

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071



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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0489

Applicant: Orange County Parks

Agent: Winecki Consulting, Inc.

Location: Strand Beach, Dana Point, Orange County (APN: 672-031-17)

Project Description: Repair and maintenance to an existing 1,250-ft. long, 13 ft. tall, 30 ft. wide rock revetment by restacking stones within revetment envelope where over-steepened and undersized riprap stones occur, removing and restacking rocks along 232 linear ft. of deep slide area seaward of toe of revetment, and importing up to 1,000 tons of 1 to 1.5-ton armorstone to fill exposed areas of the buttress slope. Also, repair and stabilization of the north and south access ramps and north stairs, monitoring of the beach and shoreline sand levels seaward of revetment for a period of three (3) years, completion of an alternatives analysis to study the feasibility of implementing public access maintenance and enhancement in the future, and installation of additional educational and wayfinding signage.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed development consists of repair and maintenance work to an existing revetment constructed prior to enactment of the Coastal Act, located along the shoreline seaward of twenty-three (23) blufftop residences in the Niguel Shores community of

Dana Point ([Exhibit 1](#)). The project consists of relocating existing rocks that have become dislodged from the revetment and are currently located within the sandy beach area and re-stacking these stones back onto the revetment structure. The project also includes importation of up to 1,000 tons of new rock, which represents approximately 20% of the volume of the existing 5,000-ton revetment. Over time, the revetment has settled; importation of new rock will return the revetment to the previously approved revetment footprint. The proposed development does not consist of any work to the buttress fill behind the revetment, will not include the addition of filter fabric, will not increase the existing footprint of the revetment, and will not increase the height of the revetment beyond previous approvals.

The existing revetment was built circa 1969 to address geologic concerns of a new housing development that was to be built atop an ancient landslide. In 1977, portions of the landslide reactivated and destabilized several of the vacant building pads. Remedial grading and reconstruction of the buttress fills took place and were completed in 1980-81, authorized by the Commission under Emergency Coastal Development Permit No. EME-134. In 1988, the revetment was rebuilt subject to an emergency exemption approved by the Commission, following severe El Niño storms in 1983 and subsequent storms in January 1988 that affected the adjacent bluff slope and completely undermined the revetment.

In 1989, the County and Niguel Shores Community Association settled litigation, and the County agreed to maintain and repair the existing rock revetment, and also to accept all liability and responsibility for any damages resulting to the Association and its property benefiting from the revetment. The County is obligated to maintain the revetment to a standard that is not less than Phase I (1969) construction and repair of the revetment. After additional litigation and mediation, the County and the homeowners agreed to a stipulated, court ordered settlement in 2015 requiring that the County prepare a CDP application. The County is proposing to repair and maintain the revetment consistent with the 1988 as-built condition.

On July 12, 2012 the Commission denied a CDP application by the County to reconstruct the revetment fronting the Niguel Shores community (CDP Application No. 5-11-053). In its denial findings, the Commission found that although past evidence of erosion indicates some form of shoreline armoring was required to protect the existing development in danger from erosion, the project had not been designed to eliminate or mitigate its adverse impacts on local shoreline sand supply, public access, or recreational opportunities. In response, the County submitted CDP Application No. 5-19-0288 for the reconstruction of the revetment that would increase its height by approximately 3 ft. and replace the smaller-sized rock with 4-ton stone. In addition, the County proposed a 10 ft. wide public walkway adjacent to the landward side of the new revetment along its entirety, connecting the existing southerly public walkway along the southern section of Strand Beach with the small County park area and the County's Salt Creek Beach Recreational area to the north. On February 13, 2020, the Commission denied this CDP because the County's proposed mitigation package was not sufficient in offsetting impacts to public access on the beach and the homeowners benefiting

from the development were not co-applicants or providing mitigation for the impacts of the proposed project.

Even though the purpose of the revetment is to protect the private blufftop development, Orange County Parks is again the sole applicant for this CDP application. In association with the previous two permit applications, the County had asked the homeowners receiving the benefit of the proposed revetment if they would like to join the County as co-applicants. The homeowners responded that they do not want to be included as co-applicants. Consistent with the requirements of Coastal Act Section 30601.5, the homeowners were provided with the opportunity to be co-applicants on the current permit pending before the Commission and once again declined. Since the current proposal consists of repair and maintenance only, the County asserts that the involvement of the homeowners is not needed, and the 2015 settlement agreement explicitly provides the County with all necessary access to private lots and any necessary encroachment permit or equivalent access rights necessary for construction associated with the revetment. Thus, the requirements of Section 30601.5 have been met.

Special Condition 1 requires the development to be undertaken consistent with the approved project plans. **Special Condition 6** requires the Commission's Executive Director to review any proposed future maintenance of the revetment, including the required prompt removal or restacking of any riprap that becomes dislodged and strewn on the beach seaward of the approved revetment toe.

