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# W17b

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Staff: S. Pfeifer - SF  
Staff Report: 2/21/2020  
Hearing Date: 3/11/2020

## STAFF REPORT: CDP HEARING

**Application Number:** 2-17-0438

**Applicant:** AMJT Capital LLC and Bolinas Community Public Utility District (BCPUD)

**Project Location:** Along the beach and bluff seaward of the oceanfront residence at 100 Brighton Avenue in the unincorporated community of Bolinas in Marin County (APNs 193-142-15 and 193-142-12).

**Project Description:** Redevelopment and expansion of an existing armoring system including: 1) replacement of a concrete seawall with a steel sheet pile wall, tieback system, and concrete cap (to measure approximately 166 feet long by 7-16 feet wide by 26.5 feet high); 2) expansion of the seawall's footprint to accommodate construction of a replacement 19-foot long by 4-foot wide concrete public access stairway (upcoast) and a new 48-foot long by 4-foot wide public access ramp (downcoast) to facilitate access (including emergency access) across the armoring system; 3) construction of new and replacement retaining walls adjacent to and inland of the seawall (measuring roughly 2-10 feet high above grade by 1-foot wide by 296 feet long) with a 6-foot tall fence on top nearest the seawall edge; and 4) restacking of the riprap fronting the seawall portion of the armoring system (which currently occupies a space that is approximately 270 feet long by 30 feet wide) to measure approximately 270 feet long by 10 feet wide by 8 feet high.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The proposed project is located along the bluff and beach near the end of Brighton Avenue where the road intersects the public beach, seaward of an ocean fronting residence at 100 Brighton Avenue, about a half-mile south of downtown Bolinas and 200 yards west of the mouth of Bolinas Lagoon, in Marin County. The shoreline at the site is currently fronted by an armoring system consisting of (1) a concrete seawall that extends along the beach and bluff approximately 166 linear shoreline feet and that ranges from about 10 to 17 feet in width, where the flat top of the seawall accommodates public access (required by a past CDP), (2) a series of stepped retaining walls directly adjacent to and further inland of the seawall, and (3) approximately 1,000 tons of riprap spread out on the beach up to about 30 feet seaward of the seawall face. The top of seawall walkway is accessed by concrete stairs on the downcoast side of the property to/from Brighton Avenue. The seawall portion of the armoring system was originally constructed sometime before 1967 and appears to have been modified without a CDP sometime between 1979 and 2009.<sup>1</sup> The riprap seaward of the seawall was originally placed in 1977, and has since been modified multiple times (with and without CDPs), including most recently in 2010. The entire armoring system is located about 12 feet seaward of, and at an elevation 11-12 feet below, the floor elevation of the existing residence. The armoring is partially on private property (owned or held in easement by AMJT Capital LLC, the entity that also owns the residence it fronts) and partially on public property (both the Bolinas Community Public Utility District (BCPUD) and the California State Lands Commission (for land below mean high tide) hold interests), and it has developed into an artificial headland that essentially blocks lateral beach access from up to downcoast. The Co-Applicants for the CDP for the proposed project are AMJT Capital LLC and BCPUD.

The existing armoring system is significantly weathered and nearing the end of its effective lifetime. The Applicants propose to redevelop and expand the seawall portion of the system, as well as restack and restructure the riprap and replace the retaining walls, in order to protect the residence and continue to provide for public and emergency access laterally from the terminus of Brighton Avenue to the upcoast beach across the top of the seawall via a redeveloped walkway and stairs/ramp. Specifically, the Applicants propose a replacement armoring system that would include a steel sheet pile wall with a tie-back system and concrete cap occupying a space that would be approximately 26.5 feet tall by 7-16 feet wide by 166 feet long, extending approximately 2 feet higher than the current seawall elevation. The proposal would also expand the

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<sup>1</sup> And there has also been a lack of compliance with underlying CDP terms and conditions (e.g., stairs were previously required on the upcoast side of the armoring system through CDP 219-79 in 1979, but have since deteriorated and are no longer present). To address CDP compliance issues and other permitting violations, the Applicant here proposes to correct the violations by installing a new armoring system with the required accessways, including installing replacement upcoast stairs. Consistent with advice from both the State Attorney General and the Coastal Commission Chief Counsel (see memos dated June 20, 2014 and August 1, 2014, respectfully), Commissioners should not engage in any ex parte communications related to violations at the site.

armoring system at its downcoast end by about 10 feet to accommodate a ramp to/from Brighton Avenue, and expand the system by another roughly 10 feet to include stairs leading to the sandy beach at the upcoast end. The accessway extending from the terminus of Brighton Avenue, on the downcoast end of the project area, would be modified to include a new wheelchair accessible ramp that would extend approximately 48 feet. The new armoring system would be designed to blend, as much as feasible, into the natural shoreline and bluff environment through colorizing and contouring its surface to match natural bluff landforms as much as possible. In addition, the project also includes the construction of 104 linear feet of 2 to 8-foot tall retaining walls inland of the armoring system surrounding a patio and spa; construction of an additional 192 linear feet of 4 to 10-foot tall (with an additional 3-4 feet embedded into the slope) retaining walls directly inland and adjacent to the seawall, with 6-foot tall fencing on top; and a 42-inch tall railing along the seaward edge of the seawall, stairs, and ramp.

Staff has reviewed the armoring proposal and agrees that hard armoring is required to protect the pre-Coastal Act residence in danger from erosion. However, staff has also determined that the proposed project would not be the least environmentally damaging feasible alternative, including because its proposed design is larger than it needs to be to protect the existing endangered structure. This unnecessary additional armoring scale and scope leads to significant coastal resource impacts, especially to the public beach, that could be reduced through a smaller scale project that could still serve to protect the residence and provide for access atop the seawall, as required by past CDPs and as needed for emergency and other access. As such, staff recommends approval of a modified armoring system, including a reduction in the width of the system, extension of a more narrow seawall along the western property line approximately 30 feet along the bluff, and removal of all riprap from the project area (in part because the proposed wall extends about 12 feet below mean sea level and can integrally account for any potential scouring effects meant to be addressed by the riprap). As modified, the approximately 7-foot wide armoring system would occupy *much less* public beach space than the proposed armoring project (reducing such coverage by about 2,547 square feet, or by over 63%), thereby avoiding and minimizing impacts to coastal resources at the same time as providing other utility (e.g., for the public accessway area, for emergency access, etc.). Additionally, staff has identified a series of other mitigations via conditions to lessen coastal resource impacts (including armoring camouflaging, landscaping, etc.). Further, staff has worked closely with the Applicants to identify a mitigation package appropriate to offset the unavoidable coastal resource impacts of the modified project, including dedication of a new public access easement and development of new public recreational access improvements in the project vicinity (i.e., improved public overlooks with benches, safety and interpretive signage, bicycle racks, etc.), as well as other measures.

Thus, staff recommends that the Commission approve a CDP for the modified project, and the motion is found on page 5 below.

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### EXHIBITS

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[Exhibit 4: Existing and Proposed Public Access Easement Areas](#)

[Exhibit 5: Proposed Public Access Deed Restricted Area](#)

[Exhibit 6: Land Valuation](#)

## I. MOTION AND RESOLUTION

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

***Motion:** I move that the Commission **approve** Coastal Development Permit Number 2-17-0438 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 2-17-0438 for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the Permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Applicant 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 Applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittees shall submit two full-size sets of Revised Final Plans to the Executive Director for review and written approval. The Plans shall be prepared by a licensed professional or professionals (i.e., geotechnical engineer, surveyor, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a graphic scale. The Revised Final Plans shall be in substantial conformance with the proposed plans (by Noble Consultants titled "Seawall Replacement at 100 Brighton: Avenue Site Plans" dated October 21, 2019, and received in the Coastal Commission's North Central Coast District office on October 21, 2019; see **Exhibit 3**), except that they shall be modified to meet the following requirements:

**(a) Armoring Modifications.** The armoring system shall be modified so that the ramp, the stairway, the lateral accessway across the top of the armoring system (also including the width of retaining wall directly adjacent to the seawall), and the seawall itself are a total of 7 feet in width, as measured from the proposed inland extent of the armoring, and otherwise sited and designed to minimize its seaward footprint. The proposed retaining wall component of the armoring system at the inland edge of the seawall shall be no taller above the lateral accessway elevation than 4 feet (with an allowance of up to 7 feet above the ramp grade on the downcoast end and up to 10 feet above the stair grade on the upcoast end), and the fencing atop the retaining wall shall be removed. All riprap in the project area shall be removed. The steel sheet pile wall, tie-back system, and concrete surfacing shall be extended north along the bluff near the western property line approximately 30 feet long, 1.25 feet deep, and a height of 26.5 feet to provide for protection for the western portion of the residence to replace the riprap removed at the upcoast most end.

**(b) Concrete Surfacing.** All armoring system concrete surfaces, including the seaward side of all above grade retaining walls adjacent to the walkway, ramp and stairs, shall be faced with a sculpted concrete surface that mimics natural undulating bluff landforms in the vicinity in terms of integral mottled color, texture, and undulation to the maximum extent feasible (except that the stairway treads, ramp surface, and lateral accessway surface on top of the armoring system may be contoured for safety as long as they meet all other camouflaging requirements as much as possible). Any protruding elements (e.g., corners, edges, etc.) shall be contoured in a non-linear manner designed to evoke natural bluff undulations. All drainage and related elements within the sculpted concrete shall be

camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden or inconspicuous as seen from public viewing areas, including camouflage of any expected drainage staining over time. The color, texture and undulations of all armoring system concrete surfaces shall be maintained in their approved state throughout the life of the structure. AT LEAST 30 DAYS PRIOR TO COMMENCEMENT OF FINISH CONCRETE SURFACING, the Permittees shall submit to the Executive Director for review and approval the qualifications of the contractor who will perform the finish concrete work, including photos and identification of similar completed projects. Such finish concrete work shall not commence until the Executive Director has approved the finish concrete contractor.

**(c) Railings.** Railings and/or other barrier types associated with the stairway, ramp, and lateral accessway along the armoring system, as well as the public access overlook (if any) (see below), may be allowed by the Executive Director if evidence is provided that conclusively demonstrates that any such railing/barrier is required to ensure public safety, and if all such railings/barriers are sited and designed to be as inconspicuous as possible and to minimize public view impacts as much as possible (e.g., cable rail).

**(d) Drainage.** All drainage and related elements within the sculpted concrete and any related energy dissipation measures shall be camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden or inconspicuous as seen from public viewing areas. All drainage elements shall be sited and designed to reduce the potential for drainage-caused erosion, and to be as inconspicuous as possible.

**(e) Integral Public Accessways.** The armoring system shall be connected to the beach (upcoast) and to Brighton Avenue (downcoast) through an integral public stairway and ramp, respectively, sited and designed to provide seamless connectivity to and along the armoring system via a public lateral accessway atop the structure itself. The stairway treads shall be 6 feet wide (as measured between the adjacent retaining wall and any required railings, or as measured between the sculpted concrete where no such railings are present) and at least 16 inches deep with a roughly 6-inch rise, and the stairway shall extend to the base of the seawall, to which it shall be structurally connected with a concrete foundation. The ramp shall be 6 feet wide (as measured between the adjacent retaining wall and any required railings, or as measured between the sculpted concrete where no such railings are present), and shall extend to the base of the seawall and/or shall extend far enough into Brighton Avenue as to ensure structural stability, and shall be sited and designed to ensure at least a 10-foot road width down to the beach. The Plans shall provide that the accessways shall be modified as necessary to maintain continued safe use over the time period that the armoring system is allowed to remain (see also **Special Condition 6**), and the Plans shall identify all mechanisms to ensure safe use, including a requirement for Executive Director approval for any significant modification.

- (f) Fencing.** The proposed fencing on top of the retaining wall at the inland seawall edge and along the eastern property perimeter shall be eliminated from the project. The Plans can include a fence provided (1) it is no taller than 6 feet from grade, (2) it is located within 5 feet of the house and the cantilevered deck, or directly adjacent to the patio supporting the spa on the upcoast end, provided there is adequate space for landscaping between any such fences and the seawall edge that will screen such fencing from public view when such landscaping reaches maturity, and (3) it is sited and designed otherwise to minimize public view degradation.
- (g) Landscaping.** Non-native and invasive plant species in the area between the residence and the seawall's inland edge (including the inland edges of the stairway and the ramp) shall be removed and not be allowed to persist, and such area shall be landscaped with native and noninvasive plant species that are tolerant of salt air and salt spray, with a preference for species capable of trailing vegetation that can help screen the top of the retaining wall (at the inland edge of the seawall) as well as the residence and related residential development (including any fences) from public views as much as possible. All such plants shall be kept in good growing condition and shall be replaced as necessary to maintain the approved vegetation over the life of the project, including to maintain some visual screening of the retaining walls and the area between them and residential development. Regular monitoring and provisions for remedial action (such as replanting as necessary) shall be identified to ensure landscaping success.
- (h) Irrigation.** Irrigation shall be limited to that necessary to ensure landscaping success, and shall be sited and designed to reduce the potential for contributing to bluff erosion.
- (i) Surveyed Benchmarks.** The Plans shall identify an appropriate number of surveyed benchmarks, including location and elevation, to be used for future monitoring evaluations (see also **Special Condition 8**).
- (j) Adjacent Property Owner Consent.** For any development associated with the project that may occur on adjacent properties, including but not limited to construction that requires equipment access on such other properties, the Plans shall be submitted with evidence of consent allowing such development from adjacent property owners, including at a minimum Marin County for all right-of-way areas.
- (k) Other Public Recreational Access Improvements.** In addition to the integral public accessways (i.e., the lateral accessway, the stairway, and the ramp), the Plans shall provide for the following additional public recreational access improvements, which shall be sited and designed to maximize coastal view protection and minimize visual intrusion, including through use of materials appropriate to the shoreline context that blend with the natural environment and existing improvements in the area:

- 1. Beach Access Maintained.** The area where Brighton Avenue extends down to beach level shall be improved, as necessary, and regularly maintained to continue to facilitate public beach access.
- 2. Private Encroachments Removed.** Other than the public access ramp to the seawall walkway, private development associated with the AMJT Capital LLC property that is located on the public Bolinas Community Public Utility District property at the end of Brighton Avenue and/or Marin County property including the public Brighton Avenue street right-of-way (including but not limited to fencing, landscaping, and structures that block public views) shall be removed and the area restored to a continuation of existing garden or revegetated. The restored area shall either (a) provide for landscaping similar to that required inland of the armoring system above, and/or (b) community gardening, all in a manner that maximizes public utility, including in terms of maximizing public views from the Brighton Avenue area out towards the ocean, and incorporating an overlook with a bench as near to the ocean as possible if feasible. All such elements shall be clearly identified on the Plans, including in terms of proposed vegetation and/or gardening and public access elements.
- 3. Public Overlook Improvements.** An enhanced public access overlook area shall be provided on the eastern side of the Brighton Avenue right-of-way nearest the ocean at the Brighton Avenue street end (on the right-of-way and on APN 193-142-12, see **Exhibit 5**). This area shall include a safe pedestrian connection from Brighton Avenue, and two overlook areas (i.e., one overlook area at roughly street level and a second overlook area at the lower elevation nearer the ocean) with a connection between the two, where all such areas and connections shall include consistent surfacing and within which shall be provided benches and/or picnic tables, identification and interpretive signage, bicycle racks, waste and recycling receptacles, a doggie mitt station, or other amenities reasonably expected to be enjoyed by the public. All remnant concrete and other debris shall be removed. Any portion of this area not surfaced shall be landscaped with native and noninvasive plant species that are tolerant of salt air and salt spray that shall be maintained in a similar manner to that required inland of the armoring system above. All such elements shall be clearly identified on the Plans, including in terms of materials and, for signs, text and graphics. All such development shall be sited and designed in a way that maximizes public access utility and minimizes public view impacts.
- 4. Signage.** The Plans shall provide for the installation of informational, directional, and safety signage at appropriate locations, including at the entrance to the access ramp at the end of Brighton Avenue, at the base of the stairway, at the entrance to the landscaping/gardening and overlook areas (i.e., on either side of Brighton Avenue), and at the entrance to the beach at the end of Brighton Avenue. The signs shall be designed so as to provide clear public use information without adversely impacting public views and site

character, and any existing signs not meeting such criteria shall be removed. At least one public access interpretive sign shall be included at the overlook area on the eastern side of Brighton Avenue, and one interpretive sign shall be located near the entrance to the access ramp from Brighton Avenue describing shoreline access hazards and issues, and emergency response information. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location. Final revised plans shall include signage details such as the location, materials, design, and text for all signs, including all existing signs to be retained.

