

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 4-16-0479

Applicant: Watermark Lodging Trust, Inc.

Agent: McCabe & Company

Location: 8301 Hollister Avenue, City of Goleta, Santa Barbara County

Project Description: Application of Watermark Lodging Trust, Inc. for demolition of a 3,675 sq. ft. building consisting of restrooms, storage, and a snack bar, demolition of associated outdoor showers, demolition of an approximately 226 ft. long temporary shoreline protective device including a 36 ft. long unpermitted portion, restoration of the demolition area with native plants and public access pathway with interpretive signs, construction of a 325 sq. ft. restroom building with outdoor showers and drinking fountain, operation of an electric-powered food truck to provide snack bar services, maintenance grading of the existing emergency access ramp, and a total of 605 cu. yds. of grading. The proposed project also includes recordation of a public access deed restriction and a \$45,000 contribution to the City of Goleta for the restoration/enhancement of Tecolote Creek.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **approve** coastal development permit application (CDP) 4-16-0479 with the following thirteen (13) special conditions to develop plans, conduct surveys, and implement requirements: (1) Public Access Program and Signage Plan, (2) Public Access Deed Restriction, (3) Archaeological Monitoring, (4) Sensitive Species Surveys, (5) Interim Erosion Control Measures and Construction Responsibilities, (6) Site Restoration, (7) Food Truck Operation Plan, (8) Emergency Ramp Maintenance, (9) Removal of Excess Material, (10) No Future Bluff or Shoreline Protection, (11) Assumption of Risk, Waiver of Liability, and Indemnity, (12) Monetary Payments to the City of Goleta, and (13) Deed Restriction.

The proposed project is located at the Ritz-Carlton Bacara adjacent to Haskell's Beach in the City of Goleta in Santa Barbara County. In January 2016, the hotel's prior owner installed a 190-foot long seawall constructed of precast concrete blocks to protect the "Beach House" (an existing 3,675 square foot building consisting of restrooms, storage, and a snack bar) from storm surge during a high tide event. This work was temporarily authorized, until May 20, 2016, pursuant to emergency permit G-4-16-0006. On May 20, 2016, the prior owner submitted an application to demolish the Beach House (and remove the seawall, sandbags and plastic sheeting), but the application was not deemed complete because it did not include a proposal to replace or relocate the Beach House (a component of the CDP for the hotel), and, therefore, the seawall, sandbags, and plastic sheeting continued to remain in place without authorization. In January 2017, the prior owners extended the seawall 36 feet up-coast of the Beach House, also without Commission authorization. Commission enforcement staff notified the hotel's representative that the work constituted a Coastal Act violation and that the authorized portion of the seawall also constituted a violation since its authorization expired on May 20, 2016, and no follow up permit was granted. The enforcement letter noted that while the violations had and would continue to accrue penalties, the collective goal of Commission staff was to work with the applicant to complete the application to relocate the Beach House to an inland location that was not reliant on the shoreline protective device. In September 2017, the hotel came under new ownership, and since that time the new owners have worked diligently to provide the materials necessary to submit a complete application. Despite construction of the seawall, the beach and the public restrooms have continued to remain open and accessible to the public.

Additionally, as further described in Section F of this report, the Commission after a full public hearing, approved Consent Cease and Desist Order CCC-13-CD-03 and Consent Restoration Order CCC-13-RO-03 ("Consent Orders") to prior owners of the hotel to address Coastal Act violations undertaken on the property in or around 2012. The violation included, among other things, unauthorized removal of major vegetation, installation of non-native landscaping, and creation of a private wedding and event venue located directly on top of a known archeological site and failure to develop and implement an approved public access and interpretive sign program as required by a previously issued CDP. The Consent Orders required substantial restoration on and off-site, a dedicated interpretive signage program to advise the public about traditional

4-16-0479

Bacara Beach House

Chumash use of the native vegetation on site and provide additional parameters for the use of the onsite coastal trails and the snack bar/restroom. Additionally, the Consent Orders provide for the assessment of stipulated penalties of \$1,000 per day per violation of the Consent Orders, which through their terms, also prohibit any further unpermitted development on the property. Restoration work pursuant to the Consent Orders is ongoing.

The subject application includes removal of the 226-foot long seawall (comprising of the original 190-foot long seawall constructed in 2016 and the 36-foot long extension constructed in 2017), demolition and removal of the 3,675 square foot Beach House structure and adjacent outdoor showers, restoration of the demolition site with native salt grass and coastal bluff scrub plant species, and installation of a new walking path, benches, and interpretive signs within the restoration area. To replace the public restroom and snack bar amenities, the applicant proposes to construct a new restroom structure and operate a hotel-owned food truck (available to the general public and hotel guests alike) along an existing emergency access road within the vicinity of the existing Beach House and inland of the beach ([Exhibit 3](#)). The proposed restroom building has been sited to be safe from coastal hazards, as influenced by sea level rise, for the life of the development, and several adaptive management features have been incorporated into the project, including the operation of a food truck instead of construction of a permanent snack bar structure.

To ensure the public has a legal right to access the new visitor-serving amenities, the applicant is proposing to record a deed restriction that would include the proposed restoration area, the food truck and restroom building locations, and adjacent trails and walkways to provide legal access between the beach and existing public accessways and the new amenities. To further resolve the violation associated with the unpermitted seawall, the applicant has also proposed to include the existing picnic area and an existing trail within the proposed deed restriction, contribute \$45,000 to the City of Goleta to conduct invasive plant species removal at Tecolote Creek, and install an additional interpretive sign and benches throughout the public access area. The anticipated duration of the proposed project is approximately six months; however, the new restrooms and food truck will be open and available to the public prior to demolition of the existing Beach House.

In order to maintain adequate public access during the construction and restoration activities, Special Condition One (1) is necessary to require the applicant to submit a public access program that describes the methods, such as signage and fencing, by which safe public access shall be maintained around construction areas, staging areas, and active restoration areas during all project operations, as well as require the minimum number of public parking spaces to be used for staging if such use is unavoidable. Further, Special Condition One (1) is necessary to ensure that the proposed public access amenities are clearly marked and identifiable as available for public use. Additionally, because the replacement snack bar service is not proposed within a permanent structure, Special Condition Seven (7) is necessary to ensure that the food truck is operated in perpetuity, is open to serve the public from Memorial Day

to Labor Day, and, if it becomes inoperable, to require that an alternate food service be provided.

Once the Beach House demolition site is restored, it is proposed to be used for passive recreation activities, such as nature watching and picnicking. In order to ensure that the demolition site is properly restored and maintained, Special Condition Six (6) requires implementation of the applicant's proposed restoration plan as well as 1:1 replacement of all removed native vegetation within the project site. Further, to ensure that the proposed contribution to fund habitat restoration and enhancement at Tecolote Creek is implemented, Special Condition Twelve (12), requires the applicant to draft and enter into a memorandum of understanding with the Commission and the City of Goleta.

Although the proposed project site is located within an existing developed area, the property contains sensitive archaeological and ecological resources. Therefore, Special Condition Three (3) is necessary to ensure that the mitigation measures contained in the applicant's Archaeological Investigation Report are implemented and if cultural deposits are discovered during the course of the project, that project activities will cease immediately and that particular protocols will be followed to determine the significance of the deposits and avoid impacts to cultural resources. Additionally, Special Condition Four (4) requires sensitive species surveys prior to the commencement of construction to ensure that sensitive species within or adjacent to the project site are not impacted by project activities. Lastly, to ensure that the project is consistent with the water quality protection provisions of the Coastal Act, Special Condition Five (5) is necessary to require erosion control measures and construction best management practices are implemented.

Although the proposed restroom structure has been sited to avoid coastal hazards, such as storm surge and erosion, and it is expected that much of the existing project area will erode over time and succumb to sea level rise in the future. Therefore, Special Condition Two (2), which requires a public access deed restriction for the public access areas subject to this permit, also requires the public access amenities, such as trails, benches, and interpretive signs to be moved inland as the beach and bluff edge move inland as well. Additionally, Special Condition Ten (10) prohibits construction of bluff or shoreline protective devices for the proposed development and requires removal or relocation of the proposed development if it becomes threatened or damaged by coastal hazards.

