should be protected through proper siting of new development:

*LUP Policy 5.6.3.6. Views of the Moss Landing community, harbor and dunes from Highway 1 should be protected through regulation of landscaping and siting of new development adjacent to the highway to minimize the loss of visual access.*

The proposed project will create new viewing opportunities of Moss Landing Harbor, the Monterey Bay, and Elkhorn Slough by creating a designated and separated bike and pedestrian route along Highway 1 and the Harbor. The proposed project will also include viewing areas/lookout points and interpretive signs along the trail in key locations to further enhance viewing opportunities.

The entirety of the proposed trail would be visible from a variety of public vantage points,



including Highway 1, Moss Landing Road, northern and southern areas of Harbor waters and facilities, and Jetty Road. The proposed trail would be located at-grade along Moss Landing Road and Highway 1 in the road shoulder for approximately the southern half of the alignment (see site photos in **Exhibit 4**). No railings or other structural elements (other than a standard curb on both sides) would be included as part of the trail itself for this southern segment. The northern half of the trail along the highway edge (from Dolan Road to the northern end of the MLPP seawater intake infrastructure) involves replacement of the existing approximately three-foot-high wood and metal guardrail with a solid concrete barrier of similar height, and an increase in the existing six-foot high chain link fence along the westerly edge to eight feet. Once the trail turns westward down the slope to the Harbor edge at the north end of the MLPP facility, the trail would continue to be visible from the highway (namely the existing highway bridge) as well from within the Harbor. The new bridge would be located slightly below the vehicular bridge and is expected to be visible to highway travelers looking westward, but would not block these views given the difference in elevation between the two bridges. The new bridge would also be visible to kayakers and boaters within the Harbor waters, as well as from the public shoreline access area of the North Harbor and from Jetty Road. The two proposed revetments would similarly be visible from Highway 1, Moss Landing Road, and/or from within the Harbor depending on where the viewer is located.

This mostly at-grade facility would have a minimal effect on views to and along the Harbor and Monterey Bay shoreline and would not block views of the Harbor and coastline. Lighting along the trail, which could adversely impact nighttime views in the area, is not proposed as part of the project, nor are trash or recycling cans, which are available in the Harbor. The height, bulk, location, and design of the above-grade elements (bridge, interpretive signage, bike racks, railings, and fencing) are similar in size to those typically in use at other coastal access facilities in the area, as well as to existing Harbor and other industrial uses in the area, and are therefore compatible with the visual character of the surrounding area. Preliminary plans identify five proposed interpretive signs, the exact locations of which have yet to be finalized. To ensure that such signage will be visually compatible with the character of the surrounding area as possible, **Special Condition 1(c)** requires signage details to be submitted with the final project plans, identifying the location of all signage as well as the dimensions, materials, colors, and content of each sign. Similarly, **Special Conditions 1(a) and 1(d)** require that the final plans identify all benches, bike racks, and any other user amenities for Executive Director review and approval to ensure visual consistency with the surrounding area.

Temporary visual impacts during construction would occur, and would be minimized through best management practices as required by **Special Condition 3**. Overall, as conditioned, the proposed project will not adversely affect views of the Harbor, Monterey Bay, Elkhorn Slough, or the shoreline as seen from Highway 1 or other public vantage points, and the Commission finds the project consistent with Coastal Act Section 30251 and LUP Policy 5.6.3.6.

## **H. ARCHAEOLOGICAL RESOURCES**

The Coastal Act requires development to implement reasonable mitigation measures to protect identified archaeological or paleontological resources. Section 30244 of the Coastal Act states:

*Section 30244. Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The project's Mitigated Negative Declaration (MND) identified one prehistoric archaeological site (CA-MNT-229) within the proposed project area, which has been determined to be eligible for inclusion in the National Register of Historic Places. The Applicant initiated consultation with the Ohlone/Costanoan-Esselen Nation (OCEN) Most Likely Descendant (MLD) in 2009 during the early project planning stage. Field surveys in 2010 unearthed and identified prehistoric material (ancestral human remains) within the site, and the MLD provided a list of recommendations related to reburial of these remains and avoidance of the site. The MLD identified the site as one of OCEN's ancestral cemetery and village sites and in 2014, during the MND process, continued to request that the remains be reburied in the original area where they were disturbed and also requested the following: that there be no continued disturbance; that the reburial area be recorded with GPS coordinates, mapped, and archived; and that if the proposed trail were to be placed over ancestral remains that all remains be removed and reburied in a protected area where there will be no future disturbance.