5. **Beach Level Development.** All remnant fencing and columns located on the sandy beach to the west of the site shall be removed and the area restored to sandy beach if underlying landowners, whether the California State Lands Commission and/or others, provide consent for same.

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Revised Final Plans. Minor adjustments to the above requirements, as well as to the Executive Director-approved Revised Final Plans, which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

2. **Public Access Management Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittees shall submit two sets of a Public Access Management Plan (Plan) to the Executive Director for review and approval. The Plan shall clearly describe the manner in which public recreational access to the beach, onto and along the top of the seawall, to the overlook areas, and to all other adjacent public access areas is to be provided and managed, with the objective of maximizing public access and recreational use of all public access areas associated with the approved project and all related areas and public access amenities (i.e., pathways, overlooks, benches, picnic tables, bicycle racks, interpretive signage, waste and recycling receptacles, doggie mitt stations, additional on-street parking, etc.) as described in this special condition and **Special Condition 1**. All public access improvements shall be sited and designed to maximize coastal view protection and minimize visual intrusion, including through use of materials appropriate to the shoreline context that blend with the natural environment and existing improvements in the area. The Plan shall at a minimum include and provide for all of the following:

- (a) **Public Access Areas and Amenities.** The Plan shall clearly identify and depict on a site plan all existing and required public access areas and amenities, including as described in **Special Condition 1**, as well the existing public access easement/dedication areas (from prior CDP authorizations) and the required public access easement/dedication areas associated with this CDP (see **Special Conditions 3 and 4**).

- (b) Public Access Use Parameters.** All parameters for use of the public access areas, improvements and amenities shall be clearly identified. All such public access areas, improvements, and amenities shall be publicly available and maintained in their approved state for general public pedestrian and other general public access consistent with the terms and conditions of this CDP for at least as long as the armoring system remains present.
- (c) No Public Access Disruption.** Development and uses within the Plan's public access areas that disrupt or degrade public access, including areas set aside for private uses, barriers to public access (such as planters, temporary structures, private use signs, fences, barriers, ropes, etc.) shall be prohibited. The public use areas, improvements, and amenities shall be maintained consistent with the approved Plan and in a manner that maximizes public use and enjoyment.
- (d) Public Access Use Hours.** All public access areas, improvements, and amenities shall be available to the general public 24 hours a day and shall be free of charge.
- (e) Public Access Construction.** All public access areas, improvements, and amenities associated with the approved project shall be constructed and available for public use as soon as possible, but no later than the Saturday of Memorial Day weekend 2022 (May 29, 2022). The Executive Director may extend this deadline if the Executive Director determines that the Permittees have been diligently pursuing same, and that the Permittees have demonstrated good cause for any identified delays.
- (f) Public Access Areas and Amenities Maintained.** All of the public access areas, improvements, and amenities shall be constructed in a structurally sound manner and maintained in their approved state consistent with the terms and conditions of this CDP, including through ongoing repair, maintenance, or relocation (if necessary to respond to shoreline erosion) of all public access improvements. Prior to any modification, movement, or replacement of access improvements, the Permittees shall obtain an amendment to this CDP to authorize such development, unless the Executive Director determines that an amendment is not legally necessary, in which case Executive Director approval of any such development shall be required. Public use areas shall be maintained consistent with the approved Public Access Management Plan and in a manner that maximizes public use and enjoyment.

All requirements above and all requirements of the approved Public Access Management Plan shall be enforceable components of this CDP. The Permittees shall undertake development in accordance with this condition and the approved Public Access Management Plan. Minor adjustments to the above requirements, as well as to the Executive Director-approved Plan, which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

**3. Public Access Easement.** PRIOR TO ISSUANCE OF THE CDP, AMJT Capital, LLC (or its successor Permittee if applicable) shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private entity, approved by the Executive Director, a public access easement for public recreational access use in perpetuity, as described below.

**(a) Easement Area.** The easement area shall consist of all public access areas on the property owned by AMJT Capital, LLC or its successor that are identified for public access (including community garden/landscaping area) in the approved Revised Final Plans (**Special Condition 1**) and the approved Public Access Management Plan (**Special Condition 2**), generally described as the landward boundary of the armoring system and stair/ramp along the entire width of the property and extending out to the mean high line, including all sandy beach areas upcoast, downcoast, and seaward of the approved armoring system (see easement area generally depicted in **Exhibit 4, page 4**). The Commission's intent is that the easement area includes existing easement areas associated with CDPs 1-88-16, 219-79 and 205-80-E, as well as additional easement areas intended to create a unified area for public access use and enjoyment subject to the terms and conditions of this CDP (again, see **Exhibit 4**).

**(b) Allowed Development.** No development, as defined in Coastal Act Section 30106, shall occur within the easement area except for the following: construction of the approved armoring system, removal of riprap, and construction of the public access amenities and improvements, all as identified in the approved Revised Final Plans and approved Public Access Management Plan, consistent with the requirements of **Special Conditions 1 and 2**. Repair, maintenance, and relocation associated with the allowed development, consistent with the terms and conditions of this CDP, shall also be allowed in the easement area. The Permittees and their successors and assigns shall be jointly and individually responsible for the installation, repair, maintenance and accessibility of the public access areas, improvements and amenities for public recreational uses and enjoyment consistent with the terms and conditions of this CDP and the approved Public Access Management Plan. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property, and shall also provide that public access consistent with the terms and conditions of this CDP shall be uninterrupted at all times.

**(c) Additional Parameters.** The document shall also provide that all public access areas, improvements, and amenities within the easement area shall be available to the general public 24 hours a day and shall be free of charge. The public access easement shall be ambulatory, and the easement boundaries and amenities within (e.g., accessways, etc.) shall move inland within the AMJT Capital, LLC (or its successor) property if relocation and/or reconstruction of public access amenities inland of the easement area are necessary to retain their

continuity and/or utility in response to erosion and related coastal hazards (see also **Special Condition 6**).

**(d) Recordation.** The document shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed, and it shall include the approved Public Access Management Plan, a metes and bounds legal description of the legal parcels subject to this CDP as well as a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the perimeter of the easement area within the subject property, prepared by a licensed surveyor based on an on-site inspection of the easement area.

**(e) Duration.** The offer to dedicate shall run with the land in favor of the People of the State of California, binding successors and assigns of AMJT Capital, LLC in perpetuity; shall be irrevocable for a period of 21 years, such period running from the date of recording; and shall indicate that the restrictions on the use of the land shall be in effect upon recording and remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

**4. Public Access Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Bolinas Community Public Utility District (or its successor Permittee if applicable) shall execute and record a document, in a form and content acceptable to the Executive Director, restricting the use and enjoyment of APN 193-142-12 as described below, and providing public access and recreational uses in perpetuity on the property (owned by the Bolinas Community Public Utility District or its successor) as well as all sandy beach areas associated with the base of Brighton Avenue (see deed restriction area generally depicted in **Exhibit 5**).

**(a) Allowed Uses and Development.** No development, as defined in Coastal Act Section 30106, shall occur within the deed restricted area except for the following uses and development: construction of the approved armoring system and access improvements, removal of riprap, the use of the road ramp by the Bolinas Community Public Utility District (or its successor Permittee if applicable) and others performing public functions (e.g., Bolinas Fire Protection District), the community garden, and public access amenities, all as identified in the approved Revised Final Plans and approved Public Access Management Plan, consistent with the requirements of **Special Condition 1** and **2**. Repair, maintenance, and relocation associated with the allowed development, consistent with the terms and conditions of this CDP, shall also be allowed in the restricted area. The Permittees and their successors and assigns shall be jointly and individually responsible for the installation, repair, maintenance and accessibility of the public access areas, improvements and amenities for public recreational uses and enjoyment consistent with the terms and conditions of this CDP and the approved Public Access Management Plan. The document shall provide that the deed restriction shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the

property, and shall also provide that public access consistent with the terms and conditions of this CDP shall be uninterrupted at all times.

**(b) Additional Parameters.** The document shall also provide that all public access areas, improvements, and amenities within the deed restriction area shall be available to the general public 24 hours a day and shall be free of charge. The deed restriction area shall be ambulatory, and its boundaries and amenities within (e.g., accessways, etc.) shall move inland if relocation and/or reconstruction of public access amenities inland of the deed restricted area are necessary to retain their continuity and/or utility in response to erosion and related coastal hazards (see also **Special Condition 6**).

**(c) Recordation.** 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 Bolinas Community Public Utility District in perpetuity. The recorded document shall include the approved Public Access Management Plan, and a legal description and graphic depiction of the legal parcel(s) subject to this condition.

**5. Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittees shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include and provide for the following:

**(a) Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the fullest extent feasible in order to have the least impact on public access and ocean resources, including by using, as feasible, inland private areas for staging and storing construction equipment and materials. Special attention shall be given to siting and designing construction areas in order to minimize impacts to public beach access and public views from Brighton Avenue, including but not limited to public views across the site. Intertidal areas shall be avoided to the maximum extent possible.

**(b) Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separate from public recreational use areas as much as possible (including using unobtrusive temporary fencing or equivalent measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not, to the maximum extent feasible, significantly degrade public access and public views during construction. The Plan shall limit construction activities to avoid coastal resource impacts as much as feasible, and lighting of the work area is prohibited.

- (c) Construction Timing.** Construction is prohibited during weekends, from the Saturday of Memorial Day through Labor Day inclusive, and during non-daytime hours (i.e., from one-hour after sunset to one-hour before sunrise), unless due to extenuating circumstances the Executive Director authorizes such work.
- (d) Construction BMPs.** The Construction Plan shall identify the type and location of all erosion control and water quality best management practices that will be implemented during construction to protect coastal water quality, including at a minimum all of the following:
- 1. Runoff Protection.** Silt fences, straw wattles, or equivalent apparatus shall be installed at the perimeter of all construction areas to prevent construction-related runoff and sediment from discharging from the construction area, or entering into storm drains or otherwise offsite or towards the beach and ocean. Similar apparatus shall be applied on the beach area for the same purpose when potential runoff is anticipated. Special attention shall be given to appropriate filtering and treating of all runoff, and all drainage points, including storm drains, shall be equipped with appropriate construction-related containment, filtration, and treatment equipment. All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday.
  - 2. Equipment BMPs.** Equipment washing, refueling, and servicing shall take place at an appropriate off-site and inland location to help prevent leaks and spills of hazardous materials at the project site, at least 50 feet inland from the beach and preferably on an existing hard surface area (e.g., a road) or an area where collection of materials is facilitated. All construction equipment shall also be inspected and maintained at a similarly sited inland location to prevent leaks and spills of hazardous materials at the project site.
  - 3. Good Housekeeping BMPs.** The construction site shall maintain good construction housekeeping controls and procedures at all times (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site; etc.).
  - 4. Rubber-tired Construction Vehicles.** Only rubber-tired construction vehicles are allowed on the beach, except track vehicles may be used if the Executive Director determines that they are required to safely carry out construction. When transiting on the beach, all such vehicles shall remain as far away from the ocean as possible and avoid contact with ocean waters.
  - 5. Construction Material Storage.** All construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment

shall be removed in their entirety from these areas by one-hour after sunset each day that work occurs, except for necessary erosion and sediment controls and construction area boundary fencing where such controls and fencing are placed as close to the toe of the armoring or approved construction area as possible, and are minimized in their extent.

- (e) Restoration.** All construction debris shall be removed, and all beach area and other public recreational access and use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any native materials impacted shall be appropriately filtered as necessary to remove all construction debris.
- (f) Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, as well as the public review requirements applicable to them, prior to commencement of construction.
- (g) Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that the construction coordinator's contact information (i.e., address, phone numbers, email, etc.), including, at a minimum, an email address and a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name and contact information (i.e., address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.
- (h) Construction Specifications.** The construction specifications and materials shall include appropriate control provisions that require remediation for any work done inconsistent with the terms and conditions of this CDP.
- (i) Notification.** The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittees shall undertake development in accordance with this condition and the approved Construction Plan. Minor adjustments to the above requirements, as well as to the Executive Director-approved Plan, which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

**6. Shoreline Armoring Terms.** This CDP authorizes shoreline armoring pursuant to the following terms:

**(a) Duration.** This CDP authorizes the approved armoring system protecting the residence at 100 Brighton Avenue until the time when the residence is redeveloped (as defined in subdivision (b) of this special condition), is no longer present, or no longer requires shoreline armoring, whichever occurs first. At such time, or at such time as the residence is removed or no longer requires armoring, the Permittees shall remove the approved armoring and appropriately restore the affected area to natural conditions subject to Executive Director approval of a plan to accomplish same with the least coastal resource impacts.

**(b) Residence Redevelopment.** Within three months of the anticipated termination of the authorization identified in this special condition and/or in conjunction with any proposed redevelopment of the residence and related development on the property, the Permittees shall submit a complete CDP amendment application to the Coastal Commission to remove the approved armoring and to appropriately restore the affected area to natural conditions. The residence shall be considered redeveloped if alteration (including demolition, renovation, replacement, and addition) of 50% or more of the major structural components, or alteration that leads a 50% or more increase in gross floor area, has occurred or is proposed, as measured from January 1, 1977 for purposes of this redevelopment determination. Major structural components mean exterior walls, floor structures, roof structures, and foundations,<sup>2</sup> and the 50% threshold applies to individual

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<sup>2</sup> An **exterior wall** is considered to be altered 50% or more when any of the following occur: (a) exterior cladding and/or framing systems are altered in a manner that requires removal and/or replacement of 50% or more of the elements of those cladding and framing systems, normally considered as linear length of wall; and/or (b) reinforcement is needed for any remaining portions of the wall to provide structural support in excess of 50% of existing support elements (e.g., addition of 50% or more of beams, shear walls, or studs whether alone or alongside the existing/retained elements, etc.).

A **floor or roof structure** is considered to be altered 50% or more when any of the following occur: (a) the roof or floor framing is altered in a manner that requires removal and/or replacement of structural elements (e.g., trusses, joists, shear components, rafters, roof/floor structural surface (e.g., plywood), etc.) supporting 50% or more of the square footage of the roof or floor; and/or (b) the roof or floor structural framing system requires additional reinforcement to any remaining portions of the roof or floor system to provide structural support (e.g., addition of 50% or more of beams, joists, shear components, rafters, roof/floor structural surface (e.g., plywood), etc., whether alone or alongside existing/retained system elements).

components only and is not additive between differing components. The residence shall also be considered redeveloped if the cost of any alterations to the residence and related development equals or exceeds 50% of the market value of the residence structure/related development at the start of construction, based on the documented construction bid costs and either an appraisal by a professional property appraiser or Marin County assessor data.

