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# W23b

Filed: 2/11/2020  
Action Deadline: 8/9/2020  
Staff: Kevin Kahn-SC  
Staff report: 2/21/2020  
Hearing date: 3/11/2020

## STAFF REPORT: CDP AMENDMENT

**Application Number:** 3-82-199-A8

**Applicant:** Carmel Area Wastewater District (CAWD)

**Project Location:** CAWD's Wastewater Treatment Plant located at 26900 Highway 1 just south of the City of Carmel-by-the-Sea and adjacent to the Carmel River and Carmel River State Beach in unincorporated Monterey County (APNs 009-521-004 and 009-511-010).

**Project Description:** Authorize a series of changes to wastewater treatment plant infrastructure and operations, including: 1) after-the-fact (ATF) authorization for a series of infrastructure improvements (including new digester and digester control buildings, a new sodium bisulfite/hypochlorite facility, a new stormwater pump station and electrical service pad, and repairs/modifications to ten existing facilities and structures); 2) ATF authorization for the removal of roughly 2,500 square feet of riparian vegetation; 3) ATF authorization for expansion of the wastewater service boundary; 4) a new perimeter fence and new reverse osmosis facility storage tanks; and 5) future repair and maintenance.

**Staff Recommendation:** Approval with Conditions

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## **SUMMARY OF STAFF RECOMMENDATION**

The Carmel Area Wastewater District (CAWD) seeks approval of a series of improvements to its wastewater treatment infrastructure and operations, some of which have already been completed and for which CAWD is seeking after-the-fact authorization.<sup>1</sup> CAWD's wastewater treatment plant (Plant) is located within the Carmel River lagoon complex adjacent to the Carmel River and Carmel River State Beach, and was originally designed and built in 1939 with a capacity of 0.8 million gallons per day (mgd). The Plant has had numerous improvements over the years, including via CDPs that authorized system capacity expansions and tertiary treatment to produce recycled water for several Monterey peninsula golf courses (e.g., Pebble Beach Golf Links). Today the Plant, which serves the communities of Carmel Valley, Del Monte Forest, and the City of Carmel-by-the-Sea, has an average dry weather treatment capacity of 1.8 mgd and produces 1.0 mgd of recycled water during the summer months.

More specifically, the Commission approved CDP 3-82-199 in 1981, which authorized a series of Plant improvements and upgrades needed to ensure compliance with ocean discharge water quality requirements promulgated by the State Water Resources Control Board, including to address raw sewage spills from inadequately sized treatment infrastructure. The CDP rectified these problems by permitting new treatment capacity, including construction of recycled water facilities meant to provide treated wastewater for a variety of uses, including to irrigate nearby golf courses. The 1981 CDP approval also included a series of conditions addressing the Plant's operations, including service area boundaries, treatment capacity, flood management/coastal hazards (i.e., prohibiting levees, dikes, and other shoreline protective devices to protect the Plant from flooding), public coastal access (i.e., requiring CAWD to offer an easement or enter into an agreement to allow a public trail along the Carmel River to the shoreline), and habitat preservation (i.e., requiring CAWD to develop a plan to protect riparian habitat located outside of the Plant's boundaries). The CDP was amended seven times since its initial approval to authorize various other proposed changes, most recently in 2006. Thus, the CDP, as amended, regulates the Plant's overall operations, including in terms of structural facilities, capacity, and service area.

CAWD seeks after-the-fact (ATF) authorization for a series of Plant improvements that were undertaken in Spring 2017 without the requisite CDP approval, including a new digester and digester control buildings, a new sodium bisulfite/hypochlorite facility, a new stormwater pump station, a new electrical service pad; and improvements/repairs to ten existing facilities and structures (including a new blower and associated electrical work, new pumps and electrical equipment in the pump station, new piping and a new tank in the dissolved air flotation thickener structure, a new waste gas burner, and modifications to the main and standby power systems). In addition, CAWD seeks ATF

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<sup>1</sup> The project is partially proposed to resolve Coastal Act violations. 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, respectively), Commissioners should not engage in any ex parte communications related to these violations.

approval of other unauthorized development, including removal of some roughly 2,500 square feet of riparian vegetation that was done in preparation for replacing the Plant's existing perimeter fence, and expansion of CAWD's wastewater service area boundaries to areas south of the Plant in Point Lobos State Natural Reserve and in the unincorporated Carmel Highlands area. And finally, CAWD proposes new development, including a new perimeter fence, a new sodium hypochlorite facility (which is proposed to be located within the existing reverse osmosis building), as well as a repair and maintenance program.

At a broad level, the proposed work constitutes important and necessary investments in critical public infrastructure. All such development maintains and improves the operations of a wastewater treatment facility that produces needed recycled water for productive use in a very water scarce area, while also ensuring the protection of public health and ocean water quality for coastal waters that are known worldwide for their public recreational value and high biological productivity. Thus, a well-functioning wastewater treatment facility and the capital improvements needed to ensure it remains so are critical to meeting numerous Coastal Act objectives, including with respect to the protection of the biological productivity and quality of coastal waters (Sections 30230 and 30231), water recycling and water supply (Sections 30231 and 30250), and public access and recreation (Sections 30210-30244).

That being said, the proposed improvements, and the wastewater treatment facility more broadly, raise significant questions about the long-term appropriateness of siting such critical public infrastructure in a low-lying floodplain near the mouth of a major river and surrounded by State parkland and sensitive wetland and riverine habitat. Indeed, the Plant already is subject to flood events, and these events are expected to worsen over time given the expected impacts from climate change, including from changes to water levels at the adjacent Carmel River lagoon from sea level rise, as well as from increases in Carmel River flow intensity from increased storm intensity. These factors, combined with other envisioned management measures that may materially alter the Carmel River lagoon and floodplain,<sup>2</sup> demonstrate that the Plant is located in a highly dynamic environment that may not be an appropriate place for wastewater treatment services in the future.

Thus, while the project constitutes an important water quality and public health improvement in the near term, adding new infrastructure to the site in the long term raises consistency issues with Coastal Act Section 30253(a), which requires new development to minimize risk to life and property from flooding. That is particularly important with critical public infrastructure like this that has a high consequence/impact potential when subject to such flooding/coastal hazard risk. To ensure consistency with Coastal Act requirements necessitating risk minimization, particularly for critical

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<sup>2</sup> Including breaching of the Carmel River as well as the Carmel River Floodplain Restoration and Environmental Enhancement Project (Carmel River FREE) projects, all as described in more detail in this report.

infrastructure, the approval must include a series of conditions aimed at addressing and avoiding long-term hazards risk.

As such, the approval is subject to special conditions, including acknowledging and accepting coastal hazards risk, waiving armoring rights, and making clear that the CDP amendment approval is to allow for the Plant to operate while simultaneously allowing time for CAWD to consider, plan, develop, and implement a long-term solution to address flooding and related coastal hazards without armoring and with the fewest coastal resource impacts. On this point, the CDP amendment specifies the parameters for coastal hazards monitoring. This includes setting up a monitoring program (i.e., a “Coastal Hazards Monitoring Plan;” **Special Condition 8**) that, among other things, requires CAWD to monitor hazard conditions and keep track of CAWD’s responses to those conditions. This will better inform CAWD and the Commission of the hazards the Plant is facing and the necessary actions (and coastal resource impacts) associated with them. The analyses from the Coastal Hazards Monitoring Plan will help inform long-term solutions at the site with respect to addressing hazards. Specifically, **Special Condition 9** requires CAWD to develop a Long-Term Coastal Hazards Plan, the objective of which is to evaluate and identify measures, including Plant relocation, to address Plant needs and functions in the long term in relation to coastal hazards risks without the use of armoring or similar large-scale coastal hazard abatement measures (e.g., berming, levees, substantial alteration of landforms, riprap, etc.) and their attendant coastal resource impacts. In essence, the Long-Term Coastal Hazard Plan’s purpose is to evaluate coastal hazards risks and identify the most appropriate solutions to address those risks while avoiding the use of armoring and other hazard response mechanisms that have significant coastal resource impacts. **Special Condition 7** further requires the submittal of progress reports, including for Commission oversight of the hazard abatement and monitoring program, and within the overall framework of CDP flexibility and adaptability of making needed changes as opposed to locking in any particular outcome in perpetuity. The intent is to have the CDP be flexible and dynamic and able to better respond to coastal hazard risks and uncertainties, including through required monitoring and reporting of coastal hazard risk and abatement strategies. As conditioned, the proposed project can be found consistent with Coastal Act coastal hazard requirements.