The Commission has not yet certified a Local Coastal Program (LCP) for the City of Goleta. Thus, the proposed project is subject to the Commission's coastal development permit jurisdiction, and the standard of review for this project are the Chapter Three policies of the Coastal Act. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act. Therefore, Staff recommends that the Commission **approve** CDP No. 4-16-0479. The **motion** and **resolution** to adopt the staff recommendation of approval of the permit can be found on **page 6**.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Site Aerial
- Exhibit 3 – Project Plans
- Exhibit 4 – Public Access Deed Restriction Areas
- Exhibit 5 – Restoration Plan
- Exhibit 6 – Monterey Cypress Tree Replacement Plan

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 4-16-0479 subject to conditions set forth in the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution to Approve the Permit:

The Commission hereby approves the Coastal Development Permit for the proposed project 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 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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

- 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

1. Public Access Program and Signage Plan

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a Public Access Program and post-construction Signage Plan that is consistent with the following requirements:

a. Construction Phase Public Access Program

1. The Public Access Program shall describe the methods (including signs, fencing, posting of docents, guides, or security guards, etc.) by which safe public access around construction areas, staging areas, and active restoration areas shall be maintained during all project operations.
2. Where public paths will be closed during construction activities, a person or persons shall be on-site to detour traffic, or adequate fencing and signage to detour traffic shall be used.
3. The applicant shall post notice at the construction site indicating the expected dates of construction and/or public accessway or parking area closures.
4. Where the use of public parking spaces is unavoidable, the number of public parking spaces required for staging of equipment, machinery, and employee parking shall be the minimum necessary to implement the project.
5. All beaches, beach access points, and other recreational use areas impacted by construction activities shall be restored to their pre-construction condition, or better, within three days of completion of construction. Any beach sand impacted by project activities shall be filtered as necessary to remove all construction debris from the beach.

b. Post-construction Signage Plan

1. The Signage Plan shall include a map with the proposed locations of all public signs and detailed descriptions and graphic representations of the proposed signs.
2. New public access signs, including wayfinding, interpretive, and informational signs, shall be installed prior to, or immediately upon completion of, the adjacent construction or restoration activities. The wayfinding signs shall clearly direct the public to, and mark the locations of, public accessways and

- facilities. The wayfinding signs shall be conspicuously placed along the public accessways and display the standard Coastal Access Logo.
3. The public restrooms at Haskell's Beach shall be marked with signs designating that they are open and available to the public. The restrooms shall be open all days of the week but are permitted to be closed during nighttime hours.
 4. No signs shall be posted on the property subject to this permit that (a) explicitly or implicitly indicate that the portion of the beach on the subject site located seaward of the development permitted in this application, or other areas designated for public access and recreation, are private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach or public access and recreation areas. In no instance shall signs be posted which read "Private Beach" or "Private Property."
 5. The permittee/landowner is required to submit any future proposed changes to the approved Signage Plan to the Executive Director for review and approval prior to posting any of the proposed signs. The approved Signage Plan shall be implemented in perpetuity.

The applicant shall implement the Public Access Program and Signage Plan in accordance with this condition. Any proposed changes to these requirements shall be reported to the Executive Director. Any substantial changes to these requirements shall require an amendment to the permit or a new coastal development permit.

2. Public Access Deed Restriction

- A. Prior to issuance of the coastal development permit, and in order to implement the applicant's proposal, the permittee shall execute and record a document(s) in a form and content acceptable to the Executive Director, restricting the use and enjoyment of the parcel, and providing public access, recreational uses, and public amenities in perpetuity as shown on Exhibit 4.
 1. Public Access Areas. The deed restriction shall reflect that the permittee shall provide public access for recreational uses consistent with the terms and conditions of this coastal development permit in the following locations (as generally shown in Exhibit 4):
 - a. Trail – public access trail extending continuously from the emergency access road and the equestrian/hiking trail to the beach on the east terrace;
 - b. Picnic Area – picnic area up-coast of and adjacent to the vertical public accessway that leads from the public parking lot to the beach;
 - c. Beach House Area – the Beach House restoration area, the designated food truck location, the public restroom location, and adjacent areas.

Access improvements within the deed restricted areas shall be ambulatory, including that the deed restricted area boundaries and amenities (e.g., paths and trails, benches, interpretive signs) shall move inland within the permittee's property, if relocation and/or reconstruction of access amenities in the deed restricted area is necessary to retain their continued use.

2. Development and Use Restrictions. No development, as defined in Section 30106 of the Coastal Act, shall occur within any of the public access areas described in subsection A.1 of this condition, and as described and depicted in [Exhibit 4](#) of this staff report, except for the following development authorized by this coastal development permit:

Grading and construction necessary to complete the public access amenities, including removal of the temporary shoreline protective device and restoration grading and import of fill at the Beach House site; construction of the new restroom structure; removal and installation of underground utilities; paving of the emergency access road turnaround area; vegetation removal and planting; installation of a decomposed granite pathway, picnic tables, benches, trash cans, and public safety fencing; installation of public access, interpretive and informational signs; operation of a food truck; periodic maintenance grading of the emergency access ramp; and maintenance and repair of approved development within the restricted area(s) approved by this coastal development permit.

The recorded document(s) shall also provide that the public restrooms be open all days of the week but are permitted to be closed during nighttime hours, that the food truck shall, at a minimum, be open for service to the public daily from Memorial Day to Labor Day at all reasonable hours, and that access on the public trails and the beach shall be uninterrupted at all times.

- B. 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 designated public access area(s) prepared by a licensed surveyor based on an on-site inspection of the public access area(s). The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

3. Archaeological Monitoring

- A. The applicant shall comply with all recommendations and mitigation measures contained in the Extended Phase I Archaeological Investigation Report, prepared by Dudek, dated January 2020. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved

final plans shall be reported to the Executive Director for review and written approval. Upon completion of the development, the applicant shall submit evidence in the form of a narrative report, for the review and written approval of the Executive Director, showing that the development was undertaken in accordance with the approved archaeological plan. No changes to the approved archaeological plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director provides a written determination that no amendment is legally required. The applicant shall also comply with the following monitoring conditions during construction:

1. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, a minimum of 1 Native American monitor from each tribal entity with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading, excavation work, site preparation or landscaping activities associated with the approved development.
 2. The permittee shall provide sufficient archeological and Native American monitors to ensure that all project grading and any other subsurface activity that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times.
- B. If an area of cultural deposits is discovered during the course of the project, all construction and subsurface activity that have the potential to uncover or otherwise disturb cultural deposits in the area of the discovery shall cease immediately and shall not recommence except as provided in subsection C below; and the project archaeologist shall prepare and submit a Significance Testing Plan, for review and approval of the Executive Director, identifying measures to be undertaken to determine the significance of the find. The Significance Testing Plan shall be prepared in consultation with the Native American monitors, and the MLD when State Law mandates the identification of a MLD. The Executive Director shall determine the adequacy of the Significance Testing Plan and if it is found to be de minimis, it can be implemented without further Commission action. The Significance Testing Plan results, along with the project archaeologist's recommendation as to whether the discovery should be considered significant, and the comments of the Native American monitors and MLD when State Law mandates the identification of a MLD, shall be submitted to the Executive Director for a determination of the significance of the discovery. If the Executive Director determines that the discovery is significant, development shall not recommence and the permittee shall submit to the Executive Director a Supplementary Archaeological Plan in accordance with subsection C, below.
- C. A permittee seeking to recommence construction following discovery of cultural deposits determined to be significant pursuant to the process established in the Significance Testing Plan in subsection B shall submit a Supplementary

Archaeological Plan for the review and written approval of the Executive Director, prepared by the project archaeologist in consultation with the Native American monitor(s) for the project, and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD. The Supplementary Archaeology Plan shall identify proposed investigation and mitigation measures, which can range from in-situ preservation to recovery and/or relocation/reburial. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect archaeological resources, any further development may only be undertaken consistent with the provisions of the approved Supplementary Archaeological Plan, as well as, to the extent applicable, the original approved archaeological plan.