**(c) Future Mitigation.** If the CDP authorization has not expired via the terms of subdivision (a) of this special condition by March 11, 2040, and if the Permittees intend to keep the approved armoring in place beyond the end of that initial 20-year mitigation period (i.e., past March 11, 2040), the Permittees shall submit a complete CDP amendment application to the Coastal Commission that shall reassess mitigation for the ongoing impacts of the approved armoring, including an evaluation of actions that could be taken to reduce or eliminate those impacts. The complete application shall be submitted no later than 6 months prior to the end of the original mitigation period (i.e., by September 11, 2039). The application shall include analysis of feasible alternatives to modify the shoreline armoring and the residential structure, the public access improvements, and any related development that the approved armoring protects, in order to eliminate to the maximum extent feasible such armoring's impacts on coastal resources, and shall propose mitigation for unavoidable coastal resource impacts associated with the retention of the armoring and/or any modified armoring beyond the initial 20-year mitigation period. In addition, if the Permittees apply for a separate CDP or an amendment to this CDP to modify the approved armoring, or to perform repair work affecting 50% or more of the armoring, such Permittees shall be required to propose additional commensurate mitigation for the impacts of the enlarged or redeveloped armoring on public views, public recreational access, shoreline processes, and all other affected coastal resources that have not already been mitigated through this CDP, at that time.

**(d) Provision of Information.** The Permittees shall submit information regarding the development sufficient to establish the presence or absence of the factors listed above upon Executive Director request.

**7. As-Built Plans.** WITHIN THREE MONTHS OF COMPLETION OF CONSTRUCTION, the Permittees shall submit two copies of As-Built Plans to the

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A **foundation** is considered to be altered 50% or more when any work is done on any of the following: (a) 50% or more of the horizontal surface area of a slab foundation; (b) 50% or more of the floor area of a structure supported by a pier/post and/or caisson/grade beam foundation; and/or (c) 50% or more of a perimeter foundation.

Major structural component alterations not covered above generally do not include changes to roof coverings; replacement of glass or doors in existing window or door openings; replacement of window or door framing when the size and location of the window/door remains unchanged; repair of roofs or foundations without any change to structural supporting elements; changes to exterior siding; repair, maintenance, and replacement of chimneys; and interior changes to non-structural interior walls and sheetrock, insulation, fixtures, and mechanical, electrical and plumbing elements.

Executive Director for review and written approval showing all elements of the approved project. The As-Built Plans shall be substantially consistent with the approved project identified in Special Condition 1. The As-Built Plans shall include color photographs (in hard copy and jpg format) that clearly show the as-built project, and that are accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, the photographs shall be from inland viewpoints, as well as upcoast, seaward, and downcoast viewpoints on the beach, and from a sufficient number of viewpoints as to provide complete photographic coverage of the permitted project. Such photographs shall be at a scale that allows comparisons to be made with the naked eye between photographs taken in different years and from the same vantage points. The As-Built Plans shall include an adequate number of vertical and horizontal surveyed reference markers built into the approved project to allow comparison to them from inland surveyed benchmarks (required to be installed as part of the as-built plan process) for use in future monitoring efforts. The As-Built Plans shall be submitted with certification by a licensed civil engineer with experience in coastal structures and processes, acceptable to the Executive Director, verifying that the armoring system has been constructed in conformance with the approved project identified in Special Condition 1.

- 8. Monitoring and Reporting.** The Permittees shall ensure that the condition and performance of the approved as-built project is regularly monitored and maintained. Such monitoring evaluation shall, at a minimum, address whether any significant weathering or damage has occurred that would adversely impact future performance, and identify any structural or other damage or wear and tear requiring repair to maintain the armoring system and the public access improvements in a structurally sound manner and their approved state, including at a minimum with regards to the following:
- (a) Armoring.** The approved armoring system and all associated development, including its integral public accessways, described in **Special Condition 1**, shall be monitored by a licensed civil engineer with experience in coastal structures and processes to ensure structural integrity, including at a minimum evaluation of concrete competence, spalling, cracks, movement, outflanking, and undercutting, and evaluation of all required surface treatments.
  - (b) Other Public Access Improvements.** The approved public access improvements not integral to the approved armoring system (including pathways, overlooks, benches, picnic tables, bicycle racks, interpretive signage, waste and recycling receptacles, doggie mitt stations, on-street parking, etc.) as described in **Special Conditions 1 and 2**, shall be regularly monitored to ensure continued public safety and public access utility consistent with the terms and condition of this CDP.
  - (c) Photo Documentation.** All monitored elements shall be photographed at least bi-annually from an adequate number of inland and seaward locations as to provide complete photographic coverage of the approved project, including from

all vantage points included in the approved As-Built Plans (**see Special Condition 7**). All photographs shall be documented on a site plan that notes the location of each photographic viewpoint and the date and time of each photograph, including to allow naked eye comparison of the same views over time. Such photo documentation shall commence no later than the date of construction completion.

**(d) Reporting.** Monitoring reports covering the above-described evaluations shall be submitted to the Executive Director for review and approval by May 1st of every fifth year from the date of CDP approval (i.e., May 1, 2025, May 1, 2030, etc.) for as long as any part of the approved project remains extant. The reports shall identify the existing configuration and condition of the armoring system and all public access improvements, including providing vertical and horizontal reference distances between the approved As-Built Plans' surveyed reference markers and the inland benchmarks, and shall recommend any actions necessary to maintain these project elements in their approved and required state. The reports shall also include photographs (in color hard copy 8 ½ x 11 and digital jpg formats) that clearly show all components of the as-built project from at least the same vantage points as the approved As-Built Plans and initial photo documentation as well as subsequent monitoring reports. Any proposed actions necessary to maintain the approved as-built project in a structurally sound manner and its approved state shall be implemented within 30 days of Executive Director approval, unless a different time frame for implementation is identified by the Executive Director. In addition to the every five year requirement, separate and additional monitoring reports shall be submitted within 30 days following either (1) an El Niño storm event comparable to a 20-year or larger storm, or (2) an earthquake of magnitude 5.5 or greater with an epicenter in Marin County.

**9. Future Maintenance/Repair.** This CDP authorizes future maintenance and repair of the approved project components as described in this special condition. The Permittees acknowledge and agree on behalf of themselves and all successors and assigns that it is the Permittees' responsibility to: (1) maintain the approved project, including the armoring system and public access improvements (**see Special Conditions 1 and 2**), and all related development in a structurally sound manner, visually compatible with the beach and bluff shoreline surroundings, and in their approved and required states, including that the concrete surfacing of the armoring system and integral accessible ramp and stairway required by **Special Condition 1** shall be maintained throughout the life of the system; (2) retrieve any failing portions of the permitted structures or related improvements that might otherwise substantially impair the use, aesthetic qualities, or environmental integrity of the beach and blufftop areas; and (3) bi-annually or more often inspect the armoring system for signs of compromise. Any such maintenance-oriented development associated with the approved armoring system, public access improvements, and related development shall be subject to the following:

**(a) Maintenance/Repair.** "Maintenance" and "repair" as understood in this special condition means development that would otherwise require a CDP whose

purpose is to maintain and/or repair the armoring system and all public access improvements and amenities in their approved and/or required state pursuant to the terms and conditions of this CDP.

**(b) Other Agency Approvals.** The Permittees acknowledge that these maintenance and repair stipulations do not obviate the need to obtain permits and/or authorizations from other agencies for any future maintenance or repair.

**(c) Maintenance/Repair Notification.** At least two weeks prior to commencing any maintenance and/or repair activity, the Permittees shall notify, in writing, planning staff of the Coastal Commission's North Central Coast District Office. The notification shall include: (1) a detailed description of the maintenance/repair proposed; (2) any plans, engineering, geology, or other reports describing the event; (3) a construction plan that clearly describes construction areas and methods, and that is consistent with the parameters of **Special Condition 5** above; (4) other agency authorizations; and (5) any other supporting documentation describing the maintenance/repair event. Maintenance or repair may not commence until the Permittees have been informed by planning staff of the Coastal Commission's North Central Coast District Office that the maintenance proposed complies with this CDP. If the Permittees have not been given a verbal response or sent a written response within 30 days of the notification being received in the North Central Coast District Office, the maintenance shall be authorized as if planning staff affirmatively indicated that the maintenance/repair complies with this CDP. The notification shall clearly indicate that maintenance/repair is proposed pursuant to this CDP, and that the lack of a response to the notification within 30 days constitutes approval of it as specified in the CDP. If the notification does not explicitly indicate same, then the automatic authorization provision does not apply. In the event of an emergency requiring immediate maintenance, the notification of such emergency shall be made as soon as possible, and shall (in addition to the foregoing information) clearly describe the nature of the emergency.

**(d) Maintenance/Repair Coordination.** Maintenance/repair activity shall, to the degree feasible, be coordinated with other maintenance/repair activity proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the beach and beach access points. As such, the Permittees shall make reasonable efforts to coordinate their maintenance/repair activity with other adjacent property maintenance/repair activities, including adjusting their maintenance/repair activity scheduling as directed by planning staff of the Coastal Commission's North Central Coast District Office.

**(e) Restoration.** The Permittees shall restore all beach and other public access areas impacted by construction activities to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach. The Permittees shall notify planning staff of the Coastal Commission's North

Central Coast District Office upon completion of restoration activities to allow for a site visit to verify that all project and beach-area restoration activities are complete. If planning staff should identify additional reasonable measures necessary to restore project and/or beach areas, such measures shall be implemented as quickly as feasible.

**(f) Noncompliance Provision.** If the Permittees are not in compliance with permitting requirements of the Coastal Act, including the terms and conditions of any Coastal Commission CDPs or other coastal authorizations that apply to the subject property, at the time that a maintenance/repair event is proposed, then maintenance/repair that might otherwise be allowed by the terms of this future maintenance/repair condition may be disallowed by the Executive Director until the Permittees are in full compliance with the permitting requirements of the Coastal Act, including all terms and conditions of any outstanding CDPs and other coastal authorizations that apply to the subject properties.

**(g) Emergency.** Notwithstanding the emergency notifications set forth in subsection (c) of this special condition, nothing in this condition shall affect the emergency authority provided by Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).

**(h) Duration of Covered Maintenance/Repair.** Future maintenance under this CDP is allowed subject to the above terms throughout the duration of the armoring authorization (see **Special Condition 6**) subject to Executive Director review and approval every 5 years (i.e., by March 11, 2025; March 11, 2030; and so on) to verify that there are not changed circumstances associated with such allowance of maintenance/repair events that necessitate re-review. It is the Permittees' responsibility to request Executive Director approval prior to the end of each 5-year maintenance/repair period pursuant to these maintenance/repair provisions, and the term shall only be extended if the Permittee requests an extension prior to the end of each 5-year maintenance/repair period and only if the Executive Director extends the maintenance/repair term in writing. The intent of this CDP is to allow for 5-year extensions of the maintenance/repair term for as long as the approved armoring, public access improvements, and related development remain authorized unless there are changed circumstances that may affect the consistency of this maintenance/repair authorization with the policies of Chapter 3 of the Coastal Act. The Permittees shall maintain the approved armoring system, public access improvements, and all related development in their approved and required state.

**10. Assumption of Risk, Waiver of Liability, and Indemnity.** By acceptance of this CDP, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns: (a) that the project area is subject to coastal hazards, including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tidal scour, storms, tsunami, coastal flooding, landslide, earth movement, and the interaction of all of these, many of which will

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

- 11. Public Rights.** By acceptance of this CDP, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights that may exist on the properties involved. The Permittees shall not use this CDP as evidence of a waiver of any public rights that may exist on the properties now or in the future.
- 12. Real Estate Disclosure.** Disclosure documents related to any future marketing and/or sale of the subject property, including but not limited to specific marketing materials, sales contracts and similar documents, shall notify potential buyers of the terms and conditions of this CDP. A copy of this CDP shall be provided in all real estate disclosures.
- 13. Future Permitting.** All future proposed development related to this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required.
- 14. Other Authorizations.** PRIOR TO CONSTRUCTION, the Permittees shall provide to the Executive Director written documentation of authorizations from all entities from which such authorization is necessary for the approved project, including at a minimum Marin County, the California State Lands Commission, the Greater Farallones National Marine Sanctuary, and the U.S. Army Corps of Engineers, or evidence that no such authorizations are required from each of these entities. The Permittees shall inform the Executive Director of any changes to the project required by any other such authorizations. Any such changes shall not be incorporated into the project until the Permittees obtain a Commission amendment to this CDP, unless the Executive Director determines that no amendment is legally required.
- 15. Liability for Costs and Attorneys' Fees.** The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents,

successors and/or assigns challenging the approval or issuance of this CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission, its officers, employees, agents, successors and/or assigns.

**16. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittees shall submit for Executive Director review and approval documentation demonstrating that the Permittees have executed and recorded against the parcels governed by this CDP a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. Each deed restriction shall include a legal description and graphic depiction of the entire parcel or parcels governed by this CDP. Each deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

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

The proposed project is located along the bluff and beach seaward of an existing residence at 100 Brighton Avenue, less than a half mile from downtown Bolinas where Brighton Avenue ends at a ramp onto the public beach, in Marin County. The project site is approximately 200 yards upcoast from the mouth of Bolinas Lagoon, approximately one-mile northeast of Duxbury Reef State Marine Conservation Area, and directly adjacent to the Greater Farallones National Marine Sanctuary. The 12,354 square-foot parcel contains an existing 4,813 square-foot residential structure. The residence is protected by an armoring system that is partially on private land owned or held in easement (AMJT Capital LLC) and partially on publicly owned property (owned by both BCPUD (APN 193-142-12) and the California State Lands Commission (the land below mean high tide)). The armoring system consists of (1) a concrete seawall extending along the beach and bluff approximately 166 linear feet<sup>3</sup> that ranges from 10 to 17 feet in width, where the flat top of the seawall accommodates public access (required by a past CDP), (2) a series of stepped retaining walls directly adjacent to and

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<sup>3</sup> 166 feet is measured from the seawall's farthest upcoast to downcoast points.

further inland of the seawall, and (3) approximately 1,000 tons of riprap spread out on the beach and extending some 30 feet seaward of the seawall face. The seawall's walkway is accessed by concrete stairs on the downcoast side of the property from/to Brighton Avenue. The inland edge of the armoring lies about 12 feet seaward of the house, and at an elevation (at the walkway portion) that is about 11-12 feet below the floor elevation of the existing residence.<sup>4</sup> The Co-Applicants for the CDP for the proposed project are AMJT Capital LLC and BCPUD.<sup>5</sup> See **Exhibit 1** for location maps and **Exhibit 2** for photos of the site.