In addition, in 2017, Commission staff became aware of the removal of some 2,500 square feet of riparian vegetation on the Plant’s periphery, which is an environmentally sensitive habitat area (ESHA). CAWD stopped the work and indicated to Commission staff that the removal was being done in preparation of replacing the Plant’s perimeter fence. Though it impacted a relatively small area of the CAWD site and has since partially grown back, the vegetation removal raises conformance issues with the existing amended CDP’s terms and conditions, which do not authorize vegetation removal, and with the Coastal Act, which also does not authorize vegetation removal in ESHA for wastewater treatment plant infrastructure. It also raises questions about the proper management of this important habitat area, which totals roughly 10 acres on District property along the Carmel River and is contiguous with Carmel River State Beach parkland. It also raises questions about whether this area is being properly

protected, as was the Commission's intent in its initial 1981 CDP approval and amendments since that time. Staff has worked with CAWD staff on this issue, and believes the best way to ensure this habitat's protection moving forward is to place these lands located outside of the primary wastewater infrastructure development envelope in a conservation easement to be held by a public or private resource conservation/management entity, allowing for habitat protection and restoration activities and low-intensity public access and recreation. Placing these 10 acres in a protective easement better reflects the importance of these lands, both in terms of habitat values but also in terms of public access and recreation due to their location adjacent to existing State Parks' lands, and can offset impacts from past vegetation removal appropriately. As conditioned, the lands can better serve these important public policy functions, consistent with the Coastal Act.

Finally, the application offers an opportunity to update other existing CDP conditions, including deleting conditions that are no longer in effect or have already been met (e.g., related to the Plant's initial siting and design back in 1981), updating certain conditions to reflect on-the-ground conditions (e.g., modifying treatment capacity from 4.0 million gallons to day to 3.0 million gallons per day to match the Central Coast Regional Water Quality Control Board's permit), and to reflect more modern language regarding coastal resource protection and critical infrastructure (e.g., related to repair and maintenance protocols). These changes will ensure that the requirements of the CDP, as amended, are clear to all parties moving forward and should help aid in wastewater treatment function and coastal resource protection.

Staff has worked collaboratively and constructively with CAWD staff and community stakeholders throughout the CDP amendment process to develop conditions that resolve the violations and address the Plant's and surrounding area's current needs and long term future. CAWD staff indicates they are in agreement with the recommended terms and conditions of the CDP as amended. The motion and resolution to effect this recommendation are found on page 7.

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### APPENDICES

Appendix A – Substantive File Documents

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### EXHIBITS

Exhibit 1 – Project Location Maps and Site Photos

Exhibit 2 – Site Plan of Proposed After-the-Fact Wastewater Improvements

Exhibit 3 – CDP 3-82-199-A8 Conditions and Figures

Exhibit 4 – CAWD Resolution 92-39

Exhibit 5 – Excerpts of Commission Findings Regarding CAWD Property ESHA

## I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit amendment 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 amendment 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** the proposed amendment to Coastal Development Permit Number 3-82-199 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP Amendment:** The Commission hereby approves Coastal Development Permit Amendment Number 3-82-199-A8 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 amendment 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

Note that the following standard conditions are those from the existing CDP 3-82-199 as amended, and remain unchanged with this amendment. See Exhibit 3 for a clean version of the standard and special conditions of CDP 3-82-199 as amended through and including amendment 3-82-199-A8.

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth

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below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. **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.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

Note that the following special conditions are shown in strikethrough and underline from the existing CDP 3-82-199 as amended and with the changes required of this CDP amendment action. See Exhibit 3 for a clean version of the standard and special conditions of CDP 3-82-199 as amended through and including amendment 3-82-199-A8.

This permit is granted subject to the following special conditions:

1. a. ~~**Approved Project and CDP Intent** Facilities. The approval of this project is limited to those facilities shown on Exhibit 1 and Exhibit 2a as modified by condition 2a or 2b as second priority and only with State Department of Parks and Recreation approval. Other than normal repair and maintenance as defined in Section 30610(d) of the Coastal Act, any modifications to any approved project components within the Coastal Zone or any alteration of major vegetation, or any additional components shall require an amendment to this permit. Separate Coastal Development permit(s) shall be required for any reclaimed water lines off the main line to serve currently nonexistent uses and for all reclaimed water storage facilities. Offsite disposal of excavated spoils within the Coastal Zone shall be subject to prior review and approval by the Executive Director. This CDP amendment authorizes wastewater infrastructure and associated development at the Carmel Area Wastewater District (CAWD) Wastewater Treatment Plant (WWTP) site, all as described and shown on the plans titled "Existing CAWD WWTP Development Envelope" and "Existing CAWD WWTP Development & Surrounding CAWD Properties" prepared by CAWD dated February 2020 and dated received in the Central Coast District Office on February 11, 2020 (see Exhibit 3), and pursuant to these standard and special conditions. With the exception of the access road leading to the wastewater treatment plant from Highway 1 and any existing offsite collection and distribution pipelines (including along the pedestrian bridge crossing the Carmel River) and~~

storm drain infrastructure, all wastewater treatment development (including but not limited to all wastewater treatment plant buildings, tanks, infrastructure, parking, walkways, perimeter fences, etc.) shall be located within the development envelope identified in Exhibit 3.

By acceptance of this CDP (as amended), the Permittee acknowledges and agrees that the intent of this CDP approval is to allow for the WWTP to be used and maintained consistent with the terms and conditions of this CDP, while simultaneously allowing time for the Permittee to plan, develop, consider, and implement a long-term solution to address flooding and related coastal hazard threats to the WWTP (including as these threats may be exacerbated by climate change) in a manner with the least amount of coastal resource impacts. If one or more of the following occur, the Executive Director shall notify the Permittee that the matter will be brought to the Commission for consideration and potential action, which may include, but not be limited to, modification of the terms and conditions of this CDP (see also Special Conditions 7 through 10):

- a. Coastal hazards are adversely affecting WWTP operations in a manner that requires shoreline/riverine armoring or other substantial alteration of landforms (e.g., berming, construction of levees, installation of riprap, etc.) that result in adverse coastal resource impacts.
- b. The Executive Director is not satisfied regarding compliance with Special Condition 7 with respect to the information provided in the required five-year progress reports.
- c. The Executive Director-approved “Long-Term Coastal Hazards Plan” specified in Special Condition 9 requires implementation measures to address long-term coastal hazards avoidance.

## **2. Service Area, Assessments, and Financing.**

**ab. Service Area.** ~~Additions to the service area within the coastal zone to treat wastewater within the coastal zone, beyond the approved current sewer service area shown on Exhibit 3 must be designated in a certified Local Coastal Program and shall require an amendment to this CDP or a separate CDP Coastal Development Permit. This condition does authorize supplying locations outside the service area with reclaimed water, provided the receiving land use is existing or has been approved by the County or the Commission or is existing.~~

**c. Assessments.** ~~CSD shall not cause any property located outside its current district boundary or that approved in the future under 1b within the coastal zone to be “assessed for benefits received” from the approved project; nor shall any future payment be accepted by CSD in exchange for a promise to serve, to issue sewer connection permits to, or to annex any such property. “To serve” shall not be construed to limit the geographic area to which CSD may supply reclaimed~~

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~~wastewater, provided the receiving land use is existing or approved by the Commission.~~

**bd. Assessments and Financing.** Any revisions to CAWD's CSD's current policy not to charge vacant parcels or any parcel outside of currently authorized district boundaries shall be subject to Executive Director review and approval to determine their impact on development patterns and coastal resources and to determine if the changes result in the need for a permit amendment. ~~(per Ca. Adm. Code 13652.)~~

~~2. Final Plan Review. Prior to the bid award and commencement of construction, permittee shall submit final plans and specifications for Commission review and approval. (Note: This condition may be complied with by segment if project is staged). Plans shall include alignment, depth, designation of vegetation to be removed, revegetation and landscaping, any permanent above-ground structures and other construction details. In approving the final plans, the Commission shall impose any other conditions deemed necessary to minimize adverse impacts.~~

~~a. If CSD chooses to construct the alternative authorized under Exhibit 2a, plans shall show all permitted facilities within the existing fenced treatment plant grounds unless CSD demonstrates and SWRCB certifies that such is technologically infeasible or will interfere with the operations of a 4 MGD treatment facility. If so demonstrated, plans may include facilities in the degraded riparian area shown on Exhibit 5. (see also Exhibit 4).~~

~~b. No provisions for filling any stream bed or for any diking (other than the pond walls) shall be included in the plans.~~

~~c. Plans shall include additional landscaping provisions, developed in consultation with the Department of Fish & Game, Soil Conservation Service and Department of Parks and Recreation including (1) limits of vegetation removal; (2) revegetation of demolished pump station area (if not utilized for other facilities), pipeline route from the plant to Delores Street and any other portion of the route through vegetated areas and; (3) additional native tree planting for visual screening and habitat restoration. (With the approval of State Parks landscaping area may be designated on Parks land adjacent to CSD property).~~

~~d. Plans shall incorporate the recommendations of the archaeological investigation per condition 7.~~