If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission to authorize a new archaeological approach. A report verifying compliance with this condition shall be submitted to the Executive Director for review and written approval, upon completion of the mitigation measures detailed in the approved Archaeology Plan and/or Supplementary Archaeological Plan required to protect significant archaeological finds.

4. Sensitive Species Surveys

For any construction activities, the applicant shall retain the services of a qualified biologist or environmental resources specialist (hereinafter, "environmental resources specialist") to conduct sensitive species surveys (including birds and other terrestrial species) of the project site and surrounding areas. At least 30 calendar days prior to commencement of any construction activities, the applicant shall submit the name and qualifications of the environmental resources specialist, for the review and approval of the Executive Director. The applicant shall have the environmental resources specialist ensure that all project construction and operations are carried out consistent with the following requirements:

- a. The environmental resources specialist shall conduct surveys no more than two weeks prior to the approved construction activities to detect any active sensitive species, any reproductive behavior, and any active nests within 500 feet of the project site. Follow-up surveys must be conducted 3 calendar days prior to the initiation of construction, and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first.

- b. In the event that any sensitive species are present in or adjacent to the construction area but do not exhibit reproductive behavior and are not within the estimated breeding/reproductive cycle of the subject species, the environmental resources specialist shall implement a resource avoidance program with sufficient buffer areas to ensure adverse impacts to such resources are avoided. The applicant shall also immediately notify the Executive Director of the presence of such sensitive species and which of the above actions are being taken. If the presence of any such species requires review by the United States Fish and Wildlife Service and/or the California Department of Fish and Wildlife, then no development activities shall be allowed to continue until any such review and authorizations to proceed are received, subject to the approval of the Executive Director.
- c. If an active nest of a federally or state-listed threatened or endangered species, bird species of special concern, or any species of raptor is found, the applicant shall notify the appropriate State and Federal agencies within 24 hours and shall develop an appropriate action specific to each incident. The applicant shall notify the California Coastal Commission in writing by e-mail or facsimile within 24 hours and consult with the Commission staff regarding the determinations of State and Federal agencies.
- d. If an active nest of any federally or state-listed threatened or endangered species, species of special concern, or any species of raptor is found within 300 feet of construction activities (500 feet for raptors), the applicant shall retain the services of an environmental resources specialist with experience conducting bird and noise surveys, to monitor bird behavior and construction noise levels. The environmental resources specialist shall be present at all relevant construction meetings and during all significant construction activities (including those with potential noise impacts) to ensure that nesting birds are not disturbed by construction related noise. The environmental resources specialist shall monitor birds and noise every day at the beginning of the project and during all periods of significant construction activities. Construction activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest site(s). If construction noise exceeds a peak level of 65 dB at the nest site(s), sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction within 300 feet (500 feet for raptors) of the nesting trees/areas shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.
- e. The environmental resources specialist shall be present during all tree and vegetation removal activities. The environmental resources specialist shall require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise. If significant impacts or damage occur to sensitive habitats or to wildlife species, the applicant shall be

required to submit a supplemental program to adequately mitigate such impacts. The supplemental program shall be submitted to the Executive Director for review and approval.

- f. For the purpose of this special condition, "sensitive species" shall be taken to mean any special-status wildlife species. Special-status species are species listed as Endangered, Threatened, or Rare under the federal or state Endangered Species Acts, Candidate Species, California Fully Protected Species, and, pursuant to CEQA Guidelines Section 15380(d), all other species tracked by the California Natural Diversity Database (CNDDDB), which are considered by the California Department of Fish and Wildlife to be those species of greatest conservation concern, and locally important species including raptors, herons, and songbirds.

5. Interim Erosion Control Measures and Construction Responsibilities

By acceptance of this permit, the applicant agrees to implement the erosion control measures and construction best management practices contained within the Preliminary Erosion Control Plan, prepared by Stantec, dated April 1, 2020, as well as the following requirements:

a. Erosion Control Measures

1. Any natural areas on-site to be retained shall be clearly delineated with fencing or survey flags.
2. The Final Erosion Control Plan shall clearly depict and describe, if necessary, all temporary run-off and erosion control measures to be used during construction.
3. Implementation of the erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction.
4. Should grading or site preparation cease for a period of more than 30 days, temporary erosion control measures shall be implemented, including but not limited to: stabilization of all stockpiled fill, disturbed soils, and cut and fill slopes with geotextile mats, sand bag barriers, and/or silt fencing; and temporary drains, swales, and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.
5. All temporary construction related erosion control materials shall be comprised of bio-degradable materials (natural fiber, not photo-degradable plastics), free of weeds, and must be removed when permanent erosion control measures

are in place. Bio-degradable erosion control materials may be left in place if they have been incorporated into the permanent design.

b. Construction Best Management Practices

1. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters, or a storm drain, or be subject to wave, wind, rain, or other erosion and dispersion. Any debris inadvertently discharged into coastal waters shall be recovered immediately and disposed of consistent with the requirements of this coastal development permit.
2. No demolition or construction equipment, materials, or activity shall be placed in, or occur in, any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands, or their buffers.
3. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
4. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
5. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
6. Debris shall be disposed of at a permitted disposal site or recycled at a permitted recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
7. All stockpiles and construction materials shall be covered and enclosed on all sides. Such materials shall be located as far away as possible from drain inlets and any waterways and shall not be stored in contact with the soil.
8. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
9. The discharge of any hazardous materials into any receiving waters shall be prohibited. Hazardous materials management equipment, including oil containment booms and absorbent pads, shall be available immediately on-hand at the project site, and a registered first-response, professional

hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up.

10. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

11. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the onset of such activity.

12. All structural BMPs shall be maintained in a functional condition throughout the duration of construction activity.

The applicant shall implement erosion control measures and construction best management practices in accordance with this condition. Any proposed changes to these requirements shall be reported to the Executive Director. Any substantial changes to these requirements shall require an amendment to the permit or a new coastal development permit.

6. Site Restoration

By acceptance of this permit, the applicant agrees to restore the Beach House/temporary shoreline protective device demolition area consistent with the requirements specified in the Habitat Restoration Plan, prepared by Dudek, dated October 2019 and to plant replacement Monterey cypress pursuant to the Technical Memorandum regarding Monterey Cypress Tree Mitigation, prepared by Dudek, dated July, 14, 2020, in addition to the following:

- a. All areas disturbed by development shall be re-vegetated and maintained in perpetuity. All native vegetation and Monterey cypress removed or impacted by the approved construction shall be replaced in-kind at a 1:1 ratio. Plantings shall be maintained in good growing condition throughout the life of the development and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable restoration plan requirements.
- b. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

The applicant shall undertake restoration and monitoring in accordance with this condition. Any proposed changes to these requirements shall be reported to the

Executive Director. Any substantial changes to these requirements shall require an amendment to the permit or a new coastal development permit.

7. Food Truck Operation Plan

By acceptance of this permit, the applicant agrees that operation of the food truck shall be implemented consistent with the following requirements:

- a. The food truck shall remain appropriately stocked to serve customers and shall be open for service daily, at all reasonable hours, from Memorial Day to Labor Day, and holiday weeks such as Winter and Spring Breaks and holiday weekends.
- b. The food truck shall be marked with signs designating that it is open and available to the public when open to any customer.
- c. When in service, the food truck shall be located in the designated parking spot depicted in [Exhibit 3](#).
- d. The food truck shall be operated in perpetuity. If the food truck is inoperable (i.e., unable to provide services to the public during required times at its designated location) an alternate and comparable service shall be provided.

Any proposed changes to the food truck service shall be reported to the Executive Director. Any substantial changes to these requirements shall require an amendment to the permit or a new coastal development permit.

8. Emergency Ramp Maintenance

By acceptance of this permit, the applicant agrees that maintenance of the emergency ramp shall be implemented consistent with the following:

- a. The size of the ramp shall be limited to approximately 25 feet in length and 8 feet in width, and earth movement shall be limited to approximately 15 cubic yards per maintenance event.
- b. All grading and maintenance activities, including any necessary construction equipment, shall be limited to the area above the high high water line in the general location of the existing ramp depicted in [Exhibit 3](#).
- c. No cobble or rock shall be placed on the beach to protect the ramp from wave action or used in maintenance of the ramp.
- d. Grading and maintenance activities shall be conducted after the Labor Day Holiday and prior to the Friday before the Memorial Day Holiday of any calendar year.

