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# W23a

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Staff: Rainey Graeven - SC  
Staff Report: 3/22/2019  
Hearing Date: 4/10/2019

## STAFF REPORT: CDP HEARING

**Application Number:** 3-18-0814

**Applicant:** City of Capitola

**Project Location:** Beach and ocean area extending from the eastern end of the Capitola Beach Esplanade in the City of Capitola-by-the-Sea and continuing on the beach and into the ocean seaward approximately 250 feet.

**Project Description:** Rehabilitation of the jetty that helps to form and maintain Capitola Beach, including retrieving and restacking jetty rock that has become dislodged over time and importing and adding approximately 380 cubic yards of new rock.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The City of Capitola-by-the-Sea proposes to rehabilitate the jetty that helps to form and maintain Capitola Beach, including by retrieving and restacking rock that has become dislodged since its original construction in 1969, and by importing and adding approximately 380 cubic yards of new rock to help bring the jetty back to its original shape and form. The jetty is a groin that has served to help keep a sandy beach in Capitola for half a century, and the City proposes to repair it so that it can continue to retain sand and provide for the continuation of Capitola Beach. Capitola Beach is the focal point of Capitola Village, and a critical component of the City overall, not only as a key economic driver but also for the significant contribution it makes to the

social fabric of the Village and the City overall. The jetty rehabilitation project is thus very important to the City.

Staff believes that approval of the jetty rehabilitation project is appropriate in this case, including as there do not appear to be any feasible less environmentally-damaging alternatives to protect and maintain Capitola Beach, which is a very popular and heavily used public beach and ocean recreational area. That said though, the project is not without its coastal resource impacts, including that the jetty occupies a portion of sandy beach and offshore area that would otherwise be available to the public, and it would continue to block sand that would otherwise be delivered downcoast via the typical offshore sand-supply current that generally flows that direction. On both of these points, however, the project is not a new or replacement jetty, rather it is a repair and maintenance project for a pre-Coastal Act structure, and thus the impacts assessed here are in relation to the repair components, and not the object of repair.<sup>1</sup> These repair and maintenance-specific impacts are fairly minor, and essentially consist of a more limited subset of the overall impacts described above, as well as potential for impacts during construction. On the latter, construction best management practices can be appropriately applied to limit construction impacts as much as possible. On the former, the City has demonstrated that the project would not alter sand supply or sediment transport over existing conditions, and would instead serve to maintain the beach while preventing additional damage to the jetty that would warrant a bigger project in the future. For remaining impacts, the project can be considered self-mitigating given that ultimately the jetty's continued presence will ensure a larger sandy public beach and continuation of an offshore surfing spot associated with the jetty (and therefore, enhanced public recreational access) than would exist absent the jetty rehabilitation. In addition, arguably, if instead the jetty was not present (i.e., to address concerns that it should not be allowed to take up beach/ocean space in the first place), the space underlying it would not be available as sandy beach (or the offshore surfing area for surfing) as these conditions are created in this location by the jetty.

Staff is therefore recommending approval of a CDP for the project with conditions to monitor jetty status over time, and to allow for future maintenance under this CDP, to ensure the jetty achieves its intended objective of protecting Capitola Beach. Such conditions will help ensure that the City and the Commission are aware of any damage to or weathering of the jetty, and can also help to ensure that timely repairs and/or other actions to maintain it in its approved state and for its desired function are appropriately undertaken. The conditions also require that the authorized maintenance term be re-evaluated in five years to consider any changed circumstances (including but not limited to the effects of sea level rise) that may suggest additional review and/or permitting to address those circumstances is warranted at that time.

Staff has worked closely with the City on the project, and the City is in agreement with the staff recommendation. 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 4 below.

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<sup>1</sup> A new or replacement jetty would require that it be evaluated against the Coastal Act as a *new* structure being placed at this location, including for its overall effects on coastal resources for its entire placement as if new, whereas some of those impacts were "inherited" when the Coastal Act went into effect, and the evaluation here focuses on just the repair components.