~~e. Plans shall incorporate the recommendations of the geotechnical and floodplain investigations per condition 5.~~

~~f. Plans shall include provisions for noise, dust, and erosion control as specified in the EIR.~~

~~g. The plans shall outline procedures to minimize the disruption of public access including a public notification system identifying construction locations and time schedules, and public safety precautions.~~

~~h. Plans shall incorporate energy saving and alternative energy components to the maximum extent feasible.~~

**3. Capacity.** The maximum dry weather authorized treatment capacity shall be as specified by the RWQCB or SWRCB, but not to exceed 3.0 ~~4.0~~ m.g.d average flow. PBCSD's one-third portion (i.e., up to 1.00~~3.3~~ m.g.d.) used in the coastal zone shall be allocated pursuant to the Del Monte Forest Land Use Plan (i.e., ~~Table B shown in Exhibit 4~~). ~~CAWD~~CSD may allocate any of its two-thirds portion (i.e., up to 2.00~~7.7~~ m.g.d.) to uses outside of the coastal zone; any allocation within the coastal zone must conform to the Carmel Area, Carmel City, or Del Monte Forest Land Use Plans. Any proposed material change in the 2/3 to 1/3 allocation between ~~CAWD~~CSD and PBCSD shall include documentation of potential impacts on coastal zone development and shall require an amendment to this permit.

**4. a. Coastal Resource Conservation Easement.**

**a. Easement Objectives.** The objectives of the Coastal Resource Conservation Easement (Easement) are to ensure the conservation and protection of riparian and other sensitive habitat as well as to provide for public access and recreational opportunities within the Easement Area in perpetuity.

**b. Easement Area.** The Easement Area shall be defined as all areas on CAWD property (APNs 099-511-010, 009-521-004, and 009-541-025) that are located outside of the development envelope as identified in Exhibit 3.

**c. Easement Restrictions.** No development, as defined in Public Resources Code Section 30106, shall occur within the Easement Area except for (1) habitat protection and restoration activities; (2) low-intensity public access and recreational development, including a trail along the Carmel River to the shoreline; and (3) repair and maintenance of existing wastewater distribution pipelines.

**d. Easement Recordation.** PRIOR TO ISSUANCE OF THE AMENDED CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate the Easement to a public agency or private entity approved by the Executive Director. The recorded Easement document shall include a legal description and corresponding graphic depiction of all legal parcels in the Easement Area, and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the Easement Area prepared by a licensed surveyor, including based on an on-site inspection of the Easement Area. The Easement shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed; shall run with the land in

favor of the People of the State of California, binding all successors and assigns of the Permittee and/or landowners in perpetuity; shall be irrevocable for a period of 21 years, such period running from the date of recording; and shall indicate that Easement Restrictions on the use of the land shall be in effect upon recording and shall remain as covenants, conditions and restrictions running with the Easement Area land in perpetuity, notwithstanding any potential revocation of the offer to dedicate the Easement.

~~Resource land protection. Within one year of the effective date of this permit, CSD shall prepare a plan for Commission review and approval for maximum preservation of its riparian woodland as habitat land (see Exhibit 5). The plan shall identify (1) needed facilities that will be required to meet water quality standards and serve future growth (considering current local planning efforts such as the Carmel Valley Master Plan, local coastal programs and AMBAG population projections) and (2) facility locations based on the following priorities:~~

- ~~\_\_\_\_\_ 1<sup>st</sup> —existing fenced plant boundaries and degraded riparian areas~~
- ~~\_\_\_\_\_ 2<sup>nd</sup> —vacant lands on north side of Carmel River~~
- ~~\_\_\_\_\_ 3<sup>rd</sup> —agricultural lands~~
- ~~\_\_\_\_\_ 4<sup>th</sup> —non-degraded riparian habitat lands~~

~~Acceptable preservation techniques include sale, trade or grant of land to Department of Parks and Recreation, conservation easement, deed restriction, or management agreement with a resource agency or conservation foundation.~~

~~b. Access Easement. Prior to the award of the bid and commencement of construction, CSD shall submit for Executive Director review and approval either (1) an agreement suitable for recording allowing public access over a portion of its property or (2) an offer to dedicate to another public agency a portion of its property as part of a pedestrian trail along Carmel River to the shoreline.~~

~~The public trail area through CSD property can be limited to 10 feet in width and sited and fenced if necessary to avoid public interference with the treatment plant operation. The trail may pass through the habitat area. If a certified local coastal program contains an access component expressly excluding this site as a trail location, this condition shall become null and void and the agreement or offer may be terminated.~~

~~If CSD offers a trail dedication any public agency or private association accepting such dedication shall limit public use to pedestrian and equestrian access and shall assume responsibility for maintenance and liability. The offer shall run with the land in favor of the People of the State of California, binding its successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 25 years, such period running from the date of recording.~~

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~~c. CSD shall, by accepting the terms and conditions of the permit, agree that permit issuance and completion of the authorized development shall not prejudice any subsequent assertion of public rights, e.g. prescriptive rights, public trust, etc.~~

~~5. a. Project Investigation. Prior to the award of the bid and commencement of construction, permittee shall submit for Executive Director review (in consultation with the staff geologists and Division of Mines and Geology staff if necessary) (1) geotechnical investigation for the proposed project, covering lateral spreading, liquefaction, and tsunami potential, and (2) a hydrologic report indicating that the proposed project will not cause an increase in the water surface elevation of the 100 year flood and investigating non-structural flood mitigations.~~

~~b. Floodplain Study. Carmel Sanitary District shall cooperate with and participate in, if necessary, the floodplain management program for the lower Carmel River Valley, if undertaken.~~

~~6. a. Liability Disclaimer. In accepting this permit, CSD acknowledges that some of the permitted facilities lie within apparent high seismic and flood hazard areas, and further acknowledges that the State of California assumes no liability for loss of life or property which may result from the installation of these facilities.~~

~~b. Protective Work's Limitations. Prior to award of the bid and commencement of construction, CSD shall submit for Executive Director review and approval a binding agreement stipulating that it will not construct any flood protection dike (other than the pond walls) or similar structure unless such protective devices are specifically authorized under a comprehensive floodplain management program for the lower Carmel River.~~

~~7. Mitigation Plan. Based on the further archaeological work recommended by the archaeological consultants and required by SWRCB, CSD shall submit a plan of mitigation, prepared by a qualified professional archaeologist and using accepted scientific techniques, prior to any disturbance of the surface area of the project sites except for archaeological testing purposes. Such plan shall be submitted for review by the Cultural staff of SWRCB and the approval of the Executive Director. The plan shall provide for reasonable mitigation of archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted upon completion of excavation, for review and approval by the Executive Director.~~

~~8. Report and Program. Prior to the award of the bid and commencement of construction, CSD shall submit for Executive Director review and approval: (a) a report assessing the effects of odor control improvements (as required under P-2158), and (b) a program—including an implementation time table and certified by the design unit of the SWRCB's Division of Water Quality—for any additional odor control provisions necessary (1) to correct any existing problems identified under (a) and (2) to ensure that~~

~~the new project components authorized by this permit will not cause objectionable odors.~~

~~9. Staging Area Plans. Prior to commencement of construction, permittee shall submit final staging area plans for Executive Director review and approval. Provisions shall include locations out of agricultural lands and riparian habitats and then as removed from the public view as possible; screening; non-interference with agricultural operations or public access, and site restoration.~~

~~10. Committee Participation. Carmel Sanitary District shall participate in the Wastewater Reclamation Advisory Committee established under Coastal Permit Appeal 80-80.~~

~~11. Evidence of Approvals. Prior to the bid award and commencement of construction, permittee shall submit to the Executive Director evidence of necessary approvals consistent with the provisions of this permit from Department of Fish and Game, U.S. Army Corps of Engineers, Carmel, Pacific Grove, Monterey County, and MRWPCA (agreement to take excess flows). (Note: This condition may be complied with by segment if the project is staged).~~

~~12. Prior to the issuance of a permit, the applicant shall submit revised plans for the review and approval of the Executive Director which will require the minimum amount of agricultural land to be converted for the proposed project, consistent with Department of Parks and Recreation requirements. These revised plans will consider the feasibility of retaining all structures on the present treatment plant site and in no case will require more than 5.3 acres of agricultural land conversion.~~

~~13. The applicant will offer the prime soils to be excavated for this project for enhancement of other agricultural land or use of these soils for landscaping. This offer will be advertised in at least two local papers in at least two editions of each. The soil will be available at no charge for a minimum period of thirty days following publication of the final advertisement.~~

**5. Future Maintenance Authorized.** This CDP authorizes future maintenance to the wastewater treatment plant facilities as identified in Special Condition 1 and Exhibit 3 subject to the following:

- a. **Maintenance.** “Maintenance” as it is understood in this special condition means development, including repairs, improvements, and replacement, that would otherwise require a CDP whose purpose is to maintain the function of the approved wastewater treatment plant facilities in a manner that does not have any adverse impacts to coastal resources. Maintenance shall not include any development that meets any of the following criteria: 1) increases the capacity of wastewater treatment as identified in Special Condition 3; 2) is related in any way to coastal hazards avoidance/protection (e.g., elevating/flood-proofing structures, constructing levees, installing riprap or other armoring, etc.); 3) includes construction of any new off-site water pipelines to serve currently nonexistent uses or for any new reclaimed water storage facilities; and/or 4) falls outside the

scope of this condition as determined by the Executive Director. Any development meeting the above criteria shall not be considered maintenance covered under this CDP, but shall require a separate CDP or CDP amendment.