The applicant shall undertake all maintenance activities in accordance with the above criteria. Any proposed changes to these requirements shall be reported to the Executive Director. Any substantial changes to these requirements shall require an amendment to the permit or a new coastal development permit, unless the Executive Director authorizes minor modifications for good reason.

9. Removal of Excess Material

Prior to commencement of construction activities, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all construction/demolition debris and excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

10. No Future Bluff or Shoreline Protection

- A. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 4-16-0479, including, but not limited to, the public restrooms, the emergency access road, underground utilities, public access trails, the restoration area, and the emergency access ramp, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that they are required to remove all or a portion of the development authorized by the permit, including the restrooms, utilities, and emergency access road improvements, and restore the site, if any of the below occur:
 - 1. The City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structure is currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for use without the utilization of bluff or shoreline protective devices;
 - 2. Essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;

3. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
4. The development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

In addition, this development approval does not permit encroachment onto public trust lands, and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval.

- C. Prior to removal/relocation, the permittee shall submit a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Pacific Ocean. In the event that any portions of the approved development fall to the beach or ocean before they are removed/relocated, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. The Executive Director shall determine if a coastal development permit is required for the removal/relocation of approved development.

11. Assumption of Risk, Waiver of Liability, and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, wave action, tsunamis, liquefaction, and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, 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.

12. Monetary Payments to the City of Goleta

To implement the applicant's proposal, for a period of three (3) years following the issuance of this permit, the permittee shall pay \$15,000 each year (\$45,000 in total) to the City of Goleta in accordance with subsection B, to help fund the restoration and enhancement of Tecolote Creek.

- A. The \$45,000 amount shall be deposited into an interest-bearing account, to be established and managed by the City of Goleta. The purpose of the account shall be

to help fund the enhancement and restoration of native habitat located within Tecolote Creek. The entire fee and accrued interest shall be deposited into the account within three years of issuance of this permit and must be used for the above stated purpose, in consultation with the Executive Director, within five years of the fee being deposited into the account. If any portion of the funds remain five years after the deposit of the third and final fee payment, the permittee shall ensure that the funds are transferred into another interest-bearing account managed by the California Coastal Conservancy for use on a similar project that restores or enhances native habitat areas within the Coastal Zone of the City of Goleta.

- B. Prior to issuance of this permit, the applicant shall draft and enter into a memorandum of understanding (MOU) with the Commission and the City of Goleta, which shall include, but not be limited to, the following: 1) a description of how the funds will be used to fund the Tecolote Creek habitat restoration and enhancement project; 2) a requirement that the City of Goleta must only spend the funds on the Tecolote Creek habitat restoration and enhancement project; 3) a requirement that the City of Goleta will set up an interest-bearing account and the applicant will deposit the first payment into that account no later than 60 days after issuance of this permit, 4) a payment schedule indicating that the second payment shall be deposited within two years of permit issuance and the third payment shall be deposited within three years of permit issuance, and 5) the terms provided in subsection A of this condition.

13. Deed Restriction

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

In 1985 the Coastal Commission approved coastal development permit (CDP) 4-85-343, as well as five amendments in subsequent years (4-85-343-A1 through -A5), which permitted a hotel with 400 guest rooms, conference spaces, restaurant and bar facilities, outdoor patios and pools, a health club and spa, tennis courts, and public access amenities at 8301 Hollister Avenue (APNs 079-200-012 & 079-200-013) in Santa Barbara County. The 73-acre property is currently known as the Ritz-Carlton Bacara and is located adjacent to Haskell's Beach in the City of Goleta. The public access amenities on the property include a 50-space public parking lot, a public access trail system (including vertical accessways to the beach), a 3,675 square foot beachfront snack bar/restroom structure (Beach House), and adjacent outdoor showers.

In January 2016, the hotel's prior owner requested an emergency permit to construct a shoreline protective device to protect the Beach House and its foundation from storm surge during a high tide event. Verbal authorization was initially given by Commission staff, and an emergency permit (G-4-16-0006) was subsequently issued for the temporary installation of an approximately 190-foot long, 10-foot high seawall constructed of precast concrete blocks (2 feet wide by 2 feet high by 5.5 feet long) and installation of 600 sand bags and plastic sheeting to protect the slope immediately seaward of the Beach House and outdoor showers. The emergency permit temporarily authorized the protective device until May 20, 2016 by which time it required the applicant to remove all portions of the temporary protective device. On May 20, 2016, the prior owner submitted an application to demolish the Beach House (and remove the seawall, sandbags and plastic sheeting), but the application did not include a proposal to replace or relocate the Beach House. Commission staff requested clarification of the project description and additional information necessary to complete the application. A response to Commission staff's request was not provided until July 10, 2017.

On January 21, 2017, the hotel's prior owner extended the seawall fronting the Beach House by 36 feet without Commission authorization. On February 23, 2017, Commission enforcement staff notified the hotel's representative in writing that the work constituted a Coastal Act violation and that the portion of the seawall authorized pursuant to G-4-16-0006 also constituted a violation since its emergency authorization expired on May 20, 2016. The enforcement letter noted that while the violations had, and continued, to accrue penalties, the collective goal of Commission staff was to work with the applicant to complete the application to relocate the Beach House to an inland location. In September 2017, the hotel came under new ownership and was renamed The Ritz-Carlton Bacara, Santa Barbara. Since that time the new owners have worked diligently to provide the necessary materials to complete the application initiated by the previous owner. Despite construction of the seawall, the beach and the public restrooms have continued to remain open and accessible to the public.

On July 10, 2020, the subject application was formally filed as complete. The proposed project includes demolition of the existing Beach House structure and temporary shoreline protective device, restoration of the demolition site, and construction of replacement restroom and snack bar facilities. The replacement restrooms and snack bar would consist of two separate facilities. The new restroom structure would be located approximately 200 feet inland of the existing Beach House, and a hotel-owned and operated food truck is proposed to replace the existing snack bar facility. Both the restroom structure and designated food truck parking spot are proposed to be located along the existing emergency access road that leads from Hollister Avenue to Haskell's Beach, as depicted in [Exhibit 3](#). The proposed 325 square foot restroom building consists of four individual stalls, a storage room, two outdoor showers, and a drinking fountain. A 743 square foot concrete pad for the new building would be constructed along with necessary grading and trenching for new lateral connections to the existing underground electrical, water, sewer, and communications utilities, which would be installed within the emergency access road (the same utility lines currently serve the existing Beach House). An additional communication line is also proposed to be installed underground along the access road, which would run from the existing tennis center adjacent to the public parking lot and connect to an existing pull box near the new restroom structure. Construction of the new building includes the installation of a 65-foot long retaining wall ranging in height up to a maximum of 3 feet and erosion control features. Additionally, approximately 120 cubic yards of grading would be required for the new structure.

The new food truck is proposed to be an electric-powered vehicle that would be driven by hotel staff to a designated parking spot on the emergency access road each day that it would be open for service. The food truck is proposed to be parked at the hotel parking lot each night because the fire department has required that the vehicle not be parked on the emergency access road overnight. New electrical and communication line connections are proposed to be installed adjacent to the food truck's parking spot on the emergency access road. The new utility hook-ups would be connected to the existing underground utilities in the roadway. The applicant has indicated that the food truck would serve a menu similar to the existing menu at the snack bar. The new restroom and food truck facilities are proposed to be installed and open for operation prior to demolition of the existing Beach House.

Once the new restrooms and food truck are available to serve the public, the existing Beach House structure, including the foundation, adjacent outdoor showers, temporary shoreline protective device, and any remaining sand bags and plastic sheeting would be demolished and removed. Existing utilities for the Beach House would be capped at points where they are no longer needed and removed between those points and the Beach House; however, the existing recycled water utility line is proposed to remain to provide irrigation for the restoration of the demolition site. Any native vegetation that is removed or disturbed as a result of the development, such as during the removal of utilities, is proposed to be replaced with native species at a 1:1 ratio.