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### EXHIBITS

Exhibit 1 – Aerial Photo of Project Vicinity

Exhibit 2 – City’s Coastal Engineering Project Description

Exhibit 3 – Project Plans

Exhibit 4 – Photos of Existing Jetty

Exhibit 5 – City’s Coastal Engineering Analysis

Exhibit 6 – City’s Coastal Engineering Sand Transport Study

Exhibit 7 – Historical Photos

## I. MOTION AND RESOLUTION

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

***Motion:** I move that the Commission **approve** Coastal Development Permit Number 3-18-0814 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-18-0814 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Approved Project.** This CDP authorizes restacking existing jetty rock, and importing and adding approximately 380 cubic yards of new rock, within the jetty configuration shown on the proposed project plans (dated October 10, 2018 and titled “Capitola Beach Jetty Rehabilitation” and dated received in the Coastal Commission’s Central Coast District office on December 18, 2018; see **Exhibit 3**), and maintaining that configuration over time (see **Special Condition 5**) subject to the terms and conditions of this CDP.
2. **Construction Plan.** PRIOR TO CONSTRUCTION, 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 and provide for the following:
  - a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the fullest extent feasible in order to have the least impact on public access to and along Capitola Beach, the Pacific Ocean, and other coastal resources. Special attention shall be given to siting and designing construction areas in order to minimize impacts on the ambiance and aesthetic values of the shoreline area, including but not limited to public views in the beach area.
  - b. **Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep construction areas separated from public use areas as much as feasible (including through use of unobtrusive fencing and/or other similar measures to delineate construction areas), including verification that equipment operation and equipment and material storage will not significantly degrade public views during construction. The Plan shall limit construction activities to avoid coastal resource impacts as much as possible.
  - c. **Construction Timing.** Work shall only be allowed between October 15<sup>th</sup> and May 31<sup>st</sup>. No work shall occur during weekends, and all work shall take place during daylight hours (i.e., from one hour before sunrise to one hour after sunset). Nighttime work and lighting of the work area is prohibited unless, due to extenuating circumstances, the Executive Director authorizes such work on a case-specific basis.
  - d. **Imported Rock Requirements.** Imported rock shall be inspected at an inland location and shall not be added to the jetty if it is determined to harbor any potential for leading to introduced species in the Monterey Bay National Marine Sanctuary. The Permittee shall coordinate with Sanctuary staff to ensure compliance with this requirement.
  - e. **Construction Best Management Practices (BMPs).** The Construction Plan shall identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality and related coastal resources, including at a minimum all of the following:

- 1. Equipment BMPs.** Equipment washing, refueling, and/or servicing shall take place at an appropriate location inland of the beach to prevent leaks and spills of hazardous materials at the project site, preferably on an existing hard surface area (e.g., a road) or an area where collection of materials is facilitated. All construction equipment shall also be inspected and maintained at a similar inland location to prevent leaks and spills of hazardous materials at the project site.
  - 2. Good Housekeeping BMPs.** 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.).
  - 3. Rubber-tired Construction Vehicles.** Only rubber-tired construction vehicles are allowed on the beach and in the intertidal zone, except track vehicles may be used if the Executive Director determines that they are required to safely carry out construction.
  - 4. Construction Material Storage.** All construction materials and equipment placed on or adjacent to the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from these areas by one hour after sunset each day that work occurs.
- (f) Restoration.** All sandy beach and other public recreational use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any native materials impacted shall be filtered as necessary to remove all construction debris.
- (g) 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 be available for public review on request. All persons involved with project construction shall be briefed on the content and meaning of the CDP (including explicitly its terms and conditions) and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (h) 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 (with message capabilities) 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 (e.g., 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 within one week of receipt of the complaints.

- (i) **Construction Specifications.** The construction specifications and materials shall include appropriate provisions that require remediation for any work done inconsistent with the terms and conditions of the CDP.
- (j) **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, and immediately upon completion of construction.

Minor adjustments to the above Construction Plan requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake development in conformance with this condition and the approved Construction Plan, unless the Commission amends this CDP or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

3. **As-Built Plans.** WITHIN THREE MONTHS OF COMPLETION OF CONSTRUCTION, the Permittee shall submit two copies of As-Built Plans to the Executive Director for review and written approval showing all elements of the jetty, including riprap and the interior concrete membrane. The As-Built Plans shall be substantially consistent with the approved project identified in **Special Condition 1**. 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 upcoast, seaward, and downcoast viewpoints on the beach and/or atop the jetty, and from a sufficient number of viewpoints as to provide complete photographic coverage of the permitted jetty. Such photographs shall be at a scale that allows comparisons to be made with the naked eye between photographs taken in different years and from the same vantage points. The As-Built Plans shall include vertical and horizontal reference markers from inland surveyed benchmarks for use in future monitoring efforts. The As-Built Plans shall be submitted with certification by a licensed civil engineer with experience in coastal structures and processes, acceptable to the Executive Director, verifying that the jetty has been constructed in conformance with the approved project identified in **Special Condition 1**.
4. **Monitoring and Reporting.** The Permittee shall ensure that the condition and performance of the approved as-built project is regularly monitored and maintained. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that would adversely impact future performance of the jetty, and identify any

structural or other damage or wear and tear requiring repair and/or maintenance (subject to **Special Condition 5** below) to maintain the jetty in a structurally sound manner and in its approved state. The monitoring evaluation shall also identify any changes to the as-built project relative to the surveyed vertical and horizontal reference markers described in **Special Condition 3** above, and shall include a summary of seasonal (i.e., winter and summer) beach profiles including the approximate size of the beach during these seasons and corresponding photos. The jetty shall be monitored by a licensed civil engineer with experience in coastal structures and processes to ensure structural and cosmetic integrity, including evaluation of movement and slumping of rock. Monitoring reports covering the above-described evaluations, shall be submitted to the Executive Director for review and approval at five year intervals by May 1st of each fifth year measured from the year of approval of this CDP (with the first report due May 1, 2024, and subsequent reports due May 1, 2029, May 1, 2034, and so on) for as long as the approved as-built project exists at this location. The reports shall identify the existing configuration and condition of the jetty, and shall recommend actions necessary to maintain the jetty in its approved and/or required state, and shall include photographs with the date and time of the photographs and the location of each photographic viewpoint noted on a site plan. Actions necessary to maintain the approved as-built project in a structurally sound manner and in its approved state, subject to **Special Condition 5** below, shall be implemented within 30 days of Executive Director approval, unless a different time frame for implementation is identified by the Executive Director. Any proposed development to the as-built project which is not covered by **Special Condition 5** below shall require submission to the Coastal Commission of a CDP amendment application.