To limit impacts to public access and recreation associated with future damage or changes to the revetment, **Special Condition 2** requires long-term monitoring of the revetment. This monitoring will ensure that the applicant, the City, and the Commission are aware of any damage or changes to the revetment and can determine whether repairs or other actions are necessary to maintain the shoreline protection in its approved state. The monitoring will include measurements from permanent benchmarks and ensure that no seaward encroachment has occurred.

Special Condition 3 memorializes the applicant's proposal to monitor short-term trends in the beach profile and nearshore environment (termed "shore zone") of Strand Beach. Approximately 28% of the California coastline consists of pocket beaches, including at this site, which are usually backed by coastal bluffs/cliffs. Pocket beaches often pose particularly challenging conditions for public access, where the only way to get to many of the beaches is through a few vertical access points. Pocket beaches are also different from other sandy beaches in that they have relatively constrained littoral sediment systems; sand moves on and off the beach or a short distance along the beach, and there are limited sand inputs beyond minor creeks and eroding coastal bluffs. This aspect tends to complicate analyses of how pocket beaches will respond to major storms, sea level rise, and strategies like sand replenishment. By monitoring multiple cross-shore beach transects along a pocket beach, the State can start to understand how the system responds to various environmental factors, including how sand moves around the constrained system and how resources like rocky subtidal habitat and dry beach area change with different climatic conditions.

Special Condition 4 memorializes the applicant's proposal to undertake public access monitoring and reporting at the site, and to study alternatives (and their feasibility) for future beach maintenance and/or restoration when sand supplies are anticipated to be severely diminished to the detriment of public access and recreation. The County must identify potential public and/or private funding sources to demonstrate the financial feasibility of implementing the most preferable alternative in the near future.

Special Condition 5 memorializes the applicant's proposal to submit a plan for additional wayfinding and educational signage to enhance public access and recreation at the site.

Special Condition 11 requires the applicant to acknowledge the hazards present onsite, assume the risk of such hazards, and accept full liability for developing in a hazardous location. Should the MHTL retreat landward significantly, the applicant is also required to seek additional approvals from the California State Lands Commission (CSLC) or other trustee agencies for the revetment's encroachment upon public tide lands.

Special Condition 7 requires the applicant to submit final construction plans facilitating continued public beach access and identifying appropriate Best Management Practices (BMPs) to minimize potential impacts from construction-related pollutants. **Special Conditions 10 and 11** require submittal of grunion and avian monitoring and avoidance plans for sensitive marine and avian species, such as California least terns and western snowy plovers, which may be encountered during construction activities. **Special Condition 10** requires the applicant to acknowledge that public rights may exist on the property and that the issuance of the permit does not waive such public rights. Lastly, **Special Condition 12** requires the applicant to reimburse the California Coastal Commission in full for all Coastal Commission costs and attorneys' fees that the Coastal Commission may be required by a court to pay in connection with the defense of any challenging the of the approval or issuance of this CDP.

The proposed work could include construction activities on public trust lands, the boundaries of which are ambulatory and move with the MHTL. Portions of the revetment will also be at low enough elevations that, during low sand levels, they could sit on top of or underneath the MHTL. Because portions of the project are within the Commission's retained original jurisdiction, the County and City of Dana Point agreed in writing to consolidate the permitting under Coastal Act Section 30601.3 and Section 9.69.030(c) "Authority to Grant Permit" of the City's Certified Implementation Plan (IP)/City's Zoning Code. Thus, the standard of review is Chapter 3 of the Coastal Act, with provisions of the certified Dana Point LCP used for guidance.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 5-21-0489, as conditioned. The motion is on page 6.

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EXHIBITS

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[Exhibit 5 – 1988 Exemption and Converse Plans](#)

[Exhibit 6 – Stones with Distinctive Bedding](#)

[Exhibit 7 – Limits of 1977 Seagate Landslide](#)

[Exhibit 8 – Mean High Tide Line \(MHTL\) Survey](#)

[Exhibit 9 – Legal Summary and Settlement Agreements](#)

[Exhibit 10 – Existing Bluff Vegetation](#)

[Exhibit 11 – Grunion Walker Scale](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 5-21-0489 pursuant to the staff recommendation.

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

Resolution:

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

II. STANDARD CONDITIONS

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

III. SPECIAL CONDITIONS

1. **As-Built Plans.** Within 90 days of completion of the project, or within such additional time as the Executive Director may grant for good cause, the permittee shall submit as-built plans for the approved revetment and associated structures and submit certification by a registered civil engineer, acceptable to the Executive Director, verifying the revetment has been constructed in conformance with the approved plans for the project. The as-built plans shall be in substantial conformance with the plans prepared by TerraCosta Consulting Group dated April 15, 2021 and supplemental plans by TerraCosta Consulting Group submitted to the Commission on July 25, 2022. The plans shall include the location of any public access signage improvements required in **Special Condition 5**, as well as any large stones with distinct bedding or other visually attractive features, as determined by the County's Coastal Engineer, that have been incorporated into the face of the revetment (see [Exhibit 6](#) for reference). The as-built plans shall include permanent benchmarks from fixed reference points from which the elevation and seaward limit of the revetment can be referenced for measurements in the future.