The proposed section of the trail through this area was subsequently realigned approximately seven feet to the west of where the remains were found, in a previously disturbed area to avoid CA-MNT-229. The new site was surveyed in 2012 with OCEN representatives present and no cultural resources were uncovered during auger investigations. The MND includes a suite of mitigation measures (which are incorporated into the project – see **Exhibit 7**) to mitigate potential adverse impacts in the event further resources or remains are uncovered during project construction, including halting work until a qualified archaeologist (for archaeological resources) or coroner (for human remains) can determine the extent of the find and have the MLD make recommendations for the means of treating the find. **Special Condition 7** builds upon and incorporates these measures by, among other means, requiring that a qualified archaeologist be present during any ground disturbance, and that, in the event that any article of historical or cultural significance or human remains are encountered, all activity that could damage or destroy these resources must cease and a mitigation plan be developed in consultation with the Executive Director, the Native American Heritage Commission, and all appropriate tribal representatives as identified in the cultural resources mitigation and monitoring program. **Special Condition 7** also requires the Applicant to coordinate with OCEN to rebury the previously uncovered remains (currently being held by the MLD) at the appropriate location and time to be determined by OCEN. Thus, as conditioned, the project is consistent with the Coastal Act Section 30244 regarding the protection and mitigation of archaeological resources.

## **I. OTHER**

### **Other Agency Approvals**

Multiple regulatory agencies have authority over the proposed project given its location within the Harbor and Harbor waters. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from U.S. Army Corps of Engineers, Regional Water Quality Control Board, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, Moss Landing Harbor District, U.S. Coast Guard, National Marine Fisheries Service, Monterey

Bay National Marine Sanctuary, Caltrans, and the State Lands Commission (see **Special Condition 8**).

### **Public Rights**

The area associated with this CDP application includes areas that are clearly public, as well as other areas historically used by the public, including the Harbor shoreline. Although the Commission has identified areas of public land and public use herein, the Commission here does not intend its action to waive any public rights that may exist on the affected properties. Thus, this approval is conditioned to make that clear, and to require the Applicant to agree and acknowledge same, including that the Applicant shall not use this CDP as evidence of a waiver of any public rights that may exist on these properties now or in the future (see **Special Condition 13**).

### **Future Permitting**

The Commission herein fully expects to review any future proposed development at and/or directly related to this project and/or project area, including to ensure continued compliance with the terms and conditions of this CDP through such future proposals, but also to ensure that any such future development can be understood in terms of same. Thus, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines that a CDP or CDP amendment is not legally required (see **Special Condition 14**).

### **Indemnification**

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on pending CDP applications in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 16** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

## **J. 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 which would substantially lessen any significant adverse effect that the activity may have on the environment.

Monterey County, acting as the CEQA lead agency, adopted a Mitigated Negative Declaration for the proposed project in September 2015. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional

equivalent of environmental review under CEQA. The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources.

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

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS<sup>21</sup>**

- CDP 3-83-228 and 3-83-228-A (Caltrans, 1983)
- CDP 3-11-063 (Moss Landing Harbor District, 2013)
- CDP 3-01-016 (Moss Landing Harbor District, 2004)
- Monterey Bay Sanctuary Scenic Trail Master Plan, January 2008
- Transportation Agency of Monterey County Bicycle and Pedestrian Master Plan (2011)
- *Basis of Design for Shore Protection at Moss Landing Harbor* (prepared by Sea Engineering, Inc., March 2011)
- Transportation Agency of Monterey County Active Transportation Plan (2018)
- Moss Landing Community Coastal Climate Change Vulnerability Report (June 2017)

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

- Applicant (Monterey County Resources Management Agency – Public Works & Facilities)
- Moss Landing Harbor District
- Caltrans
- California Coastal Conservancy
- Ohlone/Costanoan-Esselen Nation (OCEN)

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<sup>21</sup> These documents are available for review in the Commission’s Central Coast District office.