- 5. Future Repair and Maintenance Authorized.** This CDP authorizes future repair and maintenance of the jetty subject to the following:
- a) **Maintenance.** “Repair” and/or “maintenance,” as understood in this special condition, means development that would otherwise require a CDP whose purpose is to maintain the jetty in its approved state. Repair and/or maintenance authorized under this CDP does not include physical enlargement of the jetty.
  - b) **Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain any other necessary permits from other agencies for any future maintenance and/or repair episodes.
  - c) **Maintenance Notification.** At least 30 days prior to commencing any maintenance event, 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 event proposed; (2) any plans, engineering and/or geology reports describing the event; (3) a construction plan that complies with all aspects of the approved construction plan (see **Special Condition 2**); (4) other agency authorizations, as applicable; and (5) any other supporting documentation describing the maintenance event. The maintenance event shall not commence until the Permittee has been informed by planning staff of the Coastal Commission’s Central Coast District Office that the maintenance event complies with this CDP. If the Permittee has not been sent a written response within 30 days of the notification being received in the Central Coast District Office, the maintenance shall be authorized as if planning staff affirmatively indicated

that the maintenance complies with this CDP. The notification shall clearly indicate that maintenance is proposed pursuant to this CDP, and that the lack of a written response to the notification within 30 days constitutes approval of the proposed maintenance event as specified in this CDP (and such automatic approval shall be void if not so indicated in the notice). 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 Coordination.** Maintenance events shall, to the degree feasible, be coordinated with other maintenance events 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 beach and bluff area, beach access points, and the Esplanade. As such, the Permittee shall make reasonable efforts to coordinate the Permittee's maintenance events with other adjacent events, including adjusting maintenance event scheduling as directed by planning staff of the Coastal Commission's Central Coast District Office.
- e) **Restoration.** The Permittee shall restore all areas (including the beach and all access points/routes) impacted by construction activities to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach. 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 beach-area restoration activities are complete. If planning staff should identify additional reasonable measures necessary to restore beach areas or access points to their pre-construction state, such measures shall be implemented as quickly and reasonably as possible.
- f) **Noncompliance Provision.** If the Permittee is not in compliance with the terms and conditions of any Coastal Commission CDPs (including this CDP) or other coastal authorizations that apply to the subject property, or are otherwise in violation of the Coastal Act, at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition may not be allowed by the Executive Director until the Permittee is in full compliance with all terms and conditions of said CDPs or other coastal authorizations and the Coastal Act.
- g) **Emergency.** In addition to the emergency provisions set forth in subsection (c) above, 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).
- h) **Duration of Covered Maintenance.** Future maintenance under this CDP is allowed subject to the above terms until April 10, 2024. Maintenance may be carried out beyond April 10, 2024 under the same existing terms if the Permittee requests an extension of the maintenance provision of this CDP prior to April 10, 2024, and if the Executive Director

extends the maintenance term in writing. The intent of this provision is to allow for future repair and maintenance to occur without obtaining an otherwise necessary CDP throughout the term of this development authorization unless there are changed circumstances that may affect the consistency of this maintenance authorization with the policies of Chapter 3 of the Coastal Act which may warrant obtaining a new CDP or CDP amendment for future repair and maintenance events associated with the approved jetty.

- 6. Other Agency Approvals.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Executive Director copies of all permits, permissions, or other required authorizations from the U.S. Army Corps of Engineers, National Marine Fisheries Service, California Department of Fish and Wildlife, Central Coast Regional Water Quality Control Board, Monterey Bay National Marine Sanctuary, and the California State Lands Commission, or evidence that no permits, permissions, or other authorizations from these agencies are required. The Permittee shall inform the Executive Director of any changes to the Commission-approved project required by such agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP, unless the Executive Director issues a written determination that no amendment is legally required.
- 7. Coastal Hazards Risk.** By acceptance of this CDP, the Permittee acknowledges and agrees to all of the following:

  - (a) Coastal Hazards.** That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tsunamis, tidal scour, coastal flooding, landslides, bluff and geologic instability, bluff retreat, liquefaction and the interaction of same, many of which will worsen with future sea level rise.
  - (b) Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such coastal 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 coastal hazards.
  - (d) Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the development against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards.
  - (e) City Responsibility.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the City of Capitola.
- 8. Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or

(2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission and/or its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission and/or its officers, employees, agents, successors and assigns.

## **IV. FINDINGS AND DECLARATIONS**

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

#### **Project Location**

The project site is an existing jetty<sup>2</sup> that is located on and adjacent to Capitola Beach in the City of Capitola-by-the-Sea. Capitola Beach and the adjacent Capitola Village are popular visitor-serving destinations with a variety of restaurants, shops, and beach/recreational opportunities. Dividing the beach from most of the Capitola Village Esplanade area is a concrete seawall that also serves as seating and is punctuated by gaps to allow easy ingress/egress to and from the beach. Capitola Beach, particularly the area immediately west of the jetty, is also home to a Junior Guards program in the summer. Capitola Beach is the largest beach in the immediate vicinity, with other smaller beaches nearby including Hooper's Beach, which is located just past the Capitola Wharf some 1,000 feet upcoast from the project site. Capitola Beach is immediately downcoast of the Capitola Wharf, and is approximately three quarters of a mile upcoast of New Brighton State Beach, separated by the Depot Hill shoreline that is almost always inundated other than during very low tides. Capitola Beach provides access to a number of popular surfing spots, including the main "Capitola" break as well as the "Jetty," which breaks off the jetty itself; "Toes Over," which is just downcoast of "Capitola;" and the lesser known "Bombora," which is located partway between "Capitola" and New Brighton State Beach.