Proposed restoration of the demolition site includes grading and capping the site with approximately 460 cubic yards of imported fill, planting the site with native salt grasses and coastal bluff scrub species, constructing a decomposed granite public access trail through the site, and installing interpretive signs and benches. Once the seawall is removed, a low bluff will remain. Due to the intermittent nature of the beach elevation, the bluff height could vary between 4 and 6 feet in height. Therefore, the applicant is proposing to install a low (maximum height is 48 inches) buck-and-rail fence between the bluff edge and the new public access trail to ensure public safety. The buck-and-rail fence is a type of fence that does not need to be installed in the ground, which is ideal given the cultural sensitivity of the site. Also, this type of fence will facilitate its relocation inland as the bluff erodes.

The proposed project also includes expansion of the existing emergency access turnaround by approximately 15 feet into an adjacent unvegetated area. The pavement expansion is necessary to accommodate the fire department's fire truck turning radius. Approximately 15 cubic yards of periodic maintenance grading of the existing emergency access ramp between the emergency access road turnaround area and the beach is also proposed to ensure that emergency personnel can access the beach. The maintenance grading is not proposed to expand the width or overall size of the existing emergency access ramp.

The total duration of the proposed project is expected to take approximately six months. Removal of the temporary shoreline protective device is expected to take approximately one week to complete. To prevent additional damage to the slope and minimize erosion, some equipment is proposed to operate from the dry sandy beach and is anticipated to take no more than five (5) working days. Demolition of the shoreline protective device and Beach House is proposed to occur in the spring in order to avoid winter storm surge conditions and give the restoration planting the best opportunity to establish before the next winter storm season.

Finally, to ensure that the public has a legal right to access the new visitor-serving amenities, the applicant is proposing to record a deed restriction, which would include the proposed restoration area, the food truck and restroom building locations, and adjacent areas in order to provide legal access between the beach and existing public accessways and the new amenities as shown on [Exhibit 4](#). Proposing to record a deed restriction over the new access areas is also one component of resolving the violation associated with the unpermitted seawall. Other components of the violation resolution include incorporating the existing up-coast picnic area and the existing trail that connects the emergency access road with the public access trail on the east terrace into the proposed deed restriction and installing an additional picnic table at the existing picnic area, two benches within the proposed restoration site, one bench next to the new restroom structure, and an additional interpretive sign. Further, in order to mitigate for the ecological impacts caused by the unpermitted portion of the seawall, the applicant has proposed to contribute \$45,000 (\$15,000 per year for three years) to the City of Goleta to fund enhancement and restoration of native habitat located within Tecolote Creek, a portion of which is located on the subject property.

B. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act, in relevant part, states:

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

Section 30221 of the Coastal Act states:

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.

In its initial approval of the hotel, the Commission found that the subject property had been a historically important access point to the adjacent beach for a variety of recreational activities, including surfing, fishing, swimming, and sun-bathing. Haskell's Beach remains popular for beachgoers as it is one of the most easily accessible beaches along this stretch of the coast due to the availability of public parking within close proximity, the well-maintained public access trails, and the beachside public restroom and snack bar facilities.

The proposed project includes replacement of the existing restrooms, outdoor showers, and snack bar with new facilities located inland of the beach and demolition of the existing Beach House structure and temporary seawall, as well as construction of a

public access trail and grassy public recreation area within the demolition site. The proposed project also includes the addition of interpretive signs, picnic tables, and benches to the project site, and a deed restriction is proposed to be recorded to provide legal public access to all of the new amenities and to connect them to the existing trail system. Consistent with Sections 30210 and 30211, which mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast, the proposed project would maintain the existing public access amenities at the subject site in addition to providing new public access and recreation amenities. Maintaining the public restrooms and food service at this location and providing additional passive recreation amenities is also consistent with Section 30213, which requires lower cost visitor serving and recreational facilities to be protected, encouraged, and, where feasible, provided.

To ensure that the public restrooms and food services are available throughout the duration of the project, the applicant has proposed to construct and open the new restroom and food truck facilities prior to demolition of the Beach House structure. The project, however, does have the potential to temporarily impact adjacent public access trails as well as public parking during construction. The proposed project includes construction staging within seven parking spaces in the public parking lot for the duration of the project. Public access from the public parking lot to the beach is proposed to remain open; however, the public may need to be routed around active construction areas, such as the Beach House site during demolition. Therefore, to ensure public safety and that the interruption to public access is minimized, **Special Condition One (1)** is necessary to require the applicant to submit a public access program that describes the methods, such as signage and fencing, by which safe public access shall be maintained around construction areas, staging areas, and active restoration areas during all project operations. Special Condition One (1) also requires the minimum number of parking spaces to be used if occupation of public parking spaces is unavoidable.

Another project component, the proposed periodic maintenance of the emergency access ramp also has the potential to impact public access at the beach and within the project area. Therefore, **Special Condition Eight (8)** is necessary to require that grading and maintenance of the emergency access ramp be conducted outside of the peak summer season in order to minimize impacts to public access and recreational use of the beach.

Coastal Act Section 30210 provides that coastal access shall be conspicuously posted in order to ensure maximum opportunities for the public to access the beach. Therefore, the Commission finds it necessary to require submittal of a signage plan that includes a map of sign locations and detailed descriptions and graphic representations of each sign. Thus, submittal of a signage plan, as outlined in Special Condition One (1), is necessary to ensure that the public access amenities, such as the public access trails and restrooms, are clearly marked and identifiable as available to the public. Further, **Special Condition Seven (7)** is necessary to require that the proposed food truck is

marked with signs designating that when it is open for service it is open and available to the public.

The proposed project is also consistent with Coastal Act Sections 30212.5 and 30221, which require public facilities to be distributed throughout an area, wherever appropriate and feasible, and that oceanfront land suitable for recreational uses is protected for such uses, respectively. The proposed project includes construction of a public access trail, installation of interpretive signs and benches, and planting of a native grass area within the existing Beach House site in order to provide for passive recreational uses, such as picnicking and nature watching. Although the applicant has provided a restoration plan for the Beach House demolition site, the Commission finds it necessary to require **Special Condition Six (6)** to ensure that the implemented restoration is consistent with the proposed plan. In addition, Special Condition Seven (7) is necessary to require that the food truck is appropriately stocked to serve customers and is open for service on a daily basis from Memorial Day to Labor Day, during Winter and Spring Breaks, and on holiday weekends. Special Condition Seven (7) also requires that the food truck is operated in perpetuity and that, when in service, it must be parked in its designated parking location as shown on [Exhibit 3](#).

Moreover, the applicant has proposed to record a deed restriction for the new public access amenities, the existing picnic area, and the trail network that connects the new amenities to the existing deed restricted public access trails and the beach, as depicted on [Exhibit 4](#). Although the new public access areas are proposed to be included in a public access deed restriction, the Commission finds it necessary to require **Special Condition Two (2)** to ensure that the public access deed restriction is recorded in a manner consistent with the approved project and in a form and content that is acceptable to the Executive Director. Additionally, to assure that future owners of the property are aware of this public access deed restriction, and all of the conditions of the subject permit, **Special Condition Thirteen (13)** is necessary to require a deed restriction to be recorded against the property that identifies the terms and conditions of the subject permit.

For the reasons stated above, the Commission finds that the proposed project, as conditioned, is consistent with the public access and recreation policies of the Coastal Act.

C. Archaeological Resources and Tribal Consultation

Section 30244 of the Coastal Act states:

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

The project area has a long history of use by the Chumash people. The traditional territory of the Chumash people “encompassed 7,000 square miles that spanned from

the beaches of Malibu to Paso Robles. The tribe also inhabited inland to the western edge of the San Joaquin Valley” and the offshore Channel Islands (Santa Ynez Band of Chumash Indians 2009). The project site, including Tecolote Canyon, which is located in the center of the subject property, had been occupied by Native Americans for over 6,000 years. As a result, the property is rich in archaeological resources and contains six recorded archaeological sites.