- b. Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits and/or authorization from other agencies for any future maintenance and/or repair episodes.
- c. Maintenance Notification.** At least 30 days prior to commencing any maintenance event defined in Special Condition 5(a) above, the Permittee shall notify, in writing, planning staff of the Coastal Commission's Central Coast District Office. The notification shall include: (1) a detailed description of the maintenance event proposed; (2) any plans, biological, engineering and/or geology reports relevant to the event; (3) a construction plan that complies with all aspects of the approved construction plan as described in **Special Condition 6**, including identification of a construction coordinator and his/her contact information (i.e., address, email, phone numbers, etc.); (4) other agency authorizations; and (5) any other supporting documentation (as necessary) describing the maintenance event. The maintenance event shall not commence until the Permittee has been informed by planning staff of the Coastal Commission's Central Coast District Office that the maintenance event complies with this CDP. The notification shall clearly indicate that the maintenance event is proposed pursuant to this CDP. In the event of an emergency requiring immediate maintenance, the notification of such emergency episode shall be made as soon as possible, and shall (in addition to the foregoing information) clearly describe the nature of the emergency. If the Permittee has not been given a verbal response or sent a written response within 30 days of the notification being received in the Central Coast District Office, the maintenance event shall be authorized as if planning staff affirmatively indicated that the event complies with this CDP. The notification shall clearly indicate that the maintenance event 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 this CDP. Absence of such description in the notification shall negate the automatic approval provisions of this condition.
- d. Maintenance Coordination.** Maintenance events shall, to the degree feasible, be coordinated with other maintenance events proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs. As such, the Permittee shall make reasonable efforts to coordinate the Permittee's maintenance events with other adjacent events, including adjusting maintenance event scheduling as directed by planning staff of the Coastal Commission's Central Coast District Office.
- e. Restoration.** The Permittee shall restore all areas impacted by maintenance activities to their pre-construction condition or better (with respect to habitat meaning revegetation with genetically-appropriate native species reflecting a comparable size class/age structure as before and removal of any invasive non-

native species) at the conclusion of any maintenance event. Where ground disturbance is necessary, topsoil should be preserved and respread over the area at the completion of maintenance activities, so as to preserve the native seedbank. All construction debris shall be removed from the area within three days of completion of construction. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office upon completion of restoration activities to arrange for a site visit to verify that all restoration activities are complete. If staff identifies additional reasonable measures necessary to restore the affected area, such measures shall be implemented as quickly as reasonably possible.

- f. Noncompliance with CDPs.** If the Permittee is not in compliance with the terms and conditions of any Coastal Commission CDPs or other coastal authorizations that apply to the project area at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition shall not be allowed by this condition until the Permittee is in full compliance with those terms and conditions.
- g. Emergency.** In addition to the emergency provisions set forth in subsection (c) above, nothing in this condition shall serve to waive any Permittee rights that may exist in cases of emergency pursuant to Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).
- h. Duration of Covered Maintenance.** Future maintenance under this CDP is allowed subject to the above terms and subject to Executive Director review and approval every five years to verify that there are not changed circumstances associated with such maintenance activities that necessitate re-review. It is the Permittee's responsibility to request Executive Director approval prior to the end of each five-year maintenance period (i.e., with the first maintenance period ending on March 11, 2025), coinciding with the dates in Special Condition 7. Maintenance can be carried out beyond 2025 (and beyond subsequent five-year periods) if the Permittee requests an extension prior to the end of each five-year maintenance term and if the Executive Director extends the maintenance term in writing. The intent of this permit is to allow for five-year extensions of the maintenance term for as long as the permitted wastewater treatment plant development remains authorized unless there are changed circumstances that may affect the consistency of this maintenance authorization with the policies of Chapter 3 of the Coastal Act and thus warrant a re-review of this permit.

**6. Construction Plan.** PRIOR TO ANY CONSTRUCTION AND ANY MAINTENANCE EVENT PURSUANT TO SPECIAL CONDITION 5, the Permittee shall submit a Construction Plan to the Executive Director for review and approval. The Construction Plan shall include, at a minimum, the following:

- a. Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, all construction access

corridors (to the construction sites and staging areas), and all public access corridors in site plan view. All such areas within which construction activities and/or staging are to take place must be located within the development envelope as identified in Special Condition 1 and Exhibit 3, unless areas outside the development envelope are specifically authorized by the Executive Director.

- b. Construction Methods and Timing.** The Construction Plan shall specify all construction methods to be used, including all erosion control/water quality best management practices to be implemented during construction and their location.
- c. Construction Criteria.** The Construction Plan shall, at a minimum, include the following required criteria specified via written notes on the Plan:
- 1) All work shall take place during daylight hours unless, due to extenuating circumstances, the Executive Director authorizes non-daylight work lighting.
  - 2) Construction (including construction activities, materials, and/or equipment storage) is prohibited outside of the development envelope, unless areas outside the development envelope are specifically authorized by the Executive Director.
  - 3) For any maintenance located outside of the development envelope, if nesting season (February 1-September 1) cannot be avoided, bird surveys shall commence no more than 30 days prior to the initiation of construction and occur weekly, with the last survey occurring no more than 72 hours prior to the start of construction. Surveys shall be completed by a qualified biologist with experience in breeding and nesting bird surveys, and shall extend at least 500 feet out from the disturbance area in all directions for raptors, and 300 feet in all directions for other migratory non-game species. For any active nests that are located, project activities within 500 feet of raptor nests or 300 feet of other species shall be postponed until juveniles have fully fledged and there is no evidence of a second attempt at nesting. Flagging, stakes, and/or construction fencing shall be used to demarcate the boundary between project activities and the nest(s), and shall remain in place for as long as construction is occurring or until the nest is no longer active.
  - 4) The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather).
  - 5) All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday. At a minimum, silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or

sediment from entering into the Carmel River and ultimately the Pacific Ocean.

- 6) 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
- 7) The Applicant shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

**d. Construction Site Documents & Construction Coordinator. DURING ALL CONSTRUCTION:**

- 1) **Construction Site Documents.** Copies of this signed CDP and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- 2) **Construction Coordinator.** A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the coordinator's contact information (i.e., address, email, phone numbers, etc.) including, at a minimum, a telephone number and email address that will be made available 24 hours a day for the duration of construction, shall be 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 an indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (e.g., name, 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

All requirements of the condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

**7. CDP Monitoring and Reporting.** The Permittee shall submit progress reports at five-year intervals by May 1st of each fifth year following approval of this CDP amendment (with the first report due on May 1, 2025, the next on May 1, 2030, etc.) that include and describe coastal hazard trends and changes since approval of this CDP amendment (for the first report in 2025) or since submission of the prior report, as well as cumulatively describing such changes over time, and that identify the status of efforts to monitor and address coastal hazards in both the short term (including through implementation of the “Coastal Hazards Monitoring Plan” as identified in Special Condition 8) and the long term (including through implementation of the “Long-Term Coastal Hazards Plan” as identified in Special Condition 9).

If the Executive Director reviews the report and is satisfied with the progress made towards compliance with these short- and long-term requirements, then the Executive Director shall notify the Permittee of this determination, and this CDP authorization shall continue uninterrupted. If the Executive Director reviews the report and reasonably concludes that the Permittee is not making significant and diligent progress towards compliance with the terms and requirements of this CDP, based on the benchmarks set forth in the “Coastal Hazards Monitoring Plan” (Special Condition 8) and the “Long-Term Coastal Hazards Plan” (Special Condition 9), or if there is a reasonable risk in the next 10 years following submission of the most recent report of 100-year flood levels exceeding the flood protection design of as then currently-built, critical WWTP components, then the following shall take place: the Executive Director shall notify the Permittee of this determination, and the matter will be brought to the Commission for consideration and potential action, which may include, but not be limited to, modification of the terms and conditions of this CDP.