More generally, the project site is located just downcoast of Soquel Creek and the Capitola Wharf and immediately seaward of Capitola Village. Specifically, the jetty extends across a portion of beach located just south of Capitola's Esplanade Park,<sup>3</sup> and continues seaward across the sandy beach and into the ocean approximately 250 feet. Though the jetty extends below the mean high tide line (MHTL), the project site is owned by the City of Capitola because the submerged lands were originally granted to the County of Santa Cruz in 1935 and subsequently transferred to the City in 1974. The jetty does, however, extend into the Monterey Bay National

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<sup>2</sup> Although the project is commonly referred to as a jetty, the jetty is technically a groin that is composed of both stacked rock and an interior concrete membrane that runs along the length of the structure and that is designed to retain sand.

<sup>3</sup> Esplanade Park includes a grassy area, restrooms, showers, benches, interpretive signage, and a bandstand where twilight concerts take place in the summertime.

Marine Sanctuary.

See **Exhibit 1** for an aerial photo of the project vicinity, **Exhibit 4** for present-day photos of the jetty and its surroundings, and **Exhibit 7** for historical air photos of Capitola.

### **Project Background**

The jetty was originally constructed in 1969 using approximately 3,300 cubic yards of two-and-a-half ton rocks surrounding an interior vertical concrete membrane that is roughly 10 feet high and just under one foot wide. The original jetty was approximately 10 feet tall, 50 feet wide, and approximately 250 feet long, beginning at the toe of Esplanade and continuing seaward. The purpose of the jetty was to reestablish the beach area following sandy beach loss attributed to the construction of the two jetties forming the access to the Santa Cruz Harbor in the early 1960's. The construction of the Santa Cruz Harbor and its jetties resulted in longshore sediment transport being effectively blocked off downcoast of the harbor due to the jetties capturing large quantities of sand at the upcoast side of the most upcoast jetty (i.e., at what is now known as the Seabright Beach unit of Twin Lakes State Beach). As a result, downcoast beaches (including Capitola Beach) were starved of sand that would have otherwise made its way through littoral transport (because littoral transport in this part of the Monterey Bay is from up to downcoast), and these beaches generally shrunk in size while the beach upcoast of the Harbor (now Seabright Beach) grew (and it is now the widest beach in Santa Cruz County directly adjacent to the jetty). The loss of sand supply effectively resulted in the near complete loss of Capitola Beach (see historical photos in **Exhibit 7**). The near-loss of Capitola Beach also presented a flooding hazard to the City due to waves breaking closer to shore, including directly onto the City's Esplanade. The original 1969 jetty was designed by the United States Army Corps of Engineers and was ultimately constructed as an emergency project to capture sand that drifts down the coast, thereby restoring the sandy beach area located seaward of the Esplanade and the Village.

Comparing photographs from before and after the construction of the jetties at the Santa Cruz Harbor shows the extent of the impact on Capitola Beach. Specifically, the images show that Capitola Beach decreased by approximately 52 percent after the construction of the Santa Cruz Harbor and its jetties (see **Exhibit 2** and **Exhibit 5**). For example, the beach in a 1928 aerial photo is approximately 260,000 square feet in size, while the beach in the aerial from 1967 (following the construction of the Santa Cruz Harbor and its jetties) is about half that size. Other aerial photographs from the 1960's (following the construction of the Santa Cruz Harbor and prior to the construction of the Capitola jetty) show little to no beach at all present in Capitola, with the water line reaching the Venetian Hotel and the Esplanade (see **Exhibit 7**). Examining aerial photographs since the construction of the Capitola jetty (i.e., photos from the 1970's to the present day), show that both the summer and winter footprints of Capitola Beach are generally within 10 percent of the 1928 beach footprint (see **Exhibits 2** and **5**). Specifically, the summer beach typically has an approximate footprint of 275,000 square feet, while the winter beach typically has an approximate footprint of about 235,000 square feet. This demonstrates that Capitola Beach has stabilized since the construction of the Capitola jetty and is approximately the same size now as it was before the construction of the Santa Cruz Yacht Harbor and its jetties. While attributable to the jetty, it is also attributable to the notion that the effect of the Santa Cruz Harbor jetties on downcoast beaches has since tailed off, including both because the upcoast harbor jetties are now "fully charged" (i.e., they hold back the maximum amount of sand possible at Seabright Beach) and are not still capturing significant sand that would otherwise

move downshore, and also because the sand that is trapped by the Harbor is dredged and deposited on and offshore of downcoast Twin Lakes State Beach as nourishment in similar volumes as is estimated to be drifting in the littoral transport system naturally.<sup>4</sup> In other words, the harbor's dredging and nourishment program roughly ensures that the amount of sand in the system upcoast of the harbor is now maintained downcoast of the harbor as well.

### **Project Description**

The jetty was constructed in 1969 and there is no record that any maintenance has been performed on the jetty since that time. The proposed project would authorize the jetty's rehabilitation, including by retrieving and restacking rock that has become dislodged over time and by importing approximately 380 cubic yards of new rock to replace rock that is not retrievable because it has migrated away from the project site and/or is buried. The work would be done using an excavator to collect any rock that has been displaced but is retrievable. New rock would also be placed using an excavator.