Consistent with the requirements of AB 52, while obtaining preliminary approval from the City of Goleta, the applicant coordinated and consulted with members of tribes potentially affected by this project. During this Tribal Consultation process, the City received two requests from Chumash representatives and held one consultation on June 7, 2019 and another on July 9, 2019. The City met with two Chumash representatives at the project site on July 29, 2019. The tribal representatives reviewed and provided input on the applicant’s Extended Phase I Archaeological Investigation Report and expressed satisfaction with its analysis and conclusions. The recommendations in the Extended Phase I Archaeological Investigation Report reflect input from the tribal representatives. Per the Initial Study/Final Mitigated Negative Declaration for the project, the applicant, City, and Chumash representatives concluded consultation to the satisfaction of the parties on February 19, 2020.

Additionally, per the Commission’s Tribal Consultation Policy, staff contacted representatives from Native American Tribes understood to have current and/or historic connections to the project area. These Tribes include the Barbareño/Ventureño Band of Mission Indians, Chumash Council of Bakersfield, Coastal Band of the Chumash Nation, Fernandeno Tataviam Band of Mission Indians, Northern Chumash Tribal Council, San Luis Obispo County Chumash Council, Santa Ynez Band of Chumash Indians, and the yak tityu tityu yak tilhini – Northern Chumash Tribe. Contact information for these Tribal Representatives was gathered from the Native American Heritage Commission’s Native American Contact Lists. At the time of publication of this staff report and recommendation, no questions or concerns had been brought to the attention of Commission staff by representatives of the Tribes that were contacted. Any concerns raised subsequent to the publication of this report will be brought to the attention of the Commission through the development of an addendum to this staff report and recommendation.

The applicant conducted an Extended Phase I Archaeological Investigation for the proposed project in order to: (1) determine the horizontal and vertical presence/absence of cultural materials within the proposed project area; (2) to better understand, delineate, and/or verify the boundary of the nearest recorded archaeological site as it relates to the proposed project; and (3) if cultural materials were encountered as a result of subsurface testing, to determine the potential integrity of the soils and extent of previous disturbances affecting the provenance of present cultural materials. The investigation revealed that the recorded archaeological site to the west does not likely extend into the proposed project site and that no secondary deposits from the archaeological site to the east exist within the project site. The investigation determined that there is a very limited potential for unknown cultural resources or isolated human

remains to be encountered within the proposed project site. However, since known archaeological sites occur within the immediate vicinity of the proposed project, it remains important that ground disturbance is minimized to the maximum extent feasible and if cultural material is discovered during construction, it is appropriately treated.

The proposed project includes 470 cubic yards of grading (10 cubic yards of cut and 460 cubic yards of fill) at the demolition site, 120 cubic yards of grading (110 cubic yards of cut and 10 cubic yards of fill) for the new restroom building, and approximately 10 cubic yards of cut and 5 cubic yards of fill to maintain the existing emergency access ramp. Trenching for the utilities for the new restroom facility will require up to 4 feet of ground disturbance and trenching to remove the utilities between the new restroom facility and the existing Beach House is also proposed. The proposed 460 cubic yards of fill at the demolition site includes a layer of geotech fabric, 4 inches of indicator sand, and a minimum of 14 inches of fill soils in which native salt grasses and coastal bluff scrub would be planted and a 5-foot wide decomposed granite path would be installed. The multiple layers of fill are proposed in order to cap the site to avoid archaeological resources and minimize disturbance of intact soils. The applicant is also proposing to install a buck-and-rail fence within the restoration site between the bluff edge and the path to ensure the safety of visitors using this area. A buck-and-rail fence is a type of fence that does not need to be installed in the ground, and thus would not result in any impacts to potential archaeological resources.

The Extended Phase I Archeological Investigation Report, dated January 2020 and prepared by Dudek (the "Investigation Report"), recommends that a qualified archaeologist and Chumash observer monitor all project activities that require ground disturbance as well as conduct a pre-construction workshop for the demolition and construction personnel. The investigation report also recommends that a precautionary excavation at the proposed restroom site is conducted to determine the absence/presence of cultural material at a depth below which the Extended Phase I Archeological Investigation was able to conduct. Finally, the Investigation Report recommends that a Construction Monitoring/Treatment Plan is developed for the proposed project. The Commission finds that **Special Condition Three (3)** is necessary to ensure that the recommendations and mitigation measures contained in the Investigation Report are implemented during construction. It is also necessary to ensure that the archaeological monitors are qualified per the standards of the California Office of Historic Preservation and the Native American Heritage Commission. Further, Special Condition Three (3) is necessary to ensure that if cultural deposits are discovered during the course of the project, that project activities shall cease immediately and that particular protocols shall be followed to determine the significance of the deposits and avoid impacts to cultural resources.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30244.

D. Biological and Visual Resources

Section 30231 of the Coastal Act states:

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

Section 30240 of the Coastal Act states:

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

Section 30251 of the Coastal Act states:

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

Section 30231 of the Coastal Act requires that a certain minimum level of biological productivity and quality of coastal waters be maintained and protected through measures such as controlling runoff, preventing depletion of groundwater supplies, and maintaining natural vegetation buffer areas that protect riparian habitats. Section 30240 protects environmentally sensitive habitat areas (ESHA) against significant disruption of habitat values and requires development adjacent to ESHA to be sited and designed to prevent impacts that would significantly degrade the ESHA. Coastal Act Section 30251 requires development to be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area.

The project site is surrounded by habitat, including, but not limited to, coastal sage scrub located west of the emergency access road and north of the Beach House, native and non-native tree and bush species located east of the emergency access road, and beach and intertidal habitat located south of the project site. The main purpose of the proposed project is to replace the existing restroom, snack bar, and outdoor shower amenities at Haskell's Beach, and to ensure that the new replacement facilities are equally as accessible as the existing facilities, and therefore sited within close proximity to the existing amenities. Given the constraints of the project site, there are no alternative locations for the new restroom structure to be sited adjacent to the beach that would be farther away from the surrounding sensitive habitats and would also be safe from coastal hazards. Therefore, the proposed location for the new restroom structure is the best feasible location.

The proposed restroom site, which is within the road shoulder of the emergency access road, was identified as a Monterey cypress planting site per the Consent Cease and Desist and Restoration Orders (CCC-13-CD-03 & CCC-13-RO-03) issued to the prior owners in 2013. Since there are limited areas to site the new restroom structure, it was determined that the proposed location would be a viable option even if some of the planted Monterey cypress had to be moved. The applicant has indicated that one of the planted Monterey cypress will need to be removed, and a second planted Monterey cypress may be partially impacted or removed as a result of the project. Any removed or impacted Monterey cypress trees are proposed to be replanted at a 1:1 ratio adjacent to another Monterey cypress planting location on the property northeast of the project site ([Exhibit 6](#)). The replacement planting location is currently dominated by non-native grasses, which would be removed through mechanical means prior to planting the Monterey cypress tree(s). To ensure the replacement of any removed or impacted Monterey cypress, **Special Condition Six (6)** requires replacement trees to be planted according to the proposed Monterey Cypress Tree Mitigation memorandum, dated July 14, 2020, prepared by Dudek, and requires that any removed or impacted trees are replaced at a 1:1 ratio, and that the plantings are maintained in good growing condition throughout the life of the development and replaced if necessary.

In addition to Monterey cypress, some of the existing vegetation within the vicinity of the Beach House would be removed or impacted as a result of trenching for the removal of existing underground utilities. Special Condition Six (6) is also necessary to require 1:1 replacement of any native vegetation impacted by the proposed construction. Because native vegetation would be impacted during project activities, and in consideration of the project's proximity to adjacent sensitive habitat areas, the Commission finds **Special Condition Four (4)** necessary to require sensitive species surveys to be conducted prior to commencement of construction activities.