**8. Coastal Hazards Monitoring Plan.** WITHIN ONE-YEAR OF APPROVAL OF THIS AMENDED CDP (i.e., no later than March 11, 2021), or as extended by the Executive Director for good cause, the Permittee shall submit two copies of a Coastal Hazards Monitoring Plan for monitoring and addressing coastal hazards at the wastewater treatment plant site to the Executive Director for review and approval. The Plan shall at a minimum establish the framework and parameters to address the following:

- a. Coastal Hazards Conditions.** Flood conditions and other coastal hazards in the vicinity of the WWTP shall be regularly monitored (including Carmel River flows, lagoon water surface elevations, sandbar elevations, and sea levels), including through flood modeling updates as needed to incorporate modified conditions and/or projections.
- b. Coastal Hazards Response.** Impacts of such coastal hazards on the operations of the WWTP, and the responses to them to allow continued appropriate and required functioning of the WWTP, shall be identified, including any potential need for shoreline armoring or other substantial alternation of landforms to address the identified hazards.

- c. **Coastal Hazards Triggers.** Coastal hazards “triggers” intended to establish when major actions (i.e., hazard abatement activities such as retrofits, upgrades, berms/levees/shoreline protective devices, and including WWTP relocation) may need to be pursued in response to specific hazard events shall be identified, as well as identifying the timing for when and how those triggers are to be implemented via the Long Term Coastal Hazards Plan pursuant to Special Condition 9.
- d. **Regional Effects.** The effect of nearby and regional projects affecting Carmel River and the Carmel River Lagoon on WWTP operations including in terms of flood risks, shall be identified.

Upon Executive Director approval of the Plan, the Permittee shall implement the monitoring and other measures identified in the Plan, and shall submit information regarding progress in implementing the Plan in conjunction with the required five-year progress reports (see Special Condition 7). The Permittee shall update and revise the Plan as necessary, subject to Executive Director approval, to ensure that the Plan effectively carries out the requirements of Special Condition 7.

**9. Long-Term Coastal Hazards Plan.** WITHIN TWO YEARS OF APPROVAL OF THIS AMENDED CDP (i.e., no later than March 11, 2022), or as extended by the Executive Director for good cause, the Permittee shall submit two copies of a Long-Term Coastal Hazards Planning Roadmap to the Executive Director for review and approval. The Planning Roadmap shall describe the specifics that will be analyzed during the iterative planning process, building upon the work prepared in accordance with Special Condition 8’s Coastal Hazards Monitoring Plan and Special Condition 7’s five-year progress reports, and including identifying the triggers for when the Long-Term Coastal Hazards Plan must be prepared for Executive Director review and approval. Ultimately, the Long-Term Coastal Hazards Plan (Plan) will address the specific manner in which the Permittee intends to plan, develop, consider, and implement a long-term solution to address flooding and related coastal hazards threats to the WWTP (including as these threats may be exacerbated by climate change) in a manner with the least amount of coastal resource impacts. The Plan shall include the identification of periodic benchmarks describing the type and timing of actions to be taken to address coastal hazards and by which progress in implementing the Plan can be measured in accordance with the periodic, five-year check-in progress reports required under Special Condition 7. The objective of the Plan is to evaluate (in conjunction with, and, as appropriate, based on the information developed and provided as part of the “Coastal Hazards Monitoring Plan” identified in Special Condition 8) measures, including up to WWTP relocation, to address WWTP needs and functions in the long term in relation to coastal hazards risks without the use of armoring or similar large-scale coastal hazard abatement measures (e.g., berming, levees, substantial alteration of landforms, riprap, etc.) and their attendant coastal resource impacts. The Plan shall at a minimum identify capital costs, long-term life-cycle cost analyses, wastewater rate effects, environmental analysis, land use analysis, and impacts to current water resources and water recycling activities for a range of alternatives, including

adaptation in place, relocation of the WWTP away from coastal hazards, consolidation with Monterey One Water, and other potential alternatives. Upon Executive Director approval of the Plan, the Permittee shall submit information regarding progress in implementing the Plan in conjunction with the required every-five-year progress reports (see Special Condition 7).

**10. Coastal Hazards Risks.** By acceptance of this CDP, the Permittee acknowledges and agrees on behalf of itself and all successors and assigns to unconditionally:

- a. **Recognize Coastal Hazards.** Recognize that the site is subject to coastal hazards including but not limited to long term shoreline retreat and coastal erosion, storms, tsunamis, flooding, geologic instability, all as potentially exacerbated by sea level rise, and the interaction of same.
- b. **Assume Hazard Risks.** Assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such coastal hazards in connection with this permitted development.
- c. **Waive Armoring Rights.** Waive any rights that it may have under Coastal Act Section 30235, the Monterey County LCP, and other applicable law to shoreline armoring and similar coastal hazard abatement measures.
- d. **Waive Liability.** Waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
- e. **Indemnify Commission.** Indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of this 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.
- f. **Recognize Responsibility.** Recognize that any adverse effects to property caused by the permitted project shall be fully the responsibility of the Permittee and property owner.

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

## IV. FINDINGS AND DECLARATIONS

### A. Project Location, Background, and Description

#### Project Location and Background

The Carmel Area Wastewater District's (CAWD's) wastewater treatment plant (Plant) was originally designed and built in 1939 with a capacity of 0.8 million gallons per day (mgd). The Plant has had numerous improvements over the years, including some that were approved via a CDP and amendments to that CDP, which authorized system capacity expansions and tertiary treatment to produce recycled water for Monterey peninsula golf courses (including Pebble Beach Golf Links). Today the Plant, which serves the communities of Carmel Valley, Del Monte Forest, and the City of Carmel-by-the-Sea, has an average dry weather treatment capacity of 1.8 mgd and produces 1.0 mgd of recycled water during the summer months.

More specifically, the Commission approved CDP 3-82-199 in 1981,<sup>3</sup> which authorized a series of Plant improvements and upgrades needed to ensure compliance with ocean discharge water quality requirements promulgated by the State Water Resources Control Board (SWRCB). At that time, the Plant had the capacity to treat 2.4 mgd of wastewater, but its inadequately sized pump station resulted in four raw sewage spills into the Carmel River in three years. In addition, since there was only one sedimentation basin (which is needed for secondary treatment), the lack of redundancy resulted in only primary wastewater treatment when the sedimentation basin was inoperable, including during repairs. To rectify these problems, the 1981 CDP authorized a second sedimentation tank, a new pump station, and associated capacity and distribution infrastructure. The CDP approval also authorized construction of on-site facilities and off-site distribution pipelines needed for water recycling, which was being proposed via an agreement between CAWD and the Pebble Beach Company (PBC) to provide treated wastewater to irrigate PBC's golf courses. The approval also included a series of conditions addressing the Plant's operations, including service area boundaries (i.e., limiting CAWD's wastewater service boundary within the coastal zone to the City of Carmel and adjacent unincorporated neighborhoods, and requiring a CDP amendment to modify the demarcated boundaries), treatment capacity (i.e., limiting capacity to 2.4 mgd, with 0.03 mgd reserved for new Coastal Act priority land uses such as visitor-serving development), flood and coastal hazards management (i.e., prohibiting levees, dikes, and other shoreline protective devices to protect the Plant from flooding), public coastal access (i.e., requiring CAWD to offer an easement or enter into an agreement to allow a public trail along the Carmel River to the shoreline), and habitat preservation (i.e., requiring CAWD to develop a plan to protect riparian habitat outside of the Plant's boundaries).

The CDP has been amended seven times since its initial approval to authorize various other proposed changes, including new wastewater treatment structures (e.g., new

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<sup>3</sup> The CDP was initially numbered P-79-569 but was subsequently renumbered to 3-82-199 after the CDP's approval in 1981.

laboratory building, aeration basin, and a maintenance shop), a change in Plant configuration (to relocate a previously approved open reservoir equalization basin on adjacent State Park-owned land to an on-site enclosed concrete structure), an increase in Plant capacity (from 2.4 mgd to 4.0 mgd), and recycled water operations. With respect to recycled water, the CDP was last amended in 2006 to construct a new microfiltration and reverse osmosis building to remove excess salts so as to provide higher quality treated water that could better be used to irrigate PBC golf courses. Thus, the CDP, as amended, regulates the wastewater treatment plant's overall operations, including in terms of structural facilities, capacity, and service area.

### **Project Description**

CAWD seeks after-the-fact authorization for a series of Plant improvements that were undertaken in Spring 2017 without requisite CDP authorization, including construction of a new digester and digester control buildings, a new sodium bisulfite/hypochlorite facility, and a new stormwater pump station and electrical service pad; as well as a series of improvements/repairs to ten existing facilities and structures, including a new blower and associated electrical work, new pumps and electrical equipment in the pump station, new piping and a new tank in the dissolved air flotation thickener structure, a new waste gas burner, and modifications to the main and standby power systems. CAWD indicates that these improvements were not intended to add, nor were they designed for, additional treatment capacity, nor did they expand the physical footprint of the Plant (all improvements are located within the developed footprint of the Plant within its perimeter fence). Rather, these improvements were meant to optimize and upgrade the Plant as part of the District's normal operations and maintenance physical capital upgrades.