Based on a topographical survey completed in May of 2018, the jetty's widest point at its base is currently approximately 70 feet compared to its 1969 as-built width of only 50 feet, demonstrating that portions of the jetty have slumped considerably since its construction. The proposed project seeks to restore the jetty to its originally constructed profile (i.e., approximately 50 feet wide at its base, 7.5 feet wide at its top, and 250 feet long), including to help prevent deterioration of the interior concrete membrane (which is essential to sand capture) and will ensure that the jetty continues to function in a manner that continues to form and maintain Capitola Beach. Once collected, the retrieved rock would be placed on top of existing rock. To minimize disturbance and grading, the base layer rock would not be touched (unless it extends beyond the 50-foot width). The retrieved rock would then be used to fill any voids immediately adjacent to the interior concrete membrane or within the 50-foot-wide 1969 profile or at the toe of the jetty (i.e., the seaward-most portion of the structure) as needed. In addition to retrieving and restacking rock, approximately 380 cubic yards of new rock will be imported to replace rock that has migrated away from the jetty or is buried and thus is not retrievable.

In sum, the proposed project is designed to bring the jetty back to its original shape and form. Capitola Beach is the focal point of Capitola Village and is a critical component of the City overall, not only as a key economic driver but also for the significant contribution it makes to the social fabric of the Village and the City. The jetty rehabilitation project is thus very important to the City.

See **Exhibit 1** for an aerial photo of the project vicinity; **Exhibit 2** for a detailed project description, **Exhibit 3** for project plans; **Exhibit 4** for present-day photos of the jetty; and **Exhibit 7** for historical photos of Capitola.

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<sup>4</sup> Subject to the Santa Cruz littoral cell (which is a high volume cell with annual longshore transport estimated between 250,000 and 325,000 cubic yards of beach quality materials annually), the dominant direction of longshore transport in this sand supply system is north north-west to south south-east (roughly from up- to downcoast).

## **B. STANDARD OF REVIEW**

The project is located within both the Commission's retained CDP jurisdiction area (for the portions of the jetty located on the beach and in the ocean) as well as in the City's CDP jurisdiction (for the more inland components of the project, including the construction staging area). The City and the Executive Director have determined that public participation will not be substantially impaired by consolidation of CDP review for the proposed development and have agreed to a consolidated CDP processing pursuant to Coastal Act Section 30601.3. Thus the standard of review for the proposed project is the Coastal Act, with the City of Capitola LCP providing non-binding guidance.

## **C. COASTAL HAZARDS**

Coastal Act Section 30610(d) exempts certain repair and maintenance activities that do not result in the addition to, enlargement or expansion of the object of repair and maintenance from CDP requirements in certain circumstances, but requires CDPs for these same activities when there is potential for certain adverse coastal resource impacts. The Coastal Commission's Administrative Regulations further identify and provide relevant detail on making such determinations, and relatedly, when such activities may be considered repair and maintenance versus activities that actually result in a replacement structure that needs to be evaluated as new structures. Because this project raises questions of whether it should be considered repair and maintenance versus a replacement structure, the relevant parts of the Commission's Administrative Regulations are cited below. In addition, Coastal Act Section 30235 is also applicable as it addresses the use of shoreline protective devices (which a groin qualifies as) including under which circumstances the Coastal Act compels approval of said devices. Applicable provisions are identified below:

***Section 13252. Repair and Maintenance of Activities Requiring a Permit.***

*(a) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:*

*(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:*

*(A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;*

*(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;*

*(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or*

*(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.*

...

*(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:*

*(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;*

*(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.*

*All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code Section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.*

...

*(b) Unless destroyed by natural disaster, the replacement of 50% or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin, or any other structure is not repair and maintenance under section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.*

**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.*

### **Consistency Analysis**

The proposed project would rehabilitate the jetty by retrieving and restacking rock that has become dislodged over time and by importing approximately 380 cubic yards of new rock to replace rock that is not retrievable because it has migrated away from the project site and/or is buried. The proposed 380 cubic yards of new rock represents approximately 12% of the entire 3,330 cubic yard structure. The proposed project is therefore below the 50% threshold specified in Section 13252(b), and thus the project may be considered repair and maintenance. Though the

proposed project entails the placement of new, imported rock, this rock is intended to replace previously existing rock in order to restore the jetty to its originally constructed and designed configuration. In other words, the restacked rock and the addition of 380 cubic yards of new rock will not expand or enlarge the jetty, including in terms of its volume, height, length, or width, compared to its prior configuration. Because the project is considered repair and maintenance, the Commission need not evaluate the whole jetty as a new replacement structure, rather the Commission must evaluate the repaired portion itself for its potential coastal resource impacts.

At a fundamental level in terms of Section 30235 requirements, the jetty itself serves to help form and maintain Capitola Beach, which would be in danger of disappearing if the jetty were not present. Historical evidence depicting Capitola Beach and the vicinity following the construction of the Santa Cruz Harbor gives an idea of what Capitola Beach may resemble absent the jetty (see **Exhibit 7**)<sup>5</sup>. Thus, the jetty serves to protect a public beach in danger from erosion, consistent with the allowed uses in Section 30235.