Brighton Avenue provides direct public beach access via a ramp where it descends to beach level at the project site. The beach and adjacent surf breaks up and downcoast of the subject property are heavily used by the public for a variety of recreational uses, including surfing, sunbathing, fishing, strolling, and dog walking. The existing armoring system has also been used by the public for decades for access from the beach at Brighton Avenue to the upcoast pocket beach (because the armoring system otherwise blocks lateral beach access, especially during higher tide conditions) and for recreational uses like sunbathing and checking surf. It is also utilized by the Bolinas Fire Protection District during emergencies for access purposes.<sup>6</sup>

The existing single-family residence was originally built in 1910 and appears to have been updated multiple times since,<sup>7</sup> and the seawall structure was originally constructed seaward of the residence sometime prior to 1967. The previous property owner received a CDP (CDP 92-78) in 1978 to place some 535 tons of riprap seaward of the seawall and along the western portion of the property, and a second CDP (CDP 219-79) in 1979 to construct a fence fronting the property landward of the seawall as well as metal access steps on the east and west sides of the armoring system. CDP 219-79 required dedication of a public access easement over and across the armoring system as a condition of approval.<sup>8</sup> Because these CDPs were not properly exercised prior to

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<sup>4</sup> The residence's foundation is located at an elevation of +17 feet NAVD88, or 20 feet above mean sea level.

<sup>5</sup> BCPUD is public utility district that provides a range of municipal services to the Bolinas area, including water, sewer, garbage/recycling, and, as applicable to this case, parks and recreational access opportunities.

<sup>6</sup> The walkway atop the seawall and the stairs are also used by the Bolinas Fire Protection District for emergency and other access to the upcoast beach area because the armoring system blocks off lateral beach access. Stairs were also previously required on the upcoast side of the armoring system through CDP 219-79 in 1979, but have since deteriorated and are no longer present. To address that (and other) CDP compliance issues and violations, the Applicant here proposes to correct the violations by installing a new armoring system with the required accessways, including installing replacement upcoast stairs.

<sup>7</sup> The residence was originally constructed in 1910, prior to the Coastal Act, and staff has been unable to find data to conclude that it has been redeveloped in the time since the Coastal Act (i.e., if it were redeveloped, then it would not be entitled to armoring under Coastal Act Section 30235). Since it appears to have not been redeveloped, the residence constitutes an existing structure for purposes of Section 30235.

<sup>8</sup> This easement was recorded in 1981 and accepted by the Bolinas Community Public Utility District in 2001.

expiration, CDP 1-88-16 (in 1988) again authorized that development, and also authorized placement of an additional 470 tons of riprap along the western perimeter of the seawall and re-required dedication of a pedestrian and public access easement<sup>9</sup> measured from the base of the seawall adjacent to the riprap (placed in 1978), seaward to the mean high tide line. It also authorized the construction of access stairs at the east and west ends of the seawall that were never completed pursuant to the requirements of CDP 219-79. CDP 1-88-16 also required that the public access easement include the area for the westerly stairs.<sup>10</sup> See **Exhibit 4** for a map of the existing public access easements.

In addition, photographic evidence indicates that unpermitted work was conducted on the seawall between 1979 and 2009, including application of an additional layer of concrete to the top and seaward portions of the structure. Further, in 2011, 40 tons of unpermitted riprap were placed seaward of the seawall but later removed through CDP 2-12-006-W. Riprap that was placed via permits in 1978 and 1988 has now migrated some 30 feet from the base of the seawall out onto the beach and into the ocean, as well as further onto the neighboring parcel to the west.

In short, the site includes a large residence that is currently fronted by an armoring system consisting of a concrete seawall, inland retaining walls, and riprap that was originally constructed in part sometime before 1967, and since modified multiple times (with and without CDPs),<sup>11,12</sup> most recently in 2010. The armoring system has developed into an artificial headland that extends significantly seaward of the natural bluff orientation and that essentially blocks lateral beach access from up to downcoast. See photos in **Exhibit 2**.

## **B. PROJECT DESCRIPTION**

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<sup>9</sup> CDP 92-78 required dedication of a public access easement from the base of the riprap seaward to the mean high tide line, but the easement was never recorded. As such, this easement was again required through CDP 1-88-16.

<sup>10</sup> Accepted by the Bolinas Community Public Utility District in 1997.

<sup>11</sup> And violations exist on the site, both in terms of CDP compliance and unpermitted development over the years. CDPs 92-78 (in 1978) and 219-79 (in 1979) accounted for much of the unpermitted riprap development but were not properly exercised prior to expiration. Ultimately, in 1988 the Commission approved CDP 1-88-16, which recognized the prior unpermitted riprap development (including that authorized by CDPs 92-78 and 219-79) and all other unpermitted riprap development up to that time. Following further unpermitted riprap development in 2010, where 40 tons of riprap was placed without benefit of a CDP, the Applicant removed the unpermitted 40 tons of riprap (as authorized by the Commission via CDP waiver 2-12-006-W). The riprap has slumped significantly over the beach (now occupying some 30 feet extending out from the seawall itself) and hasn't been maintained as required by that 1988 CDP, and thus the Applicant is out of compliance with the CDP on that point (i.e., part of the series of violations that apply here). See violation finding below for more detail.

<sup>12</sup> Consistent with advice from both the State Attorney General and the Coastal Commission Chief Counsel (see memos dated June 20, 2014 and August 1, 2014, respectfully), Commissioners should not engage in any ex parte communications related to these violations.

The existing armoring system is significantly weathered and nearing the end of its effective lifetime.<sup>13</sup> The Applicants propose to redevelop and expand the seawall portion of the system, as well as restack and restructure the riprap and modify the retaining walls, in order to protect the residence and continue to provide for public and emergency access laterally across the top of the seawall (from Brighton Avenue and the beach at its terminus to the upcoast pocket beach) via a redeveloped walkway, stairs, and ramp. At present, the concrete seawall is approximately 166-feet long and ranges from 10 to 17 feet wide (where it is narrower downcoast to wider upcoast), and it is about 15 feet in total height,<sup>14</sup> though the visible portion of the wall fluctuates seasonally as beach sand levels shift. The seawall includes concrete stairs adjacent to the downcoast portion of the seawall leading to Brighton Avenue as well as a more informal concrete walk approximately 10-feet long and 4-feet wide partially within the riprap at the upcoast end. A recessed set of stairs bisect the middle of the seawall. The residence and seawall are currently separated by a 192-foot long and 1-foot wide retaining wall with privacy fencing on top that rises approximately 6 feet above the seawall walkway. The existing fronting riprap (approximately 1,000 tons of rock extending out some 30 feet from the base of the seawall and stretching some 270 feet) extends onto the adjacent properties to the east, west, and seaward (see **Exhibit 2**).

The Applicants propose a replacement armoring system that would include a taller steel sheet pile wall with a tie back system (i.e., 24.5-foot tall steel sheet piles driven to a depth of about 12.5 feet below mean sea level (and thus extending to approximately 12 feet above mean sea level)<sup>15</sup> with grouted tie back anchors) and a concrete cap that would extend the seawall approximately 2 feet higher than its current elevation.<sup>16</sup> Thus, the final proposed seawall dimensions would be 166 feet in length,<sup>17</sup> 7 to 16 feet in width, and a total of 24.5 feet in height (about half below mean sea level elevation and half above). The Applicants also propose to redevelop the public walkway atop the seawall, and would also expand the seawall on both its up and downcoast ends to include a new accessible wheelchair ramp on the downcoast (eastern) end, extending from the terminus of Brighton Avenue, and stairs leading to the sandy beach at the upcoast (western) end. The new seawall would be designed to blend into the natural bluff environment through coloring and contouring its surface to match natural bluff landforms as much as possible. In addition, the proposed project also includes restacking of the riprap fronting the seawall (which currently occupies a space that is approximately 270 feet long by 30 feet wide) to measure approximately 270 feet long by

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<sup>13</sup> The Applicants' geotechnical evaluations show that the armoring system is susceptible to significant damage within even a single storm season and that its failure would likely lead to slope failure and undermining of the house in the same time frame.

<sup>14</sup> With its base embedded about 5 feet below mean sea level (at -2 NAVD88).

<sup>15</sup> Driven to a depth of -9.5 feet NAVD88 and extending up to an elevation of approximately +15 feet NAVD88.

<sup>16</sup> The current wall extends to approximately +13 NAVD88, or about 10 feet above mean sea level, and the new wall would be 2 feet taller than that.

<sup>17</sup> 166 feet is measured from the seawall's farthest upcoast to downcoast points.

10 feet wide by 8 feet high; construction of about 192 linear feet of 4 to 10-foot tall<sup>18</sup> retaining walls atop the armoring system, with a 6-foot tall fence atop the wall; 104 linear feet of 2-8 foot tall landscape terracing retaining walls within the patio area inland of the seawall; and a 42-inch tall cable-rail railing along the seaward edges of the public walkway, the stairs, and the ramp. Thus, the entire armoring system, including the seawall, riprap, stairs, ramp, and retaining walls, would measure some 270 linear feet along the shoreline, would be up to about 27 feet wide, and would extend vertically nearly 25 feet, with about half of that below mean sea level and embedded, and the other half above.

See **Exhibit 3** for the proposed project plans.

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

This proposed project spans both Coastal Commission and Marin County CDP jurisdictions, and the project is the subject of prior Coastal Commission CDP decisions and requirements, including the CDPs for improvements to the seawall and riprap placement. In addition to the fact that the proposed project modifies the Commission's prior CDP approvals (and thus would be properly before the Commission under that criteria), the County, the Applicants, and the Commission have all agreed to a consolidated CDP application review for the project, as allowed by Coastal Act Section 30601.3. The standard of review for a consolidated CDP application is the Chapter 3 policies of the Coastal Act with Marin County's certified LCP providing non-binding guidance.

### **D. COASTAL HAZARDS**

#### **Applicable Policies**

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

***30235.** Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

...

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures for new development. Section 30253 provides, in part:

***Section 30253.** New development shall do all of the following: (1) Minimize risks*

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<sup>18</sup> The total retaining wall is about 4 to 10 feet in height above grade, with the variance to account for changes in grade, with an additional approximately 3 to 4 feet of wall below grade.

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

### **Consistency Analysis**

Taken together, Coastal Act Sections 30235 and 30253 acknowledge that seawalls, revetments, bluff retaining walls, groins and other such structural or “hard” methods designed to forestall coastal erosion also alter natural landforms and natural shoreline processes. Accordingly, with the exception of coastal-dependent uses, Section 30235 only allows limits the construction of shoreline armoring that is otherwise inconsistent with the Coastal Act if that armoring is required to protect existing structures or public beaches in danger from erosion and that its impacts are eliminated or mitigated. Furthermore, Section 30253 requires that new development be sited, designed, and built in a manner so as not to require construction of shoreline armoring that would substantially alter natural landforms along the shoreline. The Coastal Act provides these limitations because shoreline structures can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beaches, a fundamental coastal resource.

To protect these core coastal resources, the Coastal Act has a series of specific criteria that must be met in order to approve shoreline armoring. For example, shoreline protective devices compelled by Coastal Act Section 30235 must be supported by substantial evidence demonstrating: (1) there is an existing structure; (2) the existing structure is in danger from erosion; (3) shoreline-altering construction is required to protect the existing threatened structure; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply.<sup>19</sup> The first three criteria pertaining to Section 30235 relate to whether the proposed armoring is necessary, while the fourth criterion applies to mitigation for some of the impacts of such armoring.

The analysis below discusses both Section 30235 and 30253 issues. Additional Coastal Act policies protect against other types of coastal resource impacts, and here the questions presented are not in terms of those policies per se, but the Coastal Act Section 30235 analysis for allowing armoring in the first place. For example, even where a shoreline protective device is determined to be necessary and is designed in a manner to be protective of shoreline sand supply pursuant to Section 30235, the structure will often result in significant adverse impacts to other protected resources, such as beach access and recreation and public views. There can often be considerable overlap, such as the ways in which shoreline sand supply issues translate into beach access issues, and this finding explores those overlaps as well.

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<sup>19</sup> CDP approval also requires that projects be found consistent with the other policies of the Coastal Act in addition to these Section 30235 requirements.

### **Existing Structure to be Protected**

The first Section 30235 test is whether or not a structure for which armoring is proposed as protection is considered “existing,” not in terms of whether it is extant today, but rather whether it existed in its current form when the Coastal Act came into effect (i.e., January 1, 1977) and hasn’t been redeveloped since.<sup>20</sup> Specifically, the Coastal Act distinguishes between that type of “existing structure” development that is allowed the protection offered by shoreline armoring and other forms of development that are not pursuant to Section 30235. Under Coastal Act Section 30235, those type of existing structures are potentially allowed shoreline armoring if the remaining three criteria identified above are satisfied.

In contrast, under Section 30253, new structures (i.e., structures built on or after January 1, 1977, including those structures that may have originally been built before then, but that have been redeveloped since) are to be sited, designed, and built in a manner safe from coastal hazards *without* creating a need for shoreline altering armoring. However, coastal zone development that was approved and constructed prior to the Coastal Act going into effect was not subject to Section 30253 requirements (as such requirements didn’t exist prior to that time), even if it may have been subject to other similar local requirements. Thus, although some local coastal hazard-type policies may have been in effect prior to the Coastal Act, these pre-Coastal Act structures have not necessarily been built in such a way as to avoid the future need for shoreline armoring as is required for post-Coastal Act structures under Section 30253.

In addition, the Commission has typically interpreted Section 30235 to allow shoreline armoring only to protect existing *primary* structures.<sup>21</sup> The Commission has at times historically permitted at-grade structures to be located within required coastal hazard setback areas if such structures are expendable and capable of being removed or relocated rather than requiring an armoring device that would alter natural landforms and processes along bluffs, cliffs, and beaches.

In this case, the residence is the primary structure on the site, and it was originally

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<sup>20</sup> As described in the Commission’s 2015 Sea Level Rise Policy Guidance, the Commission interprets the term “existing structures” in Section 30235 as meaning structures that were in existence on January 1, 1977, the effective date of the Coastal Act. In other words, Section 30235’s directive to permit shoreline armoring for structures in certain circumstances applies to development that lawfully existed as of January 1, 1977 and that has not subsequently been redeveloped (i.e., where changes to it since 1977 have been sufficient enough that it is considered a replacement structure required to conform to applicable Coastal Act and LCP provisions). This interpretation is the most reasonable way to construe and harmonize Sections 30235 and 30253, which together evince a broad legislative intent to allow armoring for development that existed when the Coastal Act was passed, when such development is in danger from erosion, but to avoid such armoring for development constructed consistent with the Act, which doesn’t allow shoreline altering armoring development to support same. This interpretation, which essentially “grandfathers” protection for development that predates the Coastal Act, is also supported by the Commission’s duty to protect public trust resources and interpret the Coastal Act in a liberal manner to accomplish its purposes.

<sup>21</sup> See, for example, CDPs 3-16-0345 (Honjo), 2-16-0684 (Aimco) and A-3-SCO-06-006 (Willmott).

constructed in 1910, well prior to CDP requirements associated with 1972's Proposition 20 (The Coastal Initiative) and the 1976 Coastal Act.<sup>22</sup> Although it appears clear that the residence has been significantly updated over the years, evaluation of available data is inconclusive as to whether it has tipped the threshold of having been redeveloped since January 1, 1977. Specifically based on an analysis of Marin County building permit records<sup>23</sup> and historic aerial photos, currently available information suggests that the residence has not been modified to such an extent as to be considered redeveloped in the time since January 1, 1977, and thus it is still considered to be an existing structure as that term is understood in a Section 30235 context and is eligible for consideration of shoreline armoring.

Thus, the proposed project meets the first test of Section 30235 of the Coastal Act.