In addition, CAWD seeks after-the-fact approval of other unauthorized development, including removal of some roughly 2,500 square feet of riparian vegetation that was done in preparation of replacing the Plant's existing perimeter fence, and expansion of CAWD's wastewater service area boundaries to areas south of the Plant in Point Lobos and in the unincorporated Carmel Highlands area. And finally, CAWD proposes new development, including a new perimeter fence and a new sodium hypochlorite facility (which is proposed to be located within the existing reverse osmosis building).

See **Exhibit 1** for project location maps and **Exhibit 2** for a detailed Plant site map showing the location of proposed work.

### **B. Standard of Review**

The proposed project is located within the Commission's retained/original CDP jurisdiction area because it is in an area of historic tidelands and wetlands within the Carmel River lagoon; thus, the standard of review is Chapter 3 of the Coastal Act.

### **C. Water Resources and Coastal Hazards**

#### **Applicable Policies**

The Coastal Act protects the marine and freshwater resources and offshore habitat located in the vicinity of this site. It seeks to ensure the protection of coastal water quality, encourage wastewater reclamation and recycled water, and minimize alterations of streams and riparian vegetation. Coastal Act Sections 30230 and 30231 specifically state:

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

**Section 30231.** The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30253 requires that new development minimize risks to life and property in areas of high flood hazard and ensure long-term structural integrity in a manner without shoreline armoring, and states in relevant part:

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

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

Taken together, these Coastal Act policies require that development be sited and designed in a manner that protects water resources, including by ensuring that development is safe from flood risks – particularly when such flood risks implicate critical infrastructure that could result in adverse coastal water quality – in a manner that does not require river alteration or shoreline armoring, ensuring the protection of water quality and marine biological resources by minimizing adverse wastewater discharge, and economizing on water use through water recycling.

## **Analysis**

At a broad level, the proposed Plant development (both the completed development for which CAWD seeks after-the-fact (ATF) CDP authorization as well as the proposed new development) all constitutes important and necessary investments in critical public infrastructure. All such development maintains and improves the operations of a wastewater treatment facility that produces needed recycled water for productive use in a very water scarce area, while also ensuring the protection of public health and ocean water quality for coastal waters that are known worldwide for their public recreational value and high biological productivity. A well-functioning wastewater treatment facility, and the capital improvements needed to ensure it remains so, are critical to meeting numerous Coastal Act objectives, including the aforementioned policies protecting water quality and the biological productivity of coastal waters (Sections 30230 and 30231), as well as minimizing adverse wastewater discharge and promoting water recycling (Section 30231).

As mentioned before, CAWD notes that the proposed work, including the work that was performed without CDP approval in 2017, is part of its standard operating procedures to ensure that wastewater infrastructure is consistently inspected and repaired. The ATF development did not increase capacity or expand the Plant's physical footprint. Recognizing the continual repairs/maintenance needed for this type of critical infrastructure to remain operational,<sup>4</sup> **Special Conditions 5 and 6** authorize a repair and maintenance program that specifies the protocols for how future maintenance, repairs, improvements, and replacement are to be undertaken. Of note, these conditions specify the types of repairs covered by this program versus ones that are not (e.g., ones related to coastal hazard abatement or that increase wastewater service capacity), procedures for notification to the Executive Director, and construction requirements to protect water quality and other coastal resources, particularly sensitive resources near existing pipelines outside of the main developed Plant area. The conditions are meant to proactively address needed infrastructure repairs and to more explicitly identify the process for how to do them, including to avoid future unauthorized development such as took place in Spring 2017. These conditions provide needed clarity moving forward on this important aspect of wastewater treatment operations, consistent with the Coastal Act.

However, as stated above, the application seeks after-the-fact approval of improvements to a wastewater treatment plant that is located within a low-lying area near the mouth of the Carmel River and surrounded by wetlands, riparian habitat, and State parkland. As such, the project raises significant questions about the appropriateness of investing in new critical infrastructure that is vital to public health in an area with existing flood hazards and that is surrounded by sensitive natural resources and parkland. Indeed, the site is located within FEMA's 100-year floodplain, and has been subject to flooding events in the past. The most recent flood occurred in 1998 when wastewater components critical to secondary treatment were impacted, although there were not any violations of water quality discharge standards. Given

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<sup>4</sup> The Commission notes that most daily routine Plant operations and maintenance would not even be considered "development" under the Coastal Act (as defined in Section 30106) necessitating CDP approval.

these known hazards, CAWD has prepared an analysis to better understand future flooding risks, including the potential effects from future sea level rise and heavier Carmel River flows from storms.

The analysis identified two planning horizons: 2050 and 2100, along with two sea level rise scenarios per the Ocean Protection Council and the Commission's recent guidance: medium-high and extreme,<sup>5</sup> and three sources of potential flood risk: 1) flooding from a closed lagoon; 2) flooding from a closed lagoon with storm; and/or 3) riverine flooding from the Carmel River. In addition, the analysis included a discussion of the impacts such scenarios could have on Plant infrastructure, including Plant infrastructure necessary for wastewater treatment. The analysis concluded that flood risks would become progressively more severe for numerous reasons, including due to sea level rise changing the dynamics of the beach berm that causes the seasonal lagoon formation, resulting in a higher berm that would elevate river water levels, as well as increased flows from Carmel River due to expected stronger storms. The report identified that these flood risks can be abated (i.e., ensuring the continued operability of at least secondary treatment) by some of the same measures CAWD currently employs to address flood risks, such as flood-proofing, minor elevation of Plant structures and components, installing water tight doors, and even temporarily turning off certain wastewater infrastructure components. These are considered to be "near-term" strategies that can be employed to address potential flood risks to about the year 2060. After that timeframe, the analysis identifies a series of additional Plant components, including those critical to wastewater treatment function, which would be impacted by flooding and would warrant more substantive abatement measures beyond those that CAWD currently employs. The analysis did not identify what those measures would be, however, because of the potential severity of both the impacts and needed responses to abate those impacts. Thus, responses to impacts after 2060 are not identified, but rather noted as being outside of the planning horizon.

And finally, the analysis concluded the difficulty in precisely identifying future flood hazards due to the dynamic nature of the lagoon environment, as well as the potential lagoon management projects that may be undertaken in the future. For example, Monterey County currently breaches the Carmel River sandbar that forms at the mouth of the river with the ocean to ensure that lagoon levels stay below certain elevation levels so as to reduce flood risks for adjacent residential communities and to protect critical infrastructure. The County is looking into other lagoon management measures in lieu of artificial breaching, including potential flood walls/levees in certain areas. In addition, the County and the Big Sur Land Trust are jointly working on a large scale wetland restoration program to restore former Carmel River floodplains. This project, called the Carmel River Floodplain Restoration and Environmental Enhancement Project (Carmel River FREE), seeks to remove levees and restore over 100 acres of former Carmel River floodplain lands that were converted to agricultural and other uses in the 1930s, including to allow for a hydrologic connection east and west of Highway 1 along the southern Carmel River floodplain area. These projects are all aimed at

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<sup>5</sup> The medium-high scenario estimates roughly 2 feet of sea level rise by 2050 and 6 feet by 2100, and the extreme scenario estimates 2.7 feet of sea level rise by 2050 and 10.1 feet by 2100.

reducing flood risks in the lower Carmel River valley, but will also have the possibility of materially changing hydrologic dynamics in the area. The area in which the Plant is located is dynamic, making the already difficult endeavor of estimating future flood risks even more challenging.

In short, the analysis concluded that the Plant is already subject to flooding events, albeit rare ones that to-date have not caused damage to wastewater quality or to Plant components. This is partly because the Plant is designed to accommodate FEMA 100-year storms, including through minor elevation. However, due to a myriad of factors, including stronger storms and riverine flows, higher beach berms, and even potential public lagoon management projects, in the future the Plant will be subject to flood events with more frequency and magnitude. This will impact components that are critical to wastewater function. Thus, CAWD identified potential options for abating such hazards up to the year 2060, with additional analysis needed beyond that timeframe.