With respect to project-related coastal resource impacts, on the one hand the retrieval and restacking of rock that has migrated is beneficial to coastal resources as it will help to reduce coverage in the beach and ocean. At the same time, though, the restacking of rock and the addition of more rock to recreate its profile, means that the jetty will remain in place at this location, continuing to occupy area that would otherwise be available to the public and sand that may otherwise contribute to the greater sand transport in this area. In terms of impacts to supply and sand transport, the City's geotechnical consultants concluded that Capitola Beach has largely stabilized, with an average summer beach of approximately 275,000 square feet and an average winter beach of approximately 235,000 square feet (see **Exhibit 2**), both of which closely resemble the size of Capitola Beach historically, including prior to the construction of the Santa Cruz Harbor. In other words, the jetty is now essentially "fully charged" (i.e., new/additional sand is not and will not be captured by the existing jetty), and the City's consultants concluded that the proposed project would not change the existing sand transport conditions, including in terms of the amount of sand being captured by the jetty and the amount of sand continuing further downcoast (see **Exhibit 6**).<sup>6</sup> Specifically, the City's sand transport study concluded that the jetty's interior concrete membrane is the main sand capturing component of the jetty, and

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<sup>5</sup> Although historical evidence suggests that Capitola Beach would be in danger absent the presence of the jetty and/or if the jetty were allowed to deteriorate and stop functioning including capturing the same amount of sand as it does presently, the extent of negative impacts to Capitola Beach is not clear. Because the Santa Cruz Harbor jetties are now considered "fully charged", and the amount of sand dredged from the harbor and pumped downcoast is roughly equivalent to the littoral drift in this area (i.e., between 250,000 – 300,000 cubic yards/year), it is difficult to quantify how much beach may be lost absent the jetty's placement and/or a functioning jetty, and if the loss of Capitola Beach would be as severe as it was in the 1960's immediately following the construction of the Santa Cruz Harbor and its jetties (i.e., before the Santa Cruz Harbor jetties were "fully charged"). It is nevertheless reasonable to assume that if the Capitola jetty were to be removed and/or deteriorate such that the same level of sand is no longer captured, there would be discernible impacts to Capitola Beach including the loss of beach. Therefore, Capitola Beach is considered in danger of erosion.

<sup>6</sup> Although removal or loss of the jetty altogether would presumably result in increased sand transportation further downcoast, given that the jetty predates the Coastal Act and has been capturing sand since 1969, for purposes of analyzing impacts to coastal resources from this proposed repair and maintenance project, capture of upcoast sand by the existing jetty is considered as the baseline, existing environmental condition.

because it is not being altered by the proposed project, there would be no change in the amount of sand being captured by the proposed project over existing conditions. In other words, the proposed project would not increase the size of the jetty or the amount of sand being captured by the jetty. The Commission's Geologist, Dr. Joseph Street, reviewed the relevant project materials and visited the site, and agrees that the project would result in negligible changes to downcoast sand transport volumes, and thus insignificant impacts downcoast.

Further, to be cautious and proactive about potential impacts overall, the City also evaluated three different alternatives to the repair project (and really to the jetty itself), including the no-project alternative, a beach nourishment alternative, and a wave attenuator alternative (i.e., installing some other type of physical structure to help reflect wave energy back offshore, such as rock or rubble mound breakwaters and created reefs) to determine whether there is a better and potentially less impactful method to protect Capitola Beach. Ultimately, the City concluded that nourishing the beach adjacent to the jetty could help protect the interior jetty membrane from exposure to wave action on the western side of the jetty, but not on the eastern side of the jetty (because any sand placed on the eastern side would be immediately be transported downcoast as a part of the littoral drift in this area). In addition, they concluded that beach nourishment would only be a temporary solution while such imported sand remained in place, thus likely triggering the need for frequent nourishment efforts, which would be costly and have its own adverse public access and recreation impacts on the beach, including with respect to the necessary trucking and use of heavy equipment in the beach area. Further, beach nourishment poses its own regulatory and resource challenges, which are only intensified at this location given the project's proximity to the mouth of Soquel Creek. Beach nourishment was ultimately deemed infeasible and potentially more impactful as an alternative to the proposed project.

With respect to the concept of wave attenuators, the City ultimately concluded that these would be high-cost endeavors, and would significantly alter the waves in this area for surfing, which would negatively impact recreational opportunities, inconsistent with the Coastal Act's provisions related to public access and recreation. Wave attenuators would also pose significant (and potentially insurmountable) technical, regulatory and resource challenges associated with placing artificial structures in the surf area and within a national marine sanctuary. Ultimately, this alternative was also deemed infeasible.

The proposed jetty rehabilitation is thus the preferred alternative as it would result in the least disturbance and ongoing impacts to coastal resources. This alternative is the only alternative that would reduce the footprint of the existing slumped jetty, achieve the project goals of protecting the interior membrane from additional deterioration, and not result in additional adverse impacts to public access and recreation or sensitive resources. This project alternative is also the most economical for the City. Thus, in this case, the proposed project as conditioned (see special conditions and further discussion below) is the least environmentally damaging feasible project alternative, which in turn will ensure the continuation of Capitola Beach.

In terms of potential construction impacts, construction BMPs can be appropriately applied to limit construction impacts as much as possible (see Special Condition 2). In addition, to ensure that the proposed project is installed in compliance with the proposed plans and properly maintained to ensure its long-term structural stability, **Special Conditions 3 and 4** require the

submission of as-built plans and a monitoring and maintenance program. Such a program shall provide for evaluation of the condition and performance of the jetty over time, and shall provide for necessary maintenance, repair, changes or modifications. **Special Condition 5** allows the City to maintain the jetty in its approved state without further CDP authorization using ordinary repair and maintenance, subject to the terms and conditions identified by the special conditions. Such future monitoring and maintenance activities will be understood in relation to clear as-built plans that will be submitted by the City.