The Commission also recognizes that new development has the potential to adversely impact coastal water quality and biological productivity of coastal waters through the removal of vegetation and increases in impervious surfaces, which increases runoff, erosion, sedimentation, and introduction of pollutants into adjacent and downstream waterways and wetlands. These impacts have the potential to reduce the biological

productivity and quality of coastal waters, streams, and wetlands, reduce optimum populations of marine organisms, and may contribute to adverse impacts on human health. The proposed project would significantly reduce the impervious area on site by almost 3,000 square feet, most of which would be planted with native species, thereby increasing the site's infiltrative function and capacity. Additionally, the operation of a food truck instead of construction of a building for the snack bar service further reduces the impervious area and amount of grading for the proposed project. The food truck is also proposed to be electric, which would reduce the potential of oil and gas leaks.

However, during construction some vegetation would be removed, grading would occur, and debris would be created as a result of the proposed demolition. Therefore, interim erosion control measures implemented during construction would serve to minimize the potential for adverse impacts to water quality as a result of runoff and erosion during construction. Thus, the Commission finds it necessary to impose **Special Condition Five (5)** to require the applicant to implement erosion control measures consistent with the proposed Preliminary Erosion Control Plan, prepared by Stantec, dated April 1, 2020, as well as additional erosion control measures and best management practices, such as requiring construction related erosion control materials to be bio-degradable and weed free, and requiring all trash and debris to be disposed in proper trash and recycling receptacles at the end of each day. Further, **Special Condition Nine (9)** is necessary to require the applicant to provide evidence of the disposal location for all construction and demolition debris and any excess excavated material to ensure the material will be taken to a permitted disposal site if that site is within the coastal zone.

Additionally, the applicant is proposing to conduct periodic maintenance grading of the existing emergency access ramp that connects the emergency access road to the beach. Prior to completing the application, the applicant analyzed several alternatives to maintain the existing emergency ramp, including steel and concrete mats, a hard-structured removable ramp, and the addition of rock. The proposed maintenance grading was determined to be the best feasible alternative, as it does not include installation of a hardened structure. The proposed alternative is also more adaptable than fixing the ramp in place as the ramp can continue to be graded and maintained as the land erodes inland and the conditions on the ground change due to sea level rise. However, since the emergency access ramp is located directly adjacent to the beach, the Commission finds **Special Condition Eight (8)** necessary to require that all grading and maintenance activities shall be limited to above the high high water line in order to avoid impacts to the intertidal zone. Further, Special Condition Eight (8) limits the location, dimensions, and volume of grading in order to minimize landform alteration as well as minimize impacts to adjacent habitat.

As described in more detail below in Section F, the applicant has proposed to contribute funds to the City of Goleta to conduct enhancement and restoration of native habitat within Tecolote Creek, which runs through the subject property, up-coast of the existing Beach House. Tecolote Creek contains riparian and wetland vegetation and provides habitat for amphibians and several small fish species on which waterfowl and other water associated birds, such as herons and kingfishers, feed. However, non-native plant

species have invaded the creek corridor. Non-native species often outcompete native species for resources, such as sunlight and water, which can degrade the habitat for native fauna and decrease the abundance of native species. Thus, the removal of non-native plant species would serve to restore the native vegetation and enhance the habitat within Tecolote Creek. In order to implement the applicant's proposal to contribute funds for habitat restoration and enhancement at Tecolote Creek, **Special Condition Twelve (12)**, is necessary to require that the proposed payments are deposited into an interest-bearing account to be established and managed by the City of Goleta within specific timeframes and requires the applicant to draft and enter into a memorandum of understanding with the Commission and the City of Goleta that describes how the funds will be used for the restoration and enhancement project, that the City of Goleta must only spend the funds on the Tecolote Creek project.

In addition to biological resources, the project site has significant visual resources. The scenic qualities of the project site include, but are not limited to, views of the ocean, the onsite and surrounding native vegetation, and the adjacent marine terraces. The proposed project would enhance the visual resources of the site by significantly reducing the square footage and mass of the public restroom structure and shower facilities, moving the restroom and shower location inland from the beach, and planting the demolition site with species native to the region. The architecture of the proposed restroom is designed to be consistent with the existing hotel. Additionally, the proposed restoration of the Beach House site is designed to minimize landform alteration by removing the temporary seawall and backfill but leaving the existing scarp to erode naturally.

Therefore, for the reasons described above, the proposed project, as conditioned, will not result in significant adverse impacts to the biological productivity and quality of coastal waters, ESHA, scenic public views, or the character of the surrounding area. Thus, the Commission finds that, as conditioned, the proposed development is consistent with Sections 30231, 30240, and 30251 of the Coastal Act.

E. Coastal Hazards

Section 30253 of the Coastal Act, in relevant part, states:

New development shall do all of the following:

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

...

- (d) Minimize energy consumption and vehicle miles traveled.

Section 30253 of the Coastal Act mandates that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard, and assure stability and structural integrity of the development without creating or contributing to erosion, instability, or destruction of the site or surrounding area or require protective devices that would substantially alter natural landforms along bluffs and cliffs. Section 30253 also requires development to minimize energy consumption and vehicle miles traveled.

The project site is currently subject to coastal hazards, such as wave runup and erosion. Sea level rise models show that with as little as 2.5 feet of sea level rise much of the project area, including the current Beach House site, will be impacted. The applicant submitted a coastal hazards analysis for the proposed project, which analyzed wave runup and erosion under 3.6 feet of sea level rise. Sea level rise of 3.6 feet is projected to occur under the Ocean Protection Council's low risk aversion scenario after 2110 and after 2070 under the medium-high risk aversion scenario. The coastal hazards analysis determined that the proposed location for the new restroom structure would be safe for the 50-year life of the project under the medium-high risk aversion scenario. Additionally, the applicant's proposal to operate a food truck is an adaptive component of the project, since it can be easily moved further inland when affected by sea level rise, unlike a permanent snack bar structure.

The proposed buck-and-rail style fence is another adaptive feature. Unlike a split rail fence or other fence type with posts, a buck-and-rail fence sits on top of the ground, which will allow it to be more easily moved inland as the bluff erodes. Although the Beach House site is proposed to be restored and public access amenities are proposed to be installed, it is expected that this area will naturally erode over time. As it does, any development within this area, such as the fence, benches, and signs are expected to be moved inland in order to be maintained for as long as possible. As such, **Special Condition Two (2)** requires trails, signs, and benches within the public access areas to be moved inland in order to maintain those amenities. Additionally, the existing unnecessary underground utilities are proposed to be removed so that they do not become hazards or debris in the future as the area erodes.

As previously noted, even though the proposed restroom structure was determined to be safe from coastal hazards under the medium-high risk aversion scenario and several adaptive features have been incorporated into the proposed project, **Special Condition Ten (10)** is necessary to require that if the proposed development ever does become threatened by coastal hazards, including, but not limited to, storm conditions, waves, bluff retreat, erosion, or other coastal hazards, as influenced by sea level rise, the applicant acknowledges and agrees that the subject development is not entitled to shoreline protection and waives any rights that may exist under applicable law to construct such devices. Additionally, Special Condition Ten (10) is necessary to require

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that if any portion of the subject development requires shoreline protection or encroaches onto public trust land, the development shall be removed or relocated.

Further, some inherent risk to the proposed development remains even though the structural component of the project (i.e., the restroom building) has been sited to avoid impacts from coastal hazards. As such, the Commission finds that due to the unforeseen possibility of storm waves, surges, and flooding, the applicant shall assume these risks as a condition of approval. Therefore, **Special Condition Eleven (11)** requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development.

Additionally, the proposed project includes a total of 605 cubic yards of grading for all components of the project, including the demolition site, the new restrooms, and maintenance grading of the emergency access ramp. In order to minimize erosion and ensure stability of the project site during construction, **Special Condition Five (5)** is necessary to require the implementation of erosion control measures and construction best management practices, including those proposed by the applicant.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Section 30253.