### **Danger from Erosion**

The second Section 30235 test is whether the existing structure is in danger from erosion. The Coastal Act allows shoreline armoring to be installed to protect existing structures that are in danger from erosion, but it does not define the phrase "in danger." There is a certain amount of risk involved in maintaining any development along the actively eroding California coastline that also can be directly subject to violent storms, wave attack, flooding, earthquakes, and other hazards, including at the subject location. These risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline. In a sense, all development along the immediate California coastline is in a certain amount of "danger." It is a matter of the degree of threat that distinguishes between danger that represents an ordinary and acceptable risk, and danger that requires shoreline armoring per Section 30235. Lacking a Coastal Act definition, the Commission has in the past evaluated the immediacy of any threat in order to make a determination as to whether an existing structure is "in danger" for the purposes of Section 30235 considerations. While each case is evaluated based upon its own particular set of facts, the Commission has previously interpreted "in danger" to mean that an existing structure would be unsafe to use or otherwise occupy within the next two or three storm season cycles (generally, the next few years) if nothing were to be done (i.e., in the "no project" alternative).<sup>24</sup>

Although the residence may have been built inland of or at least at the blufftop edge

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<sup>22</sup> Proposition 20, approved by California voters in November 1972, introduced coastal permitting requirements that commenced in February 1973. These were ultimately superseded by the Coastal Act, which went into effect in 1977.

<sup>23</sup> The County has no records for the site until 1986, and the records they have since then are limited to five building permits for development that occurred between 1986 and 2014 (for, among other improvements, a roof replacement, electrical upgrades, addition of a new forced air unit, replacement of windows and doors, floor replacement, and dry rot repairs), none of which included CDPs.

<sup>24</sup> See, for example, CDPs 3-07-019 (Pleasure Point seawall), 3-09-025 (Pebble Beach Company Beach Club seawall), 3-09-042 (O'Neill seawall), 2-10-039 (Land's End seawall), 3-14-0488 (Iceplant LLC seawall), and 2-17-0702 (Sharp Park Golf Course).

when it was originally constructed in 1910, the armoring has now created a circumstance where the general orientation of the bluffs at this location are *inland* of the residence both up and downcoast (see photos in **Exhibit 2**). The peninsula on which the residence now sits appears to be an elevated bank of sorts, fronted on its ocean-facing aspects (i.e., on three sides) by the deteriorated armoring system. The residence finished floor is about 24 feet NAVD88 (or just over 20 feet above mean sea level), with living areas extending two and half stories above that elevation. The Applicants' geotechnical analysis<sup>25</sup> estimates an average annualized bluff erosion rate of 1.5 feet per year in the vicinity. This retreat rate is considered fairly high along the California Coast, and coastal bluffs in this area are clearly subject to a high rate of erosion and wave attack, particularly during winter storm conditions, especially when high wave run up and velocity is present (see, for example, photos in **Exhibit 2**). As a case in point, a home that previously existed immediately upcoast and adjacent to the residence at 100 Brighton Avenue was demolished sometime between 1988 and 1993 due to the effects of coastal hazards. Further, as discussed above, the way in which the bluff has retreated adjacent to the residence and created the identified 'peninsula effect' shows that the shoreline here is in active retreat.

Perhaps in part due to that peninsula effect, the site can be subject to strong wave action, including as evidenced by photos dating back from 1979, as seen in **Exhibit 2**. The Applicants' geotechnical analysis shows that the armoring system is susceptible to significant damage within even a single storm season and that its failure would likely lead to slope failure and undermining of the house in the same time frame. In fact, the Applicants' geotechnical analysis concludes that the armoring system is in a critical state of disrepair and is at fairly imminent risk of failure and that it could fail during periods of high wave intensity, which would likely result in exposing the residence's foundation to severe erosion that could then lead to catastrophic damage or complete loss. Soils bored and examined from behind the seawall's face reveal that up to 73 percent of the area just behind the seawall is comprised of local beach material, which would be expected to erode rapidly and expose the residence to heavy wave and tidal action in a very short period of time.

The Commission's Senior Coastal Engineer, Dr. Lesley Ewing, who has visited the site, and the Commission's Geologist, Dr. Joseph Street, have both reviewed the relevant materials associated with this project, and both concur that the danger to the residence from erosion is imminent in a "no action" scenario. Therefore, the Commission concludes that the residence is an existing structure in danger from erosion for purposes of Section 30235.

### **Feasible Protection Alternatives to a Shoreline Structure**

The third test of Section 30235 that must be met is that the proposed armoring must be "required" to protect the existing structures in danger from erosion. In other words, shoreline armoring shall only be permitted if it is the only feasible alternative capable of

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<sup>25</sup> By Noble Consultants and dated June 4, 2018.

protecting the existing endangered structures.<sup>26</sup> Other alternatives to shoreline protective devices typically considered include the “no project” alternative, managed retreat (including abandonment and demolition of threatened structures), relocation of threatened structures and/or portions thereof, beach and sand replenishment programs, foundation underpinning, drainage and vegetation measures, and combinations of each. Additionally, if shoreline armoring is determined to be the only feasible alternative, this test also requires that the chosen structural design of the shoreline protective device be the least environmentally damaging option, including being the minimum necessary to protect the endangered existing structure in question (here the residence).

The Applicants prepared an alternatives analysis for the proposed project, which included both armoring and the ‘no-project’ alternatives, each of which is discussed briefly. Specifically, the Applicants’ analysis included evaluation of a no-project alternative and four armoring alternatives: replacement without riprap, replacement without riprap combined with beach nourishment, replacement without riprap where the armoring’s seaward face is moved inland to the inland retaining wall, and the proposed project.

### ***No Project Alternative***

The “no project” scenario demonstrated that, left unmanaged, the armoring system is likely to fail from undermining as a result of erosion, or from a fracture resulting from wave attack, or some combination thereof, potentially destabilizing the site within at most two to three storm cycles. Further, aerial imagery of the upcoast beach shows the erosion potential without armoring, with the adjacent beach extending approximately 60 to 70 feet inland of the seaward extent of the existing seawall’s face (see **Exhibit 2**). The Applicants dismissed the no project alternative because it would not protect the existing endangered structure, and the Commission concurs.

### ***Non-Armoring Alternatives***

Non-armoring alternatives were not evaluated as part of the Applicants’ alternatives analysis, because the Applicants determined that no non-armoring alternative would be capable of protecting the residence from erosion and wave activity, due to the hazardous exposure of the site and the fact that the residence is developed on top of what appears to be fill comprised mostly of easily erodible soil and beach sands. Further, in terms of relocation inland and onsite, the property is already fully developed with the residence and related infrastructure and the entirety of the site is subject to coastal hazards where a safe location absent armoring appears not to be possible, even for a reduced sized residence sited further inland.

The installation of improved drainage and additional landscaping seaward of endangered structures is another option that is typically considered to address erosion threats. Appropriate drainage measures coupled with planting long-rooted native bluff

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<sup>26</sup> Coastal Act Section 30108 defines feasibility as follows: “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

species can help to stabilize some bluffs and extend the useful life of existing bluff setbacks. This option can be applied as a stand-alone alternative, but it is most often applied in tandem with other protective measures. In this case, given the fill nature of the site, its low elevation in relation to the ocean, and the degree of both estimated annual bluff retreat (as well as the level of erosion that has already occurred upcoast absent armoring), it does not appear that the installation of improved drainage and landscaping alone could adequately protect the existing endangered structure at this site. Such an option should be a part of whatever alternative is ultimately applied but cannot suffice as a stand-alone measure to address the current erosion danger to the residence.

Beach nourishment is another option that is often considered to address erosion threats. Successful beach nourishment programs generally require large quantities of sand materials over a large area and are subject to very specific program parameters intended to maximize their efficacy and utility. Littoral cell sand drift in this area, and the area's exposure to fairly violent wave and storm events, add to the challenge for a successful beach nourishment effort at the project site and also argue against beach nourishment as a feasible alternative. Beach nourishment is a feasible option in many parts of the coast, especially locations between headlands or promontories that can help to retain sand, but it's not been demonstrated as yet that a nourishment project could maintain an effective beach buttress in this project area in a way that also ensures protection of the endangered structure. Therefore, beach nourishment is not a feasible alternative in this case.

Another option often considered is planned or managed retreat, which, when not referring to relocation (discussed above), refers to the intentional abandonment and demolition of the threatened structures. This concept suggests that the shoreline should be allowed to retreat absent the installation of armoring, once existing structures have been removed. Beach formation is partly assisted by the sand-generating material in the bluffs as they erode, but more importantly natural erosion provides space for the natural equilibrium between the shoreline and the ocean to re-establish itself and for beaches to form naturally. Over the longer run, a more comprehensive strategy to address shoreline erosion and the impacts of armoring may be developed (e.g. planned or managed retreat, relocation of structures inland, abandonment of structures, etc.), however, such options are not currently feasible at this location given the lack of a formalized managed retreat program for this part of the County that otherwise provides regulatory guidance and requirements, including in relation to more detailed property-by-property plans designed to proactively address threats to public and private infrastructure without the need for armoring.

Thus, there do not appear to be feasible non-armoring alternatives that could be applied in this case to the threat to the existing endangered residence.

### ***Armoring Alternatives***

In addition to the proposed project, the Applicants evaluated three other armoring alternatives, including (1) replacement of the seawall portion of the armoring system without riprap, (2) replacement without riprap combined with beach nourishment, and

(3) replacement without riprap where the armoring's seaward face is moved inland to the inland retaining wall. While the Applicants concluded that all of the alternatives examined would provide necessary protection from erosion, none were found to be capable of protecting the residence from wave impacts and flooding under various sea level rise scenarios combined with an eroded beach condition. However, the extent of damage to the residence as modelled by the Applicants did vary from damage to first floor windows to major structural damage to walls, foundation and structural supports from wave overtopping and inundation, depending on the specific alternative analyzed, timeframe for analysis, and sea level rise scenario.

In a January 18, 2019 memo from the Applicants' consultants,<sup>27</sup> the alternatives analysis was revised to clarify the Applicants' modified preferred alternative, including replacement of the existing armoring system with a deeper steel sheet pile wall with a tie back system and concrete cap, restoring the stairs on the western property lines, and adding a ramp where stairs are currently located, oriented parallel to Brighton Avenue and east of the residence. This alternative did not propose to raise the height of the armoring system and would have instead depended on the restacking of existing riprap for the dissipation of wave energy.

After discussions with the Applicants and Commission staff, including Dr. Ewing and Dr. Street, it became clear that this preferred alternative would be incapable of protecting the residence from moderate damage from waves and flooding under eroded beach conditions combined with even the lowest sea level rise projections.<sup>28</sup> Thus, the Applicants revised their proposed project to elevate it another 2 feet, and also to color and contour the armoring in such a way to mimic the nearby bluffs (i.e., the now proposed project).

Ultimately, however, the Commission does not find that the proposed project alternative would be the least environmentally damaging alternative under the Coastal Act to protect the residence, including because its proposed design includes multiple layers of shoreline protection (i.e., inland retaining walls, concrete topped sheet pile seawall with concrete facing, and riprap) that extends significantly out over the beach area (up to 27 feet in width at its widest point) resulting in significant impacts to coastal resources, including the public beach. At the same time, the Commission recognizes the need to maintain some form of reasonable lateral access across the armoring system for use by the public, as well as for emergency purposes, because the upcoast beach can be inaccessible due to the promontory that has been created by the Applicants' residence and the armoring to date, especially during high tide conditions.

As such, the Commission requires modifications to the proposed armoring, including

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<sup>27</sup> From McCabe and Company, "Response to Incomplete Letter", dated January 18, 2019.

<sup>28</sup> In this case, the Applicants applied 0.2 to 0.8 feet (or 2.4 to 9.6 inches) of sea level rise to their models, using National Research Council 2012 Sea-Level Rise Guidance. However, this amount of sea level rise may only account for the next few decades, given that these sea level rise measurements represent the very lowest projections and are not sufficiently conservative to rely upon.

most importantly a reduction in the width of the seawall to the minimum necessary to protect the residence while providing adequate public access and emergency access across the top of the armoring system (i.e., 6 feet)<sup>29</sup>, removal of all riprap, and extension of a more narrow seawall along the western property line approximately 30 feet along the bluff. Such a design helps avoid and minimize impacts to coastal resources at the same time as providing other utility (e.g., for the public accessway area, for emergency access, etc.). The reduction in the width and removal of the riprap will decrease the overall footprint of the armoring system by nearly two-thirds, from the proposed 4,019 square feet of beach coverage down to 1,472 square feet, a reduction of 2,547 square feet of beach coverage (or over 63% less coverage) that can instead be used as natural beach.

In short, the Commission finds that the Commission-required project would be the least environmentally damaging feasible armoring alternative to protect the endangered residence, provided its impacts over time can be mitigated consistent with Coastal Act Section 30235 and other Coastal Act policies. Thus, the project, if the design is so modified, meets the third test of Section 30235 of the Coastal Act.

### **Beach/Shoreline Area/Sand Supply Impacts**

The fourth test of Section 30235 that must be met in order to allow Commission approval of a shoreline armoring project is that such armoring must be designed to eliminate or mitigate adverse impacts to local shoreline sand supply.

### **Shoreline Processes**

Some of the effects of engineered armoring structures on the beach (such as scour, end effects, and modification to the beach profile) are often temporary or may be difficult to distinguish from all the other actions that modify the shoreline. In addition, there are effects that are more qualitative (e.g., impacts to the character of the shoreline and visual quality) that are imprecise proxies for understanding the total impact of an armoring structure to the coastline. However, some of the effects that a shoreline armoring structure may have on natural shoreline processes can be quantified, including: (1) the loss of the beach area on which the structure is located; (2) the long-term loss of beach that will result when the back-beach location is fixed on an eroding shoreline; and (3) the amount of material that would have been supplied to the beach if the bluff and back-beach were to erode naturally. The first two calculations affect beach and shoreline use areas, and the third is almost exclusively about providing materials

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<sup>29</sup> Commission staff has been in communication with staff from the Bolinas Fire Protection District, the entity that provides emergency services at this location, regarding the appropriate width of the accessway for that purpose. In those conversations, including in response to the District's October 16, 2019 letter on the subject (then expressing support for an 8-foot accessway width to provide adequate space for emergency operations), staff and the District agreed (in conversations on January 24, 2020) that a 6-foot width (as measured between the adjacent retaining wall and any required railings, or as measured between the sculpted concrete where no such railings are present) would be sufficient to provide appropriate space within which to maneuver, and was appropriate as a means to both provide such access and to limit beach coverage and related impacts that would otherwise accrue to the wider and larger structure proposed by the Applicants.

that can feed the beach, but all three impact public recreational access to the beach as it relates to sand supply and, by extension, beach and shoreline recreational areas.

***Encroachment on the Beach and Shoreline Recreational Area***

Shoreline protective devices, regardless of their configuration, are all physical structures that occupy space that would otherwise be unencumbered. When a shoreline protective device is placed on a beach area, the underlying beach area cannot be used by the public. This generally results in a loss of public access and recreational opportunity as well as a loss of sand and areas from which sand generating materials can be derived. The area where the structure is placed will be altered from the time the protective device is constructed, and the extent or area occupied by the device will remain the same over time, until the structure is removed or moved from its initial location (or in the case of a revetment, as it spreads seaward over time). The beach area located beneath a shoreline protective device, referred to as the encroachment area, is the area of the structure's footprint.