Even though the frequency of flooding of the Plant itself is not expected to be significant for several decades, adding any new development to a low-lying flood-prone area, particularly for critical infrastructure like wastewater treatment, raises questions about whether doing so minimizes risk to life and property, as required by Coastal Act Section 30253. That said, the proposed project is ancillary to existing critical infrastructure and is needed to ensure that the existing development operates safely, including as described above. Section 30253(a) doesn't prohibit any increases in risks; rather, risks have to be minimized. When increases in risk are necessary (including to meet other Coastal Act requirements, like protecting water quality as described above), commensurate steps to reduce/minimize them are also necessary. In this case, the increased risks identified above are necessary to ensure the Plant continues to operate properly. The proposed project can be considered a necessary investment meant to ensure proper Plant functioning at a time when the flooding risks are not yet significant enough to require more drastic steps. But conditions are also needed to ensure that the risk is minimized. Thus, the Commission finds that the approval of the proposed improvements are appropriate measures to provide continuing wastewater services to the Carmel community now while CAWD explores long-term solutions for the Plant given potential flooding scenarios in the future, including options for potential future relocation. Thus, in order to ensure consistency with Coastal Act requirements necessitating risk minimization, particularly for critical infrastructure, the approval must include a series of conditions aimed at addressing and avoiding longer-term hazards risk. This type of proactive resiliency planning builds off the work CAWD has already done with respect to its sea level rise vulnerability assessment, and requires CAWD to further evaluate ways to avoid, minimize, and mitigate coastal hazards risk in a manner that does not impact coastal resources (e.g., avoiding shoreline armoring).

Thus, the approval is subject to a series of special conditions aimed at addressing coastal hazards risk. First, as mentioned previously, the existing amended CDP recognized the Plant's flood risks, and included conditions requiring CAWD to acknowledge that its facilities were located within a high flood hazard area and to ensure the State of California assumes no liability for loss of life or property as a result of permitting wastewater treatment facilities in this area. **Special Condition 10** carries

over and builds upon these existing requirements by ensuring that CAWD recognizes and assumes coastal hazards risks, waiving Commission liability, and waiving any rights that it may have to shoreline armoring and similar coastal hazard abatement measures.<sup>6</sup> Next, **Special Condition 1** makes clear that the CDP approval is to allow for the Plant to operate while simultaneously allowing time for CAWD to plan, develop, consider, and implement a long-term solution to address flooding and related coastal hazard threats in a manner with the least amount of coastal resource impacts. This condition also specifies certain triggers for when this CDP would need to be brought back to the Commission for action/amendment to abate coastal hazards, namely if any type of armoring is needed, if the hazards monitoring program CAWD is required to undertake pursuant to this CDP is not being adequately implemented, or if measures identified pursuant to CAWD's long-term hazards monitoring program are needed. The intent is to have the CDP be flexible and dynamic and able to better respond to coastal hazards risks and uncertainties, including through required monitoring and reporting of coastal hazards risk and abatement strategies.

On this point, the CDP approval sets up a series of conditions specifying the parameters for coastal hazards monitoring, including setting up a monitoring program (a "Coastal Hazards Monitoring Plan" – **Special Condition 8**) that, among other things, monitors hazards conditions and keeps track of the responses to those conditions to better inform the hazards the Plant is facing and the actions (and coastal resource impacts) associated with them. Part of this analysis is also to address the dynamic nature of the lagoon environment as described above, including projects that could affect flood dynamics should they come to fruition. The analyses from this Plan will help inform long-term solutions, and **Special Condition 9** requires CAWD to develop a "Long-Term Coastal Hazards Plan," the objective of which is to evaluate and identify measures, including Plant relocation, to address Plant needs and functions in the long term in relation to coastal hazards risks without the use of armoring or similar large-scale coastal hazard abatement measures (e.g., berming, levees, substantial alteration of landforms, riprap, etc.) and their attendant coastal resource impacts. In essence, the Long-Term Coastal Hazards Plan's purpose is to evaluate coastal hazards risks and identify what type of solutions make the most sense to address those risks so as to avoid shoreline armoring and other similar hazard abatement measures with significant coastal resource impacts. Depending on the severity of risk, measures could include continuance of the status quo in terms of flood-proofing and minor elevation, or it could necessitate Plant relocation. And for all of this, **Special Condition 7** requires the submittal of progress reports, including for Commission oversight of the hazards abatement and monitoring program, and within the overall framework of CDP flexibility

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<sup>6</sup> It should be noted that even if the existing CDP did not already prohibit shoreline armoring, the Commission could still impose this condition because almost the entire Plant has been built or redeveloped since enactment of the Coastal Act on January 1, 1977 (including as evidenced by the development approved by CDP 3-82-199 as amended). Thus, the Plant does not constitute an "existing structure" for purposes of Coastal Act Section 30235's conditional allowance for shoreline armoring. In other words, and consistent with past Commission practice with respect to wastewater treatment plant redevelopment determinations (e.g., see CDP 3-19-0020, San Simeon Wastewater Treatment Plant), a wastewater treatment plant has been operating here since the 1930s, but this wastewater treatment plant has not.

and adaptability of making needed changes as opposed to locking in any particular outcome in perpetuity.

### **Conclusion**

While the project constitutes important investments in water quality and public health in the near term, the Commission believes adding new infrastructure to the site in the long term raises consistency issues with Coastal Act Section 30253, which requires new development to minimize risk to life and property from flooding. Thus, in order to find consistency with Section 30253, the Commission approves the development with conditions that require the development of a coastal hazards abatement program that includes monitoring, evaluation, and reporting of coastal hazards impacts and ways to reduce risk over the long term. As conditioned, the project is consistent with the Coastal Act's broad mandates to protect water resources and minimize coastal hazards risks.

### **D. ESHA**

#### **Applicable Policies**

Coastal Act Section 30240(a) protects environmentally sensitive habitat areas, or ESHA, by allowing only uses dependent on the resource within it (i.e., resource dependent uses such as habitat restoration, nature study, and low-intensity public access and recreation the purpose of which requires that it occur within ESHA) and only when such allowable uses do not significantly disrupt habitat values. In addition, Coastal Act Section 30240(b) requires that development adjacent to ESHA and parks and recreation areas be sited and designed to prevent impacts to such areas. Section 30240 states:

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

#### **Analysis**

The Plant is located within and surrounded by the Carmel River lagoon and its associated habitats. According to the Commission's Staff Ecologist, Dr. Lauren Garske-Garcia, the surrounding habitat is comprised of a complex of wetland and riparian vegetation, including some upland riparian vegetation immediately surrounding the Plant's developed area, all of which constitutes ESHA. This ESHA determination is consistent with the Commission's findings in its 1981 CDP approval authorizing additional wastewater infrastructure at this site. In that approval, the Commission also found the habitat surrounding the Plant to rise to the level of ESHA. Because of the sensitivity and rarity of adjacent habitat, as well as the Plant's adjacency to the public parkland of Carmel River State Beach, the CDP included a condition requiring CAWD to "prepare a plan for Commission review and approval for maximum preservation of its

riparian woodland as habitat land....Acceptable preservation techniques include sale, trade or grant of land to Department of Parks and Recreation, conservation easement, deed restriction, or management agreement with a resource agency or conservation foundation.” This condition was premised as mitigation for encroachment of some wastewater infrastructure into surrounding riparian ESHA. The particular location of the encroachment was in disturbed habitat that was previously used as a dumping ground. Nevertheless, the Commission found it to be ESHA, but allowed for wastewater infrastructure development in it to both clean up the land and in exchange for requiring the remaining habitat lands outside of the Plant’s boundaries to be protected via a regulatory instrument such as a conservation easement or land grant to a parks and recreation management entity. However, after approval, CAWD redesigned its facilities to ensure that all development stayed within the existing developed Plant footprint within the perimeter fence as opposed to encroaching within the ESHA.<sup>7</sup> As such, in 1992, the Commission found that the restoration plan no longer needed to be prepared since no encroachment into sensitive ESHA would be occurring and thus no mitigation would be required. Specifically, the Commission found that: “CAWD’s promise to not develop the riparian area fulfills the intent of the condition” (see **Exhibit 5**). In addition, Special Condition 1 of the amended CDP remained unchanged, which stated that “any alteration of any major vegetation” (such as removal of any ESHA or encroachment of development into adjacent habitat) required an amendment to the CDP.

However, in 2017 as part of the unpermitted construction of the wastewater improvements described previously, Commission staff became aware of the removal of some 2,500 square feet of riparian vegetation. CAWD stopped the work, and indicated to Commission staff that the removal was in preparation of replacing the Plant’s perimeter fence. CAWD also indicated that trimming vegetation adjacent to the fence was part of its normal operations and maintenance tasks to better demarcate Plant boundaries and ensure that such vegetation would not encroach into the Plant’s main physical space. The 2,500 square feet of vegetation has since partially grown back, and CAWD now seeks after-the-fact approval for its removal and to build a new perimeter fence.