In terms of recognizing and assuming the hazard risks for shoreline development, 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 such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the many, many millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, the Commission has in the past required applicants 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. Accordingly, this approval is conditioned for the City to assume all risks for developing at this location (**see Special Condition 7**).

In summary, the proposed jetty repair project will help to continue to form and maintain Capitola Beach, which is not only an extremely popular visitor destination, but is also the focal point of Capitola Village and a critical component of the City overall, not only as a key economic driver but also for the oversized contribution it makes to the social fabric of the Village and the City itself. The proposed project is an important public access project, and it can be conditioned to address relevant coastal resource concerns. As conditioned, the proposed project can be found consistent with the above-referenced Coastal Act Sections and the Commission's Administrative Regulations.

#### **D. 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 (which in this case is Park Avenue). Coastal Act Sections 30210 through 30224 specifically protect public access and recreation, and Section 30240 protects parks and recreational areas. In particular:

***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.*

*30240(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.*

These overlapping Coastal Act policies protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access.

### **Consistency Analysis**

Jetties such as the Capitola jetty have a series of impacts to public access and recreation. Section 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities. Section 30211 prohibits development from interfering with the public's right of access to the sea. Section 30213 protects lower cost forms of access, such as the free access available at Capitola Beach and offshore. Section 30220 protects coastal areas suited for ocean-oriented activities, such as the beach and offshore surfing areas here. Section 30221 protects oceanfront areas for public recreational uses. Section 30240(b) protects recreation areas, such as Capitola Beach, from degradation and seeks to preserve recreation values. Finally, the Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect such access, but rather that such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction to maximize public recreational access opportunities with respect to projects along the California coast that raise public access issues, like this one.

As mentioned in the project description, Capitola Beach is heavily used by the public, and provides significant coastal access and recreational opportunities for residents and visitors alike. The jetty's primary purpose, including the impetus for its original construction in 1969 and its continued need, is to form and maintain Capitola Beach for residents and visitors alike. Given

how much Capitola Beach diminished between the construction of Santa Cruz Harbor and its jetties in the early 1960's and the construction of the Capitola Jetty in 1969, it is likely that absent the Capitola jetty, Capitola Beach would erode and at times almost completely disappear, ultimately resembling the minimal beach seen in photos taken throughout the 1960's (see **Exhibit 7**). In addition, according to local surfers in the area, the construction of the Capitola jetty created a surf break aptly named "The Jetty," and thus it is likely that continued degradation (or removal) of the jetty would mean that this surf break would cease to exist as well. Capitola Beach is also a free public beach, and thus the continued placement of the jetty helps to preserve lower-cost visitor-serving public access and recreational opportunities, consistent with Coastal Act Section 30213.

Although the jetty does occupy physical space (some of which would likely be available to the public during low tides if the jetty were not present), ultimately more beach area is available to the public as a result of the placement of the jetty than without it, including a sandier, wider beach, as opposed to a flatter, typically sand-scoured stretch of coastline that is only accessible at low tides, similar to what is seen just downcoast below Depot Hill (see **Exhibit 7**), which has historically been a very narrow, sand-scoured beach, including prior to construction of the jetty in 1969. While the coastline beneath Depot Hill certainly provides low-cost recreational value (including walking and viewing paleontological resources), a wide beach provides an alternate and more heavily utilized public access/recreational opportunities in line with the historical beach usage in Capitola and is one of the primary draws for tourists to the area. Furthermore, the jetty itself is a frequently used public access/recreational device as beach goers can regularly be seen walking along the structure and/or watching the surf from it (see **Exhibit 4**).

Finally, the Capitola jetty is easily traversed laterally along the beach and is not a major impediment in that way, including because during the summer months the sand elevation at the trunk of the jetty (i.e., where it meets the Esplanade) is higher than the jetty, and thus users are still available to gain access to downcoast areas such as Depot Hill and New Brighton State Beach at low tides, consistent with the level of access to these areas before the construction of the jetty. As such, although the Capitola jetty is not void of adverse impacts to public access/recreational opportunities (given that it does occupy physical space along the beach/coastline), the maintenance of a stable Capitola Beach that the jetty provides and the continued availability to access areas downcoast of the jetty at low tides, meets the Coastal Act's public access/recreational objectives of *maximizing* coastal access and recreational opportunities.