In this case, the approved armoring system would cover 1,472 square feet of shoreline and beach area that would otherwise be unencumbered.<sup>30,31</sup>

***Fixing the Beach/Shoreline Position (the "Coastal Squeeze")***

On an eroding shoreline, a beach will typically continue to recreate itself between the waterline and the bluff as long as there is space to form a beach between the bluff and the ocean. As bluff erosion proceeds, the profile of the beach also retreats and the beach area migrates inland with the bluff. This process stops, however, when the backshore is fronted by a hardened, protective structure such as a revetment or a seawall. Experts generally agree that where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the sea and the upland.<sup>32</sup> While the shoreline up and downcoast of the armoring continues to retreat and reform new beach areas, shoreline in front of the armoring eventually stops at the

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<sup>30</sup> The armoring system's frontage would be approximately 139 feet long by 7 feet wide, with additional areas for the stairs (19 feet long by 7 feet wide), an access ramp (47 feet long by 7 feet wide), and the narrow extended seawall (30 feet long by 1.25 feet wide) occupying approximately 1,472 total square feet.

<sup>31</sup> In addition, there is an argument that the violations at this location have resulted in unpermitted armoring being present over some 40 years, and that that past impact also requires quantification here. However, the violation history is complex, and not as simple as saying a completely unpermitted seawall has been present here for some number of years, which years of impact would also need to be quantified in an approval that resolved such violations. Here, such violations were more nuanced, essentially resulting in an extension of the life of the prior armoring system, but not new armoring and impacts per se. In this case, and given this particular fact set, the Commission applies its discretion to quantify impacts moving forward.

<sup>32</sup> See, for example: Kraus, Nicholas (1988) "Effects of Seawalls on the Beach: An Extended Literature Review", *Journal of Coastal Research*, Special Issue No. 4: 1-28; Kraus, Nicholas (1996) "Effects of Seawalls on the Beach: Part I An Updated Literature Review", *Journal of Coastal Research*, Vol.12: 691-701, pages 1-28; and Tait and Griggs (1990) "Beach Response to the Presence of a Seawall", *Shore and Beach*, 58, 11-28.

armoring. This effect is also known as passive erosion, or “coastal squeeze.” The sandy beach area will narrow, squeezed between the moving shoreline and the fixed backshore. One need look no further for an example of this phenomenon than the project site, where the residence has been fronted by armoring, and the residence now juts out onto the beach as an armored headland, where the natural upcoast bluff was allowed to erode inland and continue to create new beach area (see **Exhibit 2**).

The coastal squeeze phenomenon caused by armoring is exacerbated by climate change and sea-level rise. As climate change causes the seas to rise ever faster, beach and recreational shoreline areas will be lost at an increasingly rapid pace.<sup>33</sup> If the inland area cannot also retreat, eventually there will be no available dry beach or shoreline area, and the shoreline will be fixed at the base of the armoring structure. In the case of an eroding shoreline, this represents the loss of a beach and shoreline recreational area as a direct result of the armoring. Specifically, beach areas are diminished as the beach is compressed between the ocean migrating landward and the fixed backshore. Such passive erosion impacts can be calculated over the time the proposed armoring is expected to be in place. Consistent with past practice, including the Commission’s experience that shoreline armoring often needs to be reinforced, augmented, replaced, or substantially changed within twenty years of its original installation, and to provide for re-review on a regular basis to allow for consideration of possible changes in policy, law, and physical conditions associated with armoring, the Commission generally evaluates this impact for an initial twenty year period.<sup>34</sup> After this 20-year initial mitigation period, additional impact analysis will be needed (see **Special Condition 6**) to assess the appropriate mitigation necessary at that time and moving forward.

The Commission has established a methodology for calculating passive erosion, or the

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<sup>33</sup> Sea level has been rising for many years, and there is a growing body of evidence that there has been an increase in global temperature and that acceleration in the rate of sea level rise can be expected to accompany this increase in temperature. The Coastal Commission’s Sea Level Rise Policy Guidance (2015) recommends using best available science at the time of application to understand the risks associated with sea level rise over the life of development. In March 2018, the California Ocean Protection Council adopted updated State Sea Level Rise Guidance, which incorporates recent scientific information and is now considered the best available science on sea level rise for the State of California. According to this Guidance, updated most recently in November 2018, the estimated range of sea level rise for the project area (based on the San Francisco tide gauge) for 2070 is approximately 1.9 to 3.5 feet; and 2.9 to 5.6 feet for 2090. Additionally, recent scientific studies have analyzed the potential for rapid ice loss and suggest that there could be extreme sea level rise of as much as 10 feet by 2100 (or an additional 5.2 and 8.3 feet of sea level rise that would be added to those estimates for 2070 and 2090, respectively), though this extreme scenario is currently less well understood. The observed trend for global sea level has been a long-term, persistent rise. Mean water level affects shoreline erosion several ways, and an increase in the average sea level will exacerbate all these conditions. On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. This, too, leads to loss of the beach as a direct result of the armor as the beach is squeezed between the landward migrating ocean and the fixed backshore (e.g., even without any armoring, a 1-foot rise in sea level generally translates into a 40-foot inland migration of the land/ocean interface for a roughly 40:1 beach slope, typical of average sandy beach profiles).

<sup>34</sup> See for example, CDPs 2-10-039 (Land’s End), 2-16-0684 (Aimco Armoring), and 3-12-030 (Pebble Beach Company).

long-term loss of beach due to fixing the back beach. The area of beach lost due to long-term erosion is equal to the long-term average annual erosion rate multiplied by the number of years that the back beach or bluff will be fixed, multiplied by the width of the property that will be protected. Applying the average annualized erosion rate (estimated by the Applicants to be 1.5 feet per year) over the first 20 years of the 170-foot-long armoring system,<sup>35</sup> 5,100 square feet of beach would have been created naturally if the back beach had not been fixed by the armoring through the first 20-year assessment period.<sup>36,37</sup>

Thus, the armoring project leads to beach and shoreline use area impacts of approximately 6,572 square feet (1,472 square feet associated with the armoring system's footprint and 5,100 square feet associated with lost passive erosion due to fixing the back beach) through the first 20-year impact horizon. There is no doubt that such impacts represent a significant public recreational access impact, including a loss of the social-economic value of beach and shoreline recreational access, for which the Coastal Act requires mitigation.

The most obvious in-kind mitigation for these impacts would be to create a new 6,572 square-foot area of beach/shoreline to replace that which will be lost over the first 20 years with an identical area of beach/shoreline in close proximity to the lost beach/shoreline area. While in concept this would be the most direct mitigation approach, finding an area that can be turned into a beach and ensuring it does so appropriately over time is very difficult in practice. At the same time, the calculations of affected area do provide a means to identify an appropriate relative scale for evaluating alternative mitigations. For example, in the past the Commission has looked at several ways to value such lost beach and shoreline areas in order to determine appropriate in-lieu mitigation fees, including evaluating the recreational value of the beach/shoreline in terms of the larger economy, as well as the real estate value of the land that would have otherwise gone to public beach/shoreline use.

In terms of the recreational beach and shoreline value, the Commission has recognized that in addition to the more qualitative social benefits of beaches and shoreline areas (recreational, aesthetic, habitat values, etc.), beaches and shoreline areas provide significant direct and indirect revenues to local economies, the state, and the nation. It is well-recognized that the ocean and the coastline of California contribute greatly to the

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<sup>35</sup> 170 feet is measured from the approved armoring systems farthest upcoast to downcoast points.

<sup>36</sup> That is, 170 feet multiplied by 1.5 feet of erosion per year multiplied by 20 years.

<sup>37</sup> In addition, there is an argument that the violations at this location have resulted in unpermitted armoring being present over some 40 years, and that that past impact also requires quantification here. However, the violation history is complex and not as simple as saying a completely unpermitted seawall has been present here for some number of years, which years of impact would also need to be quantified in an approval that resolved such violations. Here, such violations were more nuanced, essentially resulting in an extension of the life of the prior armoring system, but not new armoring and impacts per se. In this case, and given this particular fact set, the Commission applies its discretion to quantify impacts moving forward.

California economy through activities such as tourism, fishing, recreation, and other commercial activities.<sup>38</sup> There is also value in just spending a day at the beach and having wildlife and clean water at that beach, and being able to walk along a stretch of beach and shoreline. Society also benefits from access to beach and shoreline areas, including through contribution to the local community and the broader regional social fabric and cultural identity, though this value is more difficult to quantify. In addition, the loss of access to a sandy beach raises the issue of environmental justice that is similarly challenging to put a price tag on (see also environmental justice discussion in the Public Access and Recreation findings that follow).

Thus, these recreational impacts are, in many cases, difficult to quantify, including at sites such as this where visitation data needed for certain economic impact models are lacking. In other cases (including cases where visitation data was also lacking), the Commission has found that using a real estate valuation method as a basis for identifying mitigation allows for objective quantification of the value of lost beach and shoreline area and that this valuation is appropriate both in terms of the scope of the impacts and the rational basis for applying such methodology.<sup>39</sup> This method requires an evaluation of the cost of property that could be purchased and allowed to erode and turn into beach naturally to offset the area that will be lost due to the construction and continued placement of the armoring over time.

Toward this end, the market values of representative blufftop properties near the project area supply a means to identify what it might cost to purchase such property and allow it to erode in this way to create offsetting beach/shoreline recreational space. Specifically, this review was conducted by looking at the sales of blufftop property in this specific area within the last three years. This value is then divided by the property square footage to arrive at a price per square-foot. The price per square-foot calculation serves as a way to gauge the cost of acquiring an equivalent blufftop property area that could be allowed to erode to provide an equivalent amount of beach and shoreline area to that which will be lost over the first 20-year mitigation timeframe.

This evaluation focused on a total of 9 ocean fronting properties within the vicinity of the proposed project, representing a range of properties for which sales information was available (see **Exhibit 6**). The range of values starts at the high end for the property at 98 Brighton Avenue with a value of \$681.86 per square-foot, to the low end for the property at 99 Brighton Avenue with a value of \$163.35 per square-foot, with an average of \$308.83 per square-foot.<sup>40</sup> The resulting average per square-foot value of

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<sup>38</sup> See Coastal Commission's Adopted Sea Level Rise Policy Guidance at <https://www.coastal.ca.gov/climate/slrguidance.html>: "Just over 21 million people lived in California's coastal counties as of July 2014 (CDF 2014), and the state supports a \$40 billion coastal and ocean economy (NOEP 2010)."

<sup>39</sup> See, for example, CDPs 2-10-039 (Land's End seawall), 2-11-009 (City of Pacifica shoreline armoring), A-3-PSB-12-042 and A-3-PSB-12-043 (Pismo seawalls), and 3-16-0345 (Honjo seawall).

<sup>40</sup> The property sales used to derive the average price per square foot for blufftop properties in the immediate vicinity are for property sales at the following locations: 100 Brighton Avenue (\$505.66/square-

\$308.03 represents a reasonable estimate of the market value of ocean fronting properties nearest the subject site based on actual market-price data.<sup>41</sup> Applying this per-square-foot land acquisition value to the identified 20-year square-foot impact results in an estimated monetary value of \$2,012,976 for the loss of beach and shoreline use areas (i.e., 6,572 square feet x \$308.03/square foot = \$2,024,373). The Commission finds that this impact valuation amount is most closely tied to specific property values in the vicinity of the project and is thus both reasonably related and roughly proportional to the anticipated impacts of the approved armoring on beach and shoreline use areas through the first 20 years it is in place and could be applied as a mitigation fee for the those impacts.

### ***Retention of Potential Beach Material***

The final impact calculation pertains to the loss of sand and sand generating materials due to the project, and the way that affects the larger sand supply system. Beach sand material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves; and from coastal dunes and bluffs feeding the beach. Bluff retreat/shoreline erosion is one of several ways that sand and sand generating materials are added to the shoreline. Bluff retreat and erosion are natural processes resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse of caves; saturation of the bluff soil from groundwater causing the bluff to slough off; and natural bluff deterioration. For coastal dunes, the contribution to the system is typically more direct, with sand becoming part of the shoreline system during and as a result of climatic events, including wind, rain, and storms. When the bluff/shoreline is armored with a shoreline protective device, the natural exchange of material from the armored area to the beach and shoreline is interrupted, and, if the armored bluff area would have otherwise eroded, there will be a measurable loss of material provided to the beach and shoreline, contributing to a loss of sandy beach.

In bluff areas, if natural erosion were allowed to continue (absent of any shoreline armoring), bluff sediment would be added to the beach, as well as to the larger littoral cell sand supply system fronting the bluffs. The volume of total material that would have gone into the sand supply system over the life of the shoreline structure would be the volume of material between (a) the likely future bluff face location with shoreline protection; and (b) the likely future bluff face location without shoreline protection. Using the Commission's methodology<sup>42</sup> the amount of beach-quality sand that would be

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foot); 176 Seadrift Road (\$211.29/square-foot); 112 Seadrift Road (\$195.73/square-foot); 65 Brighton Avenue (\$191.00/square-foot); 99 Brighton Avenue (\$163.35/square-foot); 98 Brighton Avenue (\$681.86/square-foot); 49 Terrace Avenue (\$223.04); 47 Terrace Avenue (\$245.76/square-foot); and 70 Altura Avenue (\$354.55/square-foot).

<sup>41</sup> Market price data obtained from Zillow.com and Redfin.com on September 20, 2019.

<sup>42</sup> Sand generating materials loss is calculated with a formula that utilizes factors such as the fraction of beach quality material in the bluff material; the length of time the back beach will be fixed; the predicted rate of erosion with no armoring system; the height of the structure; and the width of property to be armored. In this case, the fraction of beach quality material was determined by the Applicants (and confirmed by the Commission's Geologist, Dr. Street) to be 0.73, the height of the armoring system from

retained due to the approved armoring system would be equal to 103.4 cubic yards of sand per year. Over the course of the initial 20-year mitigation horizon the approved armoring would thus result in the loss of about 2,068 cubic yards of sand through the first 20-year mitigation horizon (i.e., 103.4 cubic yards/year x 20 years = 2,068 cubic yards).<sup>43</sup>

To mitigate for this loss of sand, the Commission oftentimes requires payment of an in-lieu fee to contribute to ongoing sand replenishment or other appropriate mitigation programs. In such cases, the Commission has typically mitigated for such sand retention impacts with an in-lieu fee based on the cost of buying and delivering an equivalent volume of beach quality sand to the affected area. In this case, as discussed above, the approved armoring system would result in the retention of about 2,068 cubic yards of sandy material through the initial 20-year mitigation horizon. The Applicants obtained a quote of approximately \$75 per cubic yard for the cost of delivered sand appropriate for the Bolinas beach area. Thus, an in-lieu fee to address this initial sand retention impact would be approximately \$155,100.<sup>44</sup>

### ***Approvable Mitigation Package***

In total, through the first 20-year mitigation timeframe, these sand supply and related beach/shoreline loss impacts associated with the armoring would result in a required mitigation fee of \$2,179,473 (i.e., \$2,024,373 + \$155,100 = \$2,179,473). Based on the above analysis, such a figure is both reasonably related and roughly proportional to the quantifiable impacts of the approved armoring. However, rather than requiring a mitigation fee of \$2,179,473 to facilitate possible beach and shoreline access acquisition and/or improvements as a means of offsetting this identified impact, a series of immediate public access improvements nearby the project site, described in more detail below, can most effectively offset such impacts.