Albeit a small area relatively speaking in this case, the vegetation removal raises a series of conformance issues with not only the existing CDP’s terms and conditions, which do not authorize vegetation removal (and the Commission’s explicit finding in 1992 that there not be any development in the habitat area), but also with the Coastal Act, which also does not authorize vegetation removal for wastewater treatment plant infrastructure in ESHA. It also raises questions about the proper management of this important habitat area, which totals some roughly 10 acres on District property and is located along the Carmel River and is contiguous with Carmel River State Beach parkland, and whether the Commission’s initial intent in its 1981 CDP approval to ensure its protection is being adequately implemented. As mentioned before, in 1992 the Commission found the intent of that previous habitat protection condition to be met by CAWD agreeing to not encroach within it. However, since development (i.e., removal

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<sup>7</sup> This redesign was authorized via CDP amendment 3-82-199-A3 in 1989.

of 2,500 square feet of vegetation) did encroach within this important habitat area, it would appear that the best way to ensure its protection would be to both clearly establish a perimeter boundary that demarcates where the Plant ends and the ESHA begins, and to again offer that land to a public agency or private entity as part of a conservation easement. In this manner, all parties can be more certain about defined boundaries, including by defining a “development envelope” where wastewater infrastructure can be located, and outside of which is protected ESHA. And such an easement can offset and appropriately resolve the impacts from the unpermitted vegetation removal. Thus, **Special Condition 1** authorizes the new fence to be located outside of the riparian vegetation and within the development envelope shown in **Exhibit 3. Special Condition 4** further identifies the habitat as being located outside of the development envelope and that it is to be placed in a conservation easement to be held by a public or private resource conservation/management entity. No development is allowed within this area except habitat protection and restoration activities, low-intensity public access and recreation (see the “Public Access and Recreation” section below for more information on this issue), and repair and maintenance of existing off-site wastewater distribution pipelines. This condition reflects the importance of this ESHA, both in terms of habitat values and public access and recreation due to its location adjacent to existing State Parks lands. As conditioned, this approval will ensure that this ESHA is adequately protected and will continue to be a part of the broader Carmel River lagoon habitat and low-intensity recreation complex, consistent with Coastal Act Section 30240.

## **E. Public Services**

### **Applicable Policies**

The Coastal Act requires public works facilities, such as wastewater treatment plants, to be limited in their service capacities to accommodate only the types and amount of development that can be built consistent with other Coastal Act policies. In particular, Coastal Act Section 30254 ensures that public works facilities do not induce growth that cannot be accommodated in a Coastal Act-consistent manner:

**Section 30254.** New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division....

### **Analysis**

To implement Section 30254’s growth inducement provisions of ensuring that wastewater service does not act as an inducer of growth that cannot be undertaken in a Coastal Act/LCP-compliant manner, the existing CDP, as amended, limits the amount of wastewater that can be treated, and also limits its service area. The existing conditions also require CDP amendments to modify such defined capacity amounts or service area boundaries. Specifically, the CDP limits the maximum dry weather wastewater treatment capacity to the amount authorized by the Central Coast Regional Water Quality Control Board (Regional Board), but not to exceed 4.0 mgd. The existing CDP also limits service area boundaries to existing developed communities in the City of

Carmel-by-the-Sea and in adjacent unincorporated residential neighborhoods. With respect to treatment capacity, CAWD's most recent permit from the Regional Board authorizes a maximum dry weather capacity of 3.0 mgd; thus, **Special Condition 3** is amended to reflect and be consistent with the Regional Board's capacity limit. And with respect to service area, CAWD expanded its wastewater service to areas south of the existing Plant site, including to Point Lobos State Natural Reserve and the Carmel Highlands neighborhood. The intent of such expansion was to provide public wastewater services to replace aging private individual septic systems in these already built residential neighborhoods and public parklands. Since none of the residential/commercial properties being served are undeveloped, and since water quality would benefit from public wastewater collection and treatment, issues regarding inappropriate growth inducement/residential sprawl are thus not implicated. As such, the boundary expansion is authorized as shown in **Exhibit 3**. As conditioned, the project is consistent with Coastal Act Section 30254.

## **F. Public Access and Recreation**

### **Applicable Policies**

Coastal Act Sections 30210 through 30213 and 30220 through 30224 specifically protect public access and recreation, and Section 30240(b) protects parks and recreational areas. In particular:

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

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

**30212(a).** 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. ...

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

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

**30221.** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future

demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

**30222.** The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

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

**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.

### **Analysis**

These overlapping Coastal Act policies clearly protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access. The Coastal Act's access and recreation policies provide significant direction regarding not only protecting public recreational access, but also by requiring that access is provided and maximized. Specifically, Coastal Act Section 30210 requires that maximum public access and recreational opportunities be provided. This direction to maximize access and recreational opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect such access; 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, such as this one. Importantly for this project, Section 30212(a) also requires that all development between the sea and the first public road provide public access, and Section 30240(b) requires development to not adversely impact adjacent park and recreation areas. Since the Plant is located between the sea and the first public road (which in this case is Highway 1) and is adjacent to the public parkland of Carmel River State Beach, these Coastal Act requirements also apply.

As discussed before, the existing CDP required CAWD either to offer to dedicate an easement to another public agency over a portion of its property for a future pedestrian trail along the Carmel River, or to enter into some other acceptable agreement to provide for same. In 1992, while no specific trail alignment or design was proposed, CAWD approved Resolution 92-39, which committed CAWD to enter into an agreement or grant an easement to a public agency that provides parks or recreation services for a pedestrian trail along the Carmel River. This Resolution is still in effect (see **Exhibit 4**). In addition, **Special Condition 4** incorporates public access provisions into the conservation easement, specifically allowing trails and other public access and recreational amenities in this area, including to connect to other trails and recreational

opportunities in the future. The easement does not require the creation of new trails, but rather ensures that a potential future trail within the easement area would not be frustrated. Since the easement area is surrounded by existing public parkland and the Carmel River, ensuring that the property remains available for future public access – and does not serve as any form of pinchpoint/obstruction to such access – is an important public policy goal for this area. As such, the project is consistent with the above-cited Coastal Act public access and recreation policies.

## **G. Public Views**

### **Applicable Policies**

Coastal Act Section 30251, cited below, protects the aesthetic and visual quality of coastal areas.

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

### **Analysis**

Coastal Act Section 30251 requires that scenic and visual qualities of coastal areas be considered and protected as a resource of public importance. New development must be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The proposed project includes new development located within the existing Plant site. While the site is near Highway 1 and adjacent to Carmel River State Beach, the Plant is surrounded by dense vegetation that obscures most views of it from offsite public vantage points. Photographs from various vantage points, including from the beach, show that the proposed development is essentially hidden from public views (see **Exhibit 1**). Furthermore, the special conditions discussed previously regarding long-term coastal hazards risk abatement, including Plant relocation, will help avoid future coastal hazards responses that may have adverse impacts on visual resources, including construction of shoreline armoring or landform alteration along the river. As conditioned, the project is consistent with the visual protection requirements of Coastal Act Section 30251.

## **H. Other**

Lastly, 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 action on the pending CDP application 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 a condition requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP (**Special Condition 11**).

## **I. Violation**

Violations of the Coastal Act exist on the subject property<sup>8</sup> including, but not limited to the following unpermitted development: installation of a new digester and digester control buildings, a sodium bisulfite/hypochlorite facility, a stormwater pump station and electrical service pad; improvements/repairs to ten existing facilities and structures; removal of roughly 2,500 square feet of riparian vegetation, and expansion of the wastewater treatment service boundary. These violations are elucidated in Commission Violation Number V-3-17-0025. Issuance of this CDP amendment and compliance with all of the terms and conditions of the CDP, as amended, will result in resolution of the aforementioned violations of the Coastal Act on the subject property going forward.

Although development has taken place prior to submission of this CDP amendment 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 amendment does not constitute a waiver of any legal action with regard to the aforementioned violations, or any other violations at the site, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a CDP. In fact, approval of this CDP amendment is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this CDP, as amended, and of the Coastal Act. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with the Coastal Act.

## **J. California Environmental Quality Act (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would

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<sup>8</sup> The project is partially proposed to resolve Coastal Act violations. 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, respectively), Commissioners should not engage in any ex parte communications related to these violations.

### 3-82-199-A8 (Carmel Area Wastewater District Treatment Plant Upgrades)

substantially lessen any significant adverse effect that the activity may have on the environment.

The Applicant, the Carmel Area Wastewater District, acting as the CEQA lead agency, adopted a Mitigated Negative Declaration (MND) for the proposed project on February 26, 2015 (State Clearinghouse #2015011007). The Coastal Commission's review and analysis of coastal development permit applications has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit terms and conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources.

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

**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Carmel Area Wastewater District Sea-Level Rise Vulnerability Assessment, Climate Change Impact Analysis and Adaptation Strategies, Environmental Science Associates (ESA), dated December 2018.

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

- Carmel Area Wastewater District (Barbara Buikema, General Manager; Patrick Treanor, Engineer)
- Pebble Beach Company
- Pebble Beach Community Services District
- California Department of Parks and Recreation
- Big Sur Land Trust
- Monterey County Resource Management Agency