F. Unpermitted Development

2012 Violations and Consent Orders

As background for the history of Coastal Act violations on the property, on or about 2012, a former owner of the property began to undertake development that was unpermitted and/or inconsistent with a previously issued coastal development permit, including: installation of non-native landscaping, geo-fabric, wood chips, and an above ground irrigation system; creation of a private wedding and event venue located directly on top of a known archeological site designated as a 'natural area' and an 'archeologically sensitive zone' by a previous coastal development permit; grading; removal of major vegetation; failure to develop and implement an approved public access and interpretive sign program as required by a previously issued coastal development permit; and the placement of a gate that deterred use of a public access and equestrian trail. To resolve these issues, enforcement staff and the then owner reached a proposed agreement to resolve the matter and on April 11, 2013, after a full public hearing, the Commission approved Consent Cease and Desist Order CCC-13-CD-03 and Consent Restoration Order CCC-13-RO-03 ("Consent Orders") to O'hana Real Estate Investors to address violations of the Coastal Act on the Bacara property. The Consent Orders required substantial restoration on and off-site, a dedicated interpretive signage program to advise the public about traditional Chumash use of the native vegetation on site and provide additional parameters for the use of the onsite coastal trails and the snack bar/restroom. Additionally, the Consent Orders provide for the assessment of stipulated penalties of \$1,000 per day per violation of the Consent

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Orders, which through their terms, also prohibit any further unpermitted development on the property. Restoration work pursuant to the Consent Orders is ongoing.

In 2013, the same year the Consent Orders were issued, BRS Ventures LLC (“BRS”), an affiliate of Pacific Hospitality Group, purchased the Bacara. BRS owned and operated the resort until 2017 when it was purchased by Carey Watermark Investors 1 Incorporated and Carey Watermark Investors 2 Incorporated (collectively “Watermark”) – who currently own the property and are the applicants on this request.

2016 Emergency Permit and Violations

In 2016, the then-owner BRS installed an approximately 190-foot long and 10-foot high cement block sea wall on Haskell’s Beach to protect the Beach House (the restroom and snack bar facility required by the underlying CDP) from storm surge during a high tide event. This work was temporarily authorized pursuant to Emergency Coastal Development Permit G-4-16-0006, issued by the Executive Director of the Commission on February 9, 2016. Pursuant to the emergency permit, the temporary emergency seawall was to be removed by no later than May 20, 2016. When the deadline for removal had lapsed and the seawall remained in situ, enforcement staff began to work with BRS to resolve what had then become a Coastal Act violation and a violation of the Consent Orders. At that time, while stipulated penalties pursuant to the Consent Orders accrued, staff did not collect these penalties so that staff’s efforts could focus on working with BRS to resolve the matter quickly, since it had submitted a permit application to relocate the Beach House further landward, thus vitiating the need for the seawall. This permit was not taken to the Commission until the extant action, four years later. The seawall has therefore been in place for four years without Coastal Act authorization.

2017 Violations

Furthermore, on January 21, 2017, the prior owner installed an additional thirty-six foot section of seawall to the westward end of the seawall placed in 2016 pursuant to the emergency permit that had already expired by 2017—this time completely without a permit, emergency or otherwise, from the Commission. This unpermitted work involved the use of a large backhoe on the beach. Additionally, other unpermitted activities included taking intertidal sand from the beach and using it as backfill behind the interlocking concrete block wall. In conjunction with this action, BRS also closed the coastal bluff trail required by their permit—without a permit amendment to do so—both to the east and west of the Beach House, citing alleged public safety concerns as a result of bluff erosion. In addition, “No Public Access” signs were installed along the coastal bluff trail, including in front of the public beach.

Resolution Attempts

After contact from enforcement staff, the “No Public Access” signs were replaced with signs warning of the danger of bluff erosion. Enforcement staff also coordinated with

Commission permit staff to try to ensure the permit application was completed in an expeditious manner, sending letters to BRS over the years including on February 23, 2017. BRS responded on February 24, 2017, requesting a 60-day compliance deadline extension. On April 13, 2017, staff indicated that the application to complete the Beach House relocation should be submitted not later than July 10, 2017—and directed that this application should include the removal and restoration of the slope and beach impacted by the unpermitted seawall. Subsequent to contact from staff regarding the “No Public Access” signs, BRS removed the signs and replaced them with signs cautioning of the danger of the retreating bluff. Prior to completing the CDP application requested by Commission staff, BRS sold the property to the current owner, Watermark.¹

Proposed Resolution with Current Owners

Upon purchase of the Bacara in late 2017, Watermark began working efficiently and cooperatively with Commission staff to put together a CDP application that not only provides for managed retreat, a key effort that would move structures away from rising sea-levels to allow bluffs to erode naturally and obviate the need for shoreline armoring, but also addresses the liabilities associated with the prior owner’s unpermitted development. As part of the proposed permit, Watermark will remove both sections of the unpermitted seawall in conjunction with the relocation of the Beach House. To mitigate for temporal public access losses and ecological impacts associated with the past owner’s coastal act violations, Watermark has proposed, as part of the project description being considered in this permit, a suite of additional measures to address these losses and impacts. These measures will result in a great benefit to both the public and to coastal ecology of the area. Watermark has agreed to record a deed restriction over its private property, covering almost 50,000 square feet that will provide large areas immediately inland of Haskell’s Beach for public access and passive recreation and which will also provide connectivity for a public hiking trail ([Exhibit 4](#)). Additionally, Watermark has proposed to add a picnic table and several benches for public use in the newly created public access areas, as well as additional public access signs and interpretive signage to help educate the visiting public regarding coastal erosion and Chumash heritage.

Finally, Watermark has proposed contributing \$45,000 to the City of Goleta’s creek restoration program for use on Tecolote Creek—the creek that passes through the Bacara property and exits onto the beach near the Beach House and unpermitted seawall. It is now a well-established precept that tidal creeks—which form part of the estuarine ecosystem—not only help filter out pollutants from entering the nearshore ecosystem, but also provide access to inland habitat for salt-water organisms. Further, as tidal creeks and marshes provide food and habitat with low predation opportunity,

¹ Coastal Act violations run with the land. *Ojavan Investors, Inc. v California Coastal Com.* (1994) 26 Cal.App. 4th 516.

they are considered primary nursery areas for numerous species of fish and shellfish, including commercially important species (Hettler, W.F., 1989. Nekton use of regularly flooded saltmarsh cordgrass habitat in North Carolina, USA. Mar. Ecol. Prog. Ser. 56, 111 – 118). Thus, by agreeing to contribute to the City of Goleta's restoration of the Tecolote Creek, Watermark will be helping to ensure the continued health of the creek and nearshore ecosystems.

Commission staff appreciates the efforts made by Watermark to find a resolution to these Coastal Act violations undertaken by a prior owner. If the applicant implements the measures listed above in accordance with the terms and conditions of this permit amendment, the applicant will have addressed their liabilities associated with the unpermitted seawall discussed above. The Consent Orders run with the land and the obligations of those Consent Orders will continue, including the obligation to comply with the terms and conditions of those Consent Orders and the underlying CDP, as amended.

G. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act ("CEQA"). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impacts that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to any public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. **Special Conditions One (1) through Thirteen (13)** are required to assure the project's consistency with Section 13096 of Title 14 of the California Code of Regulations. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impacts that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

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APPENDIX A – Substantive File Documents

Anchor QEA, Coastal Hazards Analysis, April 5, 2018.

Anchor QEA, Response to Revell Coastal's review of Anchor QEA's Coastal Hazards Analysis for Bacara Resort & Spa, January 28, 2019.

Dudek, Addendum to the Supplemental Biological Technical Report for the Beach Facilities Project at the Ritz-Carlton Bacara, January 30, 2019.

Dudek, Extended Phase I Archaeological Investigation Report, January 2020.

Dudek, Haskell's Beach House Demolition Habitat Restoration Plan, October 2019.

Dudek, Monarch Butterfly Surveys for the Beach Facilities Project at the Ritz-Carlton Bacara Technical Memorandum, April 11, 2018.

Dudek, Supplemental Biological Technical Report for the Ritz-Carlton Bacara Beach House Demolition and Replacement Project, Santa Barbara County, California, May 11, 2018.

Kevin Merk Associates, Biological Analysis, July 10, 2017.

Santa Ynez Band of Chumash Indians, 2009. Chumash History. Cited November 2017. Available from: <http://www.santaynezchumash.org/history.html>.

Stantec, Emergency Access Ramp Alternatives Memorandum, April 9, 2019.

Stantec, Preliminary Erosion Control Plan, April 1, 2020.