When viable, the Commission has historically offset identified impacts via in-kind public access improvement projects. Because this option is generally only available with public agency applicants, in this case there is a unique opportunity for the Applicants, one of which is a public agency (i.e., BCPUD), to provide for a series of improvements that together can appropriately offset these beach and shoreline area recreational access impacts as part of an overall mitigation package in place of a fee. Such mitigation strategies can allow for mitigation benefits to be realized in the near term and in the area of the impacts, as opposed to fees that might not be spent for many years, and mitigation not timely realized as a result. The idea is typically to acknowledge that the value of a fee diminishes over time in terms of what it can result in, and improvements only become more expensive over time, and to place a premium on improvements that

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the scour level to the top of the bluff is 15 feet, the width of the property to be armored is 170 feet, the rate of retreat is 1.5 feet per year, and the time period the system is installed is measured over the first 20-year mitigation period.

<sup>43</sup> And Dr. Ewing and Dr. Street reviewed all calculations and concurred on these estimates.

<sup>44</sup> That is, \$75 per cubic yard multiplied by 2,068 cubic yards equals \$155,100.

can be realized in the near term. The project as proposed includes elements that would enhance public access in and around the project area including development of the access ramp on the east end of the seawall and the stairs on the west end of the seawall, and overall improvements to the lateral accessway across the seawall. In addition, the Applicants have been working with Commission staff on incorporating additional public access benefits into the project description. Specifically, the Applicants would develop a series of additional public access and recreation improvements in the immediate project area (see **Special Conditions 1 and 2**), would re-dedicate and unify all existing public access easement areas in the shoreline area of the private property, including over and across the reduced-size seawall extending out to the mean high tide line (see **Special Condition 3**), and would deed restrict the BCPUD property at the end of Brighton Avenue for public recreational access use and amenities (see **Special Condition 4**), all as a means of providing additional proportionate mitigation for project impacts. The required offsetting public recreational access improvements include the following:

- Removing private encroachments into the public right of way and BCPUD property and restoring these areas to maximize public utility and value.
- Improving the BCPUD property and the Brighton Avenue public right of way seaward of the residential driveways on either side of the street with public recreational access amenities including landscaping, overlook, and community gardens on the upcoast side, and a two-level improved public overlook on the downcoast side.
- Installing benches, picnic tables, bicycle racks, waste and recycling receptacles, a doggie mitt station, and/or other amenities.
- Installing additional informational, interpretive, directional, and safety signage at appropriate locations.
- Maintaining beach access down the ramp from Brighton Avenue to the beach.
- Removing impediments to public access on the upcoast beach area.
- Requiring all public access areas and improvements to be ambulatory in the face of coastal hazards.
- Reducing the scale of the inland retaining walls, removing and relocating the fencing at the edge of the seawall, and restoring the area with native plantings.
- Recording a public recreational access easement and deed restriction over the publicly available areas and amenities.
- Requiring ongoing repair and maintenance of all public access areas, improvements, and amenities.

Such improvements will enhance public recreational access amenities and utility in the Bolinas shoreline area, appropriately offsetting the impacts of the approved armoring system identified above. Importantly, as conditioned to reduce the width of the seawall and remove the riprap, the modified project will also free up more than 2,547 square feet of beach space that has been covered by the armoring system for at least the past

four decades, reducing overall coverage by over 63%, which will also substantially enhance public beach and recreational access overall.

Thus, in this case, the Commission finds it reasonable to mitigate for the above-identified armoring impacts, as well as to enhance and maximize public access and recreational opportunities in the project area as required by the Coastal Act, to require the Applicants to improve and maintain public recreational access areas, improvements, and amenities outlined here, all with the objective of maximizing and enhancing public recreational access and utility in this area to help offset approved project impacts. This mitigation package strategy and approach is similar to compensatory projects and mitigation packages required by the Commission in the past.<sup>45</sup> In addition, this approach will allow public access improvements to be realized in the near term, providing fairly immediate and tangible public benefits as opposed to an overall single fee approach that may not be used or applied for some time, reducing its effectiveness. The above described approach will likely have more value to public access users than can be captured by the cost to develop these improvement projects, as they have an intrinsic value to the shoreline-visiting public, particularly given the popularity of the related public access features on this stretch of coast that is difficult to quantify. In short, the above-described access improvement project constitutes an appropriate and adequate compensatory mitigation package to offset the impacts identified above and to be able to find the project consistent with Coastal Act Section 30235.

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

The Coastal Act compels approval of shoreline armoring to serve a coastal-dependent use or protect an existing structure in danger of erosion, and therefore such devices are no longer compelled after the existing structures or coastal-dependent uses they protect are no longer present or no longer require armoring. Although the purpose of the proposed development is to protect an existing residence, the shoreline armoring itself impedes public access to and along the sandy beach, adversely impacts beaches and shoreline recreational areas, potentially increases erosion on adjacent properties, and visually impairs this coastal area. In this case, the long term status of the residence is unclear, including related to how sea level rise and other coastal hazards may affect the shoreline in this area over time, so it is still necessary to ensure that the shoreline protection as constructed is not allowed to outlast the structure or use it was designed and approved to protect. **Special Condition 6** thus limits the duration of this armoring approval to the time when the residence is removed or redeveloped, whichever occurs first. If some portions of the residence are abandoned, the armoring is required to be reduced or modified so that it is the minimum necessary to protect only the retained portion of the residence's livable space.

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<sup>45</sup> See, for example, CDPs 2-17-0702 (Sharp Park), 3-02-107 (Podesto), 2-16-0684 (Aimco), A-3-SCO-06-006 (Willmott), 3-09-029 (Rusconi), 3-09-042 (O'Neill), 3-10-044 (Crest Apartments), 2-11-009 (Pacifica drainage armoring), A-3-PSB-12-0042 and -0043 (Pismo Beach Oceanview Boulevard seawalls), A-3-SCO-07-015/3-07-019 (Pleasure Point seawall and parkway), and 3-14-0488 (Iceplant LLC).

As described above, the armoring meets the first test of Coastal Act Section 30235 for the residence given it was originally constructed in 1910, predating the Coastal Act, and the currently available information suggests that it has not been modified to such an extent as to be considered redeveloped in the time since January 1, 1977. As a result, it retains its 'existing structure' status as long as it does not tip the threshold of redevelopment.<sup>46</sup> If, however, redevelopment of the residence were to come before the Commission in the future, it would need to meet all Coastal Act and LCP requirements, including in terms of a coastal hazard setback without reliance on armoring. Specifically, as a new redeveloped structure, the residence would need to be sited and designed to ensure geologic and engineering stability without reliance on shoreline armoring, including the armoring authorized by this CDP. If such re-siting were not possible, the residence would need to be removed to be consistent with Coastal Act requirements, including removal of the armoring approved here.

Thus, redevelopment of the site is limited by **Special Condition 6**, which recognizes that the proposed armoring is primarily being approved under Section 30235 to protect the existing residence in danger from erosion. The intent of **Special Condition 6** is to limit future impacts to public resources by restricting expansion of new development on site and to allow for potential removal of the approved armoring system when it is no longer necessary to protect the residence, and, as such, the armoring would be removed or reauthorized with updated terms under a new CDP application or amendment to this CDP, either of which would be required to be consistent with the terms and conditions identified herein. The condition also puts the current, and any future, property owners on notice that redevelopment of the parcel cannot rely on existing or new armoring for stability, and alternatives must be considered in order to avoid the need for bluff or shoreline armoring in this hazardous area, including removing threatened portions of any proposed redeveloped structure, relocation inland, and/or reduction in size. Such options would prevent siting development in hazardous locations or leading to armoring of the bluffs and long-term adverse impacts to the adjacent public beach and State tidelands. Any future redevelopment of the affected property will require re-evaluation of then current conditions and must position development safely on site, independent of any shoreline armoring.

Under **Special Condition 6**, redevelopment is defined to include additions and expansions, or any demolition, renovation or replacement that would result in alteration or reconstruction of 50 percent or more of the residential structure as measured cumulatively since January 1, 1977, the effective date of the Coastal Act. The condition also stands for the premise that the Applicants have selected the approved armoring system at this time, rather than retire portions of threatened development to decrease hazard risk over the remaining economic life of the structure. The condition acknowledges that future development on the site beyond ordinary repair and maintenance to the existing structures must meet the requirements of Section 30253

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<sup>46</sup> Any development and improvements at the site since the time of coastal permit requirements would count toward the redevelopment threshold, including that already described in this report.

and not require bluff or shoreline armoring that alters the shoreline. The condition defines redevelopment to include additions and expansions, or any demolition, renovation or replacement which would result, cumulatively, in alteration or reconstruction of 50 percent or more of the major structural components of an existing structure (where major structural components mean exterior walls, floor structures, roof structures, and foundations), or alteration that leads a 50% or more increase in gross floor area, has occurred or is proposed, as measured from January 1, 1977 for purposes of this redevelopment determination.. For example, this condition requires that if an applicant submits an application to remodel 30 percent of the major structural components of the existing structure, and five years later seeks approval of an application to remodel an additional 30 percent of the major structural components of the structure, such projects would constitute redevelopment, triggering the requirement to ensure that the redeveloped structure is sited safely, independent of any shoreline armoring. It also specifies that the residence will be considered redeveloped if the cost of any alterations and related development equals or exceeds 50 percent of the market value of the residence before the start of construction, based on the documented construction bid costs and either an appraisal by a professional property appraiser or Marin County assessor data.

In terms of impact mitigation for the approved project, mitigation for Section 30235 impacts associated with the armoring system is based on impacts through the initial 20-year time period. These impacts will continue to occur, though, for the full time that the approved armoring is in place, including beyond 20 years if it continues to be required to protect the residence. Future impacts beyond the initial mitigation period are far more uncertain to predict at this point in time due, among other factors, to possible changes in sea level, storm frequency and intensity, and direction of wave attack. The public access mitigation improvements required through this approval may very well be sufficient to offset the continued impacts of retaining the armoring in the future, but evaluation of ongoing project impacts to shoreline resources in the future could demonstrate that additional mitigation is necessary in order to maintain public access and recreation and to adequately mitigate for ongoing project impacts to these resources. **Special Condition 6** therefore requires the Applicants to reevaluate impacts associated with the retention of armoring beyond the initial 20-year mitigation period and provide additional mitigation if needed to respond to impacts to coastal resources past the initial 20 years, in the event that said impacts are not mitigated sufficiently under this approval.

Thus, as conditioned, the project satisfies the Coastal Act Section 30235 requirements regarding mitigation for sand supply impacts, and thus also meets all Section 30235 tests for requiring such armoring.

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

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. Given the dynamic shoreline environment in this area, the design and implementation a formal long-term monitoring and maintenance program will be a critical tool for achieving Coastal Act consistency. If the subject armoring were

damaged in the future (e.g., as a result of flooding, wave action, storms, etc.), it could lead to degraded public access conditions to and along the shore. In addition, such damages could adversely affect nearby beaches and recreational use areas by resulting in debris on the beaches and creating a hazard to the public using the beaches and offshore areas. To find the proposed project consistent with Section 30253, the project must be maintained in its approved state. Further, in order to ensure that the Applicants and the Commission know when repairs or maintenance are required, the Applicants must regularly monitor the performance of the subject armoring, particularly after major storm events. Such monitoring will ensure that the Applicants and the Commission are aware of any damages and inform whether repairs or other actions are necessary to maintain the armoring and the offsetting access improvements in their approved state before such repairs or actions are undertaken. To assist in such an effort, monitoring plans should provide vertical and horizontal reference distances from armoring structures to surveyed benchmarks for use in future monitoring efforts.

Thus, to provide long-term structural stability and ensure that the proposed project is properly maintained, **Special Condition 8** requires monitoring and related reporting at five-year intervals. Regular monitoring allows for evaluation of the condition and performance of the proposed project, and provides the opportunity to identify any necessary maintenance, repair, changes or modifications. **Special Conditions 8 and 9** require the Applicants to maintain the project in its approved state, subject to the terms and conditions identified herein. Future monitoring and maintenance activities must be understood in relation to the approved final project plans (see **Special Condition 1**).

In terms of recognizing and assuming the hazard risks for shoreline development, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to both long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) amounting to tens of millions of dollars. As a means of allowing continued private development in areas subject to these hazards while also avoiding placing the economic burden for possible future damages onto the people of the State of California, applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicants to assume all risks for developing at this location (see **Special Condition 9**).

### **Coastal Hazards Conclusion**

The existing residence is in danger from erosion and requires armoring through the approved project in order to be protected. The Commission approved project configuration, as conditioned, is the least environmentally damaging feasible alternative. Conditions are included to ensure that the project will appropriately offset its sand supply impacts, and to ensure long term stability and efficacy. As conditioned, the Commission finds the project consistent with Coastal Act Sections 30235 and 30253.

## **E. PUBLIC ACCESS AND RECREATION**

### **Applicable Policies**

The Coastal Act grants a high priority to public recreational access uses and activities to and along the coast. The Act protects and encourages lower-cost visitor and recreational facilities where feasible and states a preference for developments providing public recreational opportunities. In addition, the Coastal Act requires that oceanfront land and upland areas suitable for recreational use be protected for recreational uses. Coastal Act Sections 30210 through 30213, 30221 and 30223 specifically protect public access and recreation. In particular:

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

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

***30212.** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected....*

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

Coastal Act Section 30240(b) protects sensitive habitat, as well as parks and recreation areas, such as the adjacent beach:

***30240(b).** Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

These overlapping policies clearly protect access to and along the shoreline and to offshore waters for public access and recreation purposes, particularly free and low cost access.

### **Consistency Analysis**

Shoreline protective devices have significant adverse impacts to public access and recreation. Section 30210 of the Coastal Act requires the Commission to provide the

general public maximum access and recreational opportunities, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access to the sea where acquired through use or by legislation. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access. The Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect: it is not enough to simply *provide* access to and along the coast, and not enough to simply *protect* access; rather such access must also be *maximized*. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one. In addition, the mean high tide line will move landward over time depending on the beach profile, seasonal tidal activity, and continued sea level rise. Therefore, it is also critically important that the Commission ensure that the project protects public access and recreational opportunities over the time period when the project remains and that it includes measures to avoid (and where unavoidable appropriately mitigate) potential public recreational access impacts.

As discussed in the Coastal Hazards section above (incorporated into this finding by reference), shoreline structures can have a variety of negative impacts on coastal resources, including adverse effects on beaches and sand supply, which ultimately result in the loss of the beach and associated impacts to public access. The proposed project's impact to sand supply, and ultimately to beach/shoreline area, would result in measurable impacts to beaches and beach area access. Critically, the proposed project would lead to a loss of available beach and shoreline recreation area for public access and recreation because the back of the beach/shoreline area will be fixed by the continued placement of the seawall, and the ocean interface will gradually move landward as sea level rises due to climate change. More specifically, sea level at the Point Reyes tide gauge is expected to rise between 0.8 feet to 1.8 feet by 2040,<sup>47</sup> and thus it is likely that the armoring system will have discernible impacts on public access and recreation for as long as it is in place. In fact, with sea levels anticipated to rise between half-a-foot and nearly two feet within the next 20 years, less of the beach/shoreline area seaward of the armoring system will be available and such availability will be for a shorter period of time each day. Further, these impacts are predicted to be exacerbated as the years go on.