In short, the Commission believes that approval of the jetty rehabilitation project is appropriate in this case, including as there do not appear to be any feasible less environmentally-damaging alternatives to protect and maintain Capitola Beach, which is a very popular and heavily used public beach and ocean recreational area. That said though, the project is not without its coastal resource impacts, including that the jetty occupies a portion of sandy beach and offshore area that would otherwise be available to the public, and it would continue to block sand that would otherwise be delivered downcoast via the typical offshore sand-supply current that generally flows that direction. On both of these points, however, the project is not a new or replacement jetty, rather it is a repair and maintenance project for a pre-Coastal Act structure, and thus the

impacts assessed here are in relation to the repair components, and not the object of repair.<sup>7</sup> These repair and maintenance-specific impacts are fairly minor, and essentially consist of a more limited subset of the overall impacts described above, as well as potential for impacts during construction. On the latter, construction best management practices can be appropriately applied to limit construction impacts on access as much as possible. On the former, the City has demonstrated that the project would not alter sand supply or sediment transport over existing conditions, and would instead serve to maintain the beach while preventing additional damage to the jetty warranting a bigger project in the future. For remaining impacts, the project can be considered self-mitigating given that ultimately the jetty's continued presence will ensure a larger sandy public beach and continuation of an offshore surfing spot associated with the jetty (and therefore, enhanced public recreational access) than would exist absent the jetty rehabilitation. In addition, arguably, if instead the jetty was not present (i.e., to address concerns that it should not be allowed to take up beach/ocean space in the first place), the space underlying it would not be available as sandy beach (or the offshore surfing area for surfing) as these conditions are created in this location by the jetty

Furthermore, as conditioned, the City is required to submit as-built plans (see **Special Condition 3**), the jetty is required to be monitored and maintained in order to prevent significant slumping of the jetty's rock (including expansion both width and length-wise), ensuring that the jetty's physical footprint does not increase and result in the occupation of additional beach and/or tidal areas (see **Special Condition 4**). To protect public access and other coastal resources during construction, **Special Condition 2a** requires that construction activities and staging areas to be minimized to the fullest extent feasible to have the least impact on public access, and **Special Condition 2b** requires a description of the construction methods that will be used to keep construction areas separated from public use areas as much as possible (including through the use of unobtrusive fencing). **Special Condition 2c** limits construction activities to avoid the peak summer season and all weekends.

In conclusion, as conditioned, the proposed rehabilitation of the Capitola jetty is consistent with the Coastal Act access and recreation policies cited above.

## E. MARINE RESOURCES

The Coastal Act protects the marine resources and habitat at this location and offshore. 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*

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<sup>7</sup> A new or replacement jetty would require that it be evaluated against the Coastal Act as a *new* structure being placed at this location, including for its overall effects on coastal resources for its entire placement as if new, whereas some of those impacts were "inherited" when the Coastal Act went into effect, and the evaluation here focuses on just the repair components.

*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.*

### **Consistency Analysis**

Rehabilitation of the jetty, including collecting and restacking rock and importing about 380 cubic yards of new rock, could have adverse impacts to marine resources due to construction activities, especially given the proposed project's location in and adjacent to the Pacific Ocean and the Monterey Bay National Marine Sanctuary.<sup>8</sup> The project is therefore conditioned to require a construction plan that includes best management practices (BMPs) required by the Commission in the past in similar shoreline-area projects to protect water quality and marine resources during construction, including maintaining good construction site housekeeping controls and procedures, storing materials beyond the reach of tidal waters, a prohibition on equipment washing, refueling, or servicing on the beach, etc. (see **Special Condition 2e**). To further protect marine resources and offshore habitat, **Special Condition 2g** requires construction documents to be kept at the site for inspection, and **Special Condition 2h** requires a construction coordinator to be available to respond to any inquiries that arise during construction. Relatedly, **Special Condition 2f** requires that the project site be restored to its pre-construction state or better within three days of completion of construction, including that any native materials impacted to be filtered as necessary to remove any construction debris, ensuring that any construction-debris is removed and that the site is restored. **Special Condition 2i** requires appropriate remediation provisions for any work done inconsistent with the terms and conditions of this CDP, and **Special Condition 2j** requires the City to notify Commission staff three days in advance of commencement of construction. In addition, per the recommendation of the Monterey Bay National Marine Sanctuary, **Special Condition 2d** requires that the 380 cubic yards of new rock be free of introduced species to prevent the release of such species within the Sanctuary, further protecting sensitive coastal and marine resources, including the federally-protected Sanctuary. Finally, **Special Condition 6** requires that the City provide evidence of other agency approvals (e.g., the Sanctuary, Army Corps of Engineers, California Department of Fish and Wildlife, etc.) prior to commencement of construction.

Therefore, as conditioned, the proposed project is consistent with Coastal Act Sections 30230 and 30231.

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<sup>8</sup> The City completed a survey for black abalone due to concerns expressed by the National Marine Fisheries Service given the species' endangered status. The study notes that black abalone have not historically been recorded in the vicinity, and that none were found during the survey completed in the fall of 2018. As such, it is reasonable to assume that there will be no harm or take of the black abalone resulting from the proposed project.

## **F. OTHER**

### **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 the pending CDP applications in the event that the Commission's action is challenged by a party other than the Applicants. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 8** 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.

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

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Capitola, acting as the lead CEQA agency, categorically exempted the project from the provisions of CEQA (pursuant to Section 15301, the CEQA regulations applicable to maintenance of existing facilities).

The Coastal Commission's review and approval of land use proposals through CDPs has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (pursuant to Section 15301 of the CEQA regulations). (14 CCR § 15251(c).) The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address potential adverse impacts to such coastal resources. All above findings are incorporated herein in their entirety by reference.

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

3-18-0814 (Capitola Jetty Rehabilitation)

**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS<sup>9</sup>**

- File for CDP application 3-18-0814

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

- Applicant (City of Capitola Public Works Department)
- City of Capitola Planning Department
- California State Lands Commission
- Monterey Bay National Marine Sanctuary

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<sup>9</sup> These documents are available for review in the Commission's Central Coast District office in Santa Cruz.