Further, that all of the public should enjoy access for recreation at coastal areas is an important concept for environmental justice precepts in California. Coastal Act Section 30604(h) states that: "When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the

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<sup>47</sup> State of California Sea-Level Rise Guidance (2018 Update); California Natural Resources Agency & Ocean Protection Council; Sacramento, California; March 14, 2018, 1-84.

equitable distribution of environmental benefits throughout the state.”<sup>48</sup> In 2019, the Commission adopted an environmental justice policy,<sup>49</sup> committing to consider environmental justice principles, consistent with Coastal Act policies, in the agency’s decision-making process and ensuring coastal protection benefits are accessible to everyone. In approving the policy, the Commission recognized that equitable coastal access is encompassed in, and protected by the public access policies in Chapter 3 of the Coastal Act.

Equitable public access and coastal recreation face the growing threat of coastal armoring, which, as described above, cause significant impacts to beaches and public access. Armoring protects a small amount of very expensive private property (e.g., AMJT Capital LLC estimates the value of the home being protected by the approved armoring in this case at \$11 million) at the direct expense of the public, particularly low-income and minority communities who live farther inland and further exacerbates inequitable coastal access. In California, equitable coastal access and recreation opportunities for all populations has not been realized due to historic and social factors, such as discriminatory land use and economic policies and practices.<sup>50</sup> Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.<sup>51</sup> Thus, the burdens of armoring structures further exacerbate inequitable coastal access and are disproportionately borne by low-income and minority communities who depend on the public beach for low-cost recreation and access to the coast. While benefiting from their protected oceanfront residences, coastal property owners in fact diminish public access as these areas become less accessible to visitors.

Further, views from the beach are correspondingly diminished as the beach becomes less available for access. In addition, renting vacation homes in the Bolinas area can be far above the means of lower income communities (e.g., nearby beach homes rent for \$300 to up to \$1,500 per night).<sup>52</sup> Finally, public recreation and beach access represent major cornerstones of the Coastal Act and are critical along this stretch of coastline, where tall and highly erosive bluffs create a paucity of public beach access opportunities. Thus, the armoring system at this site would have the potential to cause impacts that disproportionately affect low income and minority communities. To offset

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<sup>48</sup> Government Code Section 65040.12(e) defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”

<sup>49</sup> California Coastal Commission Environmental Justice Policy, Adopted March 8, 2019 [https://documents.coastal.ca.gov/assets/env-justice/CCC\\_EJ\\_Policy\\_FINAL.pdf](https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf).

<sup>50</sup> Robert Garcia and Erica Flores Baltodano, Free the Beach! Public Access, Equal Justice, and the California Coast, 2 *Stanford Journal of Civil Rights and Civil Liberties*, (143, 2005).

<sup>51</sup> Coastal Access Equity and the Implementation of the California Coastal Act (2016) Reineman, et al., *Stanford Environmental Law Review Journal*, v.36, pages 96-98.

<sup>52</sup> Source: Airbnb.com (October 22, 2019).

these impacts, the Commission and the Applicants are mostly in agreement regarding a mitigation package<sup>53</sup> that includes a combination of public recreational access improvements (see discussion in the prior Coastal Hazards finding). Importantly, the proposed mitigation includes the rededication of a public recreational access easement over the armoring system area on AMJT Capital LLC property<sup>54</sup> and a deed restriction for public recreational access on the BCPUD property, assuring these areas are dedicated to public use and enjoyment. In addition, the package includes the improvement and restoration of BCPUD property and public right-of-way that will enhance public access and recreation in the area, including by providing improved ocean and beach viewing areas, picnic tables, benches, signage, and added access and recreation amenities. It is also important to note that the project would enhance access in and around the area by construction of a new accessible ramp from Brighton Avenue up to the top of the seawall that will facilitate access (including emergency access) and connectivity across the armoring system, as well as construction of a new stairway from the top of the seawall along the western property line, leading down to the sandy beach. Lastly, as conditioned to reduce the width of the seawall and remove the riprap, the modified project will free up more than 2,284 square feet of beach space that will enhance public beach access in tandem with the required offsetting public recreational access mitigations. Thus, the project as conditioned will appropriately offset public access and recreation impacts (see **Special Conditions 1, 2, 3, and 4**).

The remaining public access and recreation impacts accrue due to project activities on the beach and in related public access areas, and from construction overall. With respect to construction impacts, this project will: require the movement of large equipment, workers, materials, and supplies in and around the shoreline area and public access points; include large equipment operations in these areas; result in the loss of public access use areas to a construction zone; and generally intrude and negatively impact the aesthetics, ambiance, serenity, and safety of the recreational experience at these locations. These public recreational use impacts have been minimized (through the Applicants' proposed best management practices) and can be mitigated through construction parameters that require the following: limiting the area of

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<sup>53</sup> The Applicants have expressed a desire to coordinate more closely with the community on the final design details of the access amenities.

<sup>54</sup> At present, two easements are recorded over and across the existing armoring system's footprint. Both easements were requirements of previous permits to allow the placement of riprap fronting the seawall structure (see Exhibit 4). In 1981, the previous homeowner of 100 Brighton Avenue offered to dedicate an easement for public use over and across the seawall. This easement, required by CDP 219-79, was accepted by BCPUD in 2001. CDP 1-88-16 required an easement for public use across the area from the base of the seawall seaward to the mean high tide and included the area for the westerly stairs, which was offered by the homeowner at 100 Brighton in 1988, and was accepted by BCPUD in 1997. In review of the existing easements on and fronting AMJT LLC's parcel, it became clear that portions of the existing easements described above are in fact located on BCPUD's property, meaning that BCPUD may have inadvertently accepted an easement across their own property. To improve the accuracy of the two previously recorded easements, the Applicants are required to re-record/amend the public access easements by consolidating them into one easement that more accurately represents the required easement area (see Special Condition 3).

construction, limiting the times when work can take place (e.g., to avoid both weekends and peak summer use months when recreational use is highest), clearly fencing off the minimum construction area necessary, keeping equipment out of coastal waters, requiring off-beach equipment and material storage during non-construction times, clearly delineating and avoiding to the maximum extent possible public use areas, and restoration all affected public access areas at the conclusion of construction. A construction plan is required to implement these measures (**see Special Condition 5**). In addition, to provide maximum information to the beach-going public during all construction, the Applicants must maintain copies of the CDP and approved plans available for public review at the construction sites, as well as provide a construction coordinator whose contact information is posted at the sites to respond to any problems and/or inquiries that might arise (**see Special Condition 5**). In addition, this permit does not constitute a waiver of any public rights that might exist on the properties (**see Special Condition 11**).

### **Public Access and Recreation Conclusion**

In conclusion, as described above, the Commission is required to approve shoreline armoring in this case, due to the “override” provisions of Section 30235, despite the proposed project’s inconsistency with the public access and recreation provisions of the Coastal Act. The Applicants must nevertheless offset and mitigate these adverse impacts to make the project as consistent with applicable Coastal Act provisions as possible. Thus, the Applicants must implement the mitigation package per the terms and conditions of this approval, including reassessment of such impacts on a twenty-year cycle, in order to offset the public recreational access (including environmental justice) impacts associated with the proposed project as much as is possible under these circumstances. As conditioned, the Commission finds the project as consistent with the Coastal Act access and recreation policies cited above as is feasible.

## **F. MARINE RESOURCES**

### **Applicable Policies**

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

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

**Section 30231.** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means,*

*minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

### **Consistency Analysis**

Section 30230 and 30231 of the Coastal Act require that marine resources “be maintained, enhanced, and where feasible, restored.” Further, uses of the marine environment must be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

As discussed above, the project is located on an oceanfront parcel adjacent to the Greater Farallones National Marine Sanctuary, which is recognized for its unique and abundant marine life. The Sanctuary provides breeding and feeding grounds for at some twenty-five Federal and State endangered or threatened species, thirty-six marine mammal species, over a quarter-million breeding seabirds, and one of the most significant white shark populations on the planet. Further, the project area itself is recognized as a popular surfing and beach-activity destination. As such, the Commission recognizes the marine and recreational resources involved with the proposed project as sensitive coastal resources that are of high state and federal importance.

Given the proposed project is located at the shoreline interface with the Pacific Ocean, there is the potential for impacts to marine resources. Runoff here has the potential to discharge into the Sanctuary, including at one of the primary recreational water use areas within the Sanctuary. To further protect marine resources and offshore habitat, the project is conditioned to include construction methods required by the Commission in the past to protect and maintain water quality and marine resources during armoring construction, including maintaining good construction site housekeeping controls and procedures, the use of appropriate erosion and sediment controls, a prohibition on equipment washing, refueling, or servicing on the beach (see **Special Condition 5**). **Special Condition 5** additionally requires construction documents to be kept at the site for inspection and a construction coordinator to be available to respond to any inquiries that arise during construction.

As conditioned, the Commission finds the project consistent with Coastal Act Sections 30230 and 30231 regarding protection of marine resources and offshore habitats.

## **G. PUBLIC VIEWS**

### **Applicable Policies**

Coastal Act Section 30251 states:

**Section 30251.** *The scenic and visual qualities of coastal areas shall be*

*considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

Coastal Act Section 30240(b), previously cited, also protects the aesthetics of beach recreation areas such as those located directly adjacent to and at the project site.

**30240(b).** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

### **Consistency Analysis**

The Coastal Act requires that development be sited and designed to protect public views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas. Although the armoring system retains the massing in the viewshed of the current condition to a certain extent, as compared to the natural bluff face, the approved project is the preferred alternative to any design that would involve more layers of protection, as was originally proposed by the Applicants, which would be more visually bulky and have a greater impact on visual resources. In addition, as approved, the armoring system will be sculpted and designed to approximate the look of natural bluffs in the vicinity. With this camouflaging and reduction in scope, the project is designed to minimize to the extent possible visual impacts to the surrounding beach and coastal views. At the same time, it will still remain a significant and unnatural visual impediment along the coast that detracts from and impedes public views. Some of this impact can be offset by the public recreational access improvements that will also serve to improve the visual character of the area (e.g., improved overlooks, removal of impediments to access in the beach area, etc.). In addition, the project can be modified in other ways to help offset visual impacts, by removing and receding fencing at the inland seawall edge and along the eastern property perimeter, and the addition of landscaping in the area between the residence and the seawall's inland edge and along the eastern ramp.

The proposed project is inconsistent with the visual resource protection policies of the Coastal Act. Overall, as conditioned, however, the proposed project will protect public views as much as possible, given that the armoring is required to be approved in this shoreline area.

## **H. OTHER AGENCY APPROVALS**

### **Marin County**

The project includes components that will occur in Marin County and on Marin County property. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the County (see **Special Condition 14**).

### **California State Lands Commission**

The California State Lands Commission (CSLC) may require a lease or some other type of approval for the underlying armoring, and thus this approval is conditioned to require written evidence either of CSLC approval of the project or evidence that such approval is not required (see **Special Condition 14**).

### **Greater Farallones National Marine Sanctuary**

As some project elements are located below the mean high tide and project construction may result in impacts to coastal waters, authorization for the project by the National Marine Sanctuary is a requirement of the project. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from the Marine Sanctuary (see **Special Condition 14**).

### **Army Corps of Engineers**

The U.S. Army Corps of Engineers (ACOE) has regulatory authority over the proposed project under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.<sup>55</sup> Portions of the project may be located within ACOE jurisdiction, and the use of equipment and machinery on the beach up to the high tide line also has the potential to impact these areas. Accordingly, this approval is conditioned to ensure that the project (as conditioned and approved by this CDP) has received all necessary authorizations (or evidence that none are necessary) from ACOE (see **Special Condition 14**).

## **I. OTHER**

### **Public Rights**

The area associated with this CDP application includes areas that are clearly public, as well as other areas historically used by the public, including the sandy beach areas. Although the Commission has identified areas of public land and public use herein, the Commission here does not intend its action waive *any* public rights that may exist on the affected properties, including the area inland of the armoring system and the end of Brighton Avenue. Thus, this approval is conditioned to make that clear, and to require the Applicants to agree and acknowledge the same, including that this Applicants shall not use this CDP as evidence of a waiver of any public rights that may exist on these properties now or in the future (see **Special Condition 11**).

### **Disclosure**

The proposed project represents a unique set of facts, including with respect to the site's past history associated with prior CDPs. And this CDP includes important terms and conditions reflecting the set of facts as they apply to this approval, including the

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<sup>55</sup> Section 10 of the Rivers and Harbors Act regulates the diking, filling and placement of structures in navigable waterways, and Section 404 of the Clean Water Act regulates fill or discharge of materials into waters and ocean waters.

required conditions of approval. In order to ensure that the terms and conditions of this approval are clear to these Applicants as well as any future owners, this approval requires that the CDP terms and conditions be recorded as covenants, codes, and restrictions against use and enjoyment of the properties, and for them to be explicitly disclosed in all real estate transactions (see **Special Conditions 12 and 16**).

### **Future Permitting**

The Commission herein fully expects to review any future proposed development at and/or directly related to this project and/or project area, including to ensure continued compliance with the terms and conditions of this CDP through such future proposals, but also to ensure that any such future proposed development can be understood in terms of the same. Thus, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required (see **Special Condition 13**).

### **Indemnification**

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP applications in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 15** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicants challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts (see **Special Condition 15**).

## **J. VIOLATION FINDING**

Violations of the Coastal Act exist on and adjacent to the AMJT Capital LLC property including, but not limited to, the lack of compliance with maintenance of the riprap and public accessways required by prior CDPs, as well as the application of additional layers of concrete to the top and seaward portions of the seawall that occurred sometime between 1979 and 2009 without benefit of a CDP. The site also includes private development that has been constructed on public property, both on BCPUD property as well as the Brighton Avenue right-of-way owned by Marin County.

Although development has (a) been out of compliance with prior permitting requirements, and/or (b) occurred without benefit of a CDP, prior to submission of this CDP application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this CDP does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position

regarding the legality of development, other than the development addressed herein and that which is required by prior CDPs but is currently out of compliance on site. In fact, approval of this CDP is possible only because of the terms and conditions included herein, and failure to comply with these terms and conditions would also constitute a violation of this CDP and of the Coastal Act. Accordingly, AMJT Capital LLC remains subject to enforcement action just as it was prior to this CDP approval for not complying with past CDPs and engaging in unpermitted development, unless and until the terms and conditions of this CDP are satisfied and the approved project completed, fully implementing all required mitigation.

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

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

Marin County, acting as lead CEQA agency, determined the proposed project was exempt from non-CDP discretionary approvals, that it would require only a ministerial building permit, and exempted it from CEQA requirements. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding findings in this report have discussed the relevant coastal resource issues with the proposal, and the CDP terms and conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. Further, all public comments received to date have been addressed in the preceding findings, which are incorporated herein in their entirety by reference.

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

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Summary of Alternative Evaluation prepared by Noble Consultants, June 4, 2018
- McCabe and Company “Response to Incomplete Letter,” January 18, 2019
- Coastal Commission CDP, CDP waiver, and violation files for 92-78, 219-79, 205-80E, 1-88-16, 2-12-006-W, and 2-15-2022-W
- Marin County CDPs 11-0072 and 2011
- Marin County Building Permits 42604 (1989), 125615 (2010), 141271 (2014), 142126 (2014), and 142343 (2014)
- California State Lands Letter dated October 7, 2019
- Historic photos

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

- Bolinas Community Public Utility District (Applicant)
- McCabe & Company (Applicant Consultant)
- Noble Consultants (Applicant Consultant)
- Marin County Community Development Agency
- Surfrider
- Environmental Action Committee of West Marin