2. **Long-Term Revetment Monitoring and Reporting Program.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a long-term revetment monitoring plan. The purpose of the plan is to monitor and identify damage or changes to the revetment such that repair and maintenance is completed in a timely manner to avoid further encroachment of the revetment on the beach. The monitoring plan shall incorporate but not be limited to the following:
 - A. An evaluation of the current condition and performance of the revetment, addressing any migration or movement of rock which may have occurred on the site and any significant weathering or damage to the revetment that may adversely impact its future performance;
 - B. Measurements taken from permanent benchmarks to determine settling or seaward movement of the revetment. Changes in the beach profile fronting the site shall be noted and the potential impact of these changes on the effectiveness of the revetment evaluated;
 - C. Recommendations on any necessary maintenance needs, changes, or modifications to the revetment to assure its continued function and to assure no encroachment beyond the permitted toe;
 - D. General observations of the state of the beach, bluff, and any impacts of the structure on public access along the beach (e.g., changes in beach width, bluff stability, rock movement, and resulting changes in public beach access and use). If analysis identifies significant adverse impacts on public access, the report shall include recommendations for beach maintenance/restoration, alterations to the revetment, or other similar methods which would maintain and enhance public access at the site, including laterally along the beach; and

- E. A discussion of how any progress related to current or future sea level rise adaptation planning (e.g. Orange County Parks Master Plan, South OC Regional Coastal Resilience Strategic Plan) may affect this site.

The above-cited monitoring information shall be summarized in a report, prepared by a licensed professional familiar with coastal processes, submitted to the Executive Director for review and written approval. Throughout the life of the revetment, annual monitoring shall take place in April (following the winter season) of each year, and the report shall be submitted to the Executive Director and the City of Dana Point once every five (5) years. The first report will be due on June 1, 2023.

The permittee shall undertake monitoring and reporting in accordance with the approved monitoring and reporting program. Any proposed changes to the approved monitoring and reporting program shall be reported to the Executive Director. No changes to the approved monitoring and reporting program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 3. Shore Zone Monitoring and Reporting Program.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a shore zone (beach and nearshore) monitoring program prepared by a professional familiar with coastal processes. The monitoring and reporting program shall incorporate, but not be limited to the following:

- A. A plan detailing the means and methods to conduct repeated evaluations of the shore zone along Strand Beach seaward of the revetment ([Exhibit 2](#)) with the purpose of quantifying beach change.
- B. For the first three (3) years after Commission action, a report shall be submitted annually to the Executive Director of the Coastal Commission summarizing results from the repeated evaluations required above. The third annual report shall include an assessment of the public's ability to access and recreate on the beach. The report shall include recommendations for beach maintenance, restoration, or other similar methods which would maintain and enhance public access at the site, including laterally along the beach.
- C. The annual report shall enumerate methods, results, and assessments consisting of at least one of the following:
 - 1) Monthly drone surveys with Global Navigation Satellite System/Global Positioning System (GNSS/GPS) acquisition of ground control and validation points.
 - 2) Fall and spring beach transect surveys. The data would be used to compare with historical beach profile data, assess long-term

changes, and detail shorter-term observations on the state of the beach (e.g., beach widths, sediment gradation, etc.).

- 3) Summary of daily shoreline measurements tracking beach width, recorded by camera. The monitoring program would involve installing a new camera at Strand Beach, including purchasing equipment (camera, modem, lighting), installation and setup, and funding connectivity, software, and reports. The data shall be used solely by the applicant to monitor changes in the shore zone; no personal data on beach users shall be collected or shared.

The permittee shall undertake monitoring and reporting in accordance with the approved monitoring and reporting program. Any proposed changes to the approved monitoring and reporting program shall be reported to the Executive Director. No changes to the approved monitoring and reporting program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. **Alternatives and Feasibility Study for Public Access Maintenance/ Enhancement.** Within two (2) years of the last submitted monitoring report required in **Special Condition 3** (unless extended by the Executive Director for good cause), or if shore zone monitoring of the site indicates that lateral public access along the beach fronting the revetment is not available, whichever comes first, the applicant shall undertake the study of alternatives (and their feasibility) to restore/enhance lateral public access along the beach, in cooperation with the City and relevant resource agencies. The study shall also identify potential public and/or private funding streams or sources to undertake the preferred alternative.
5. **Public Access Signage Plan.** PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a signage plan that identifies all existing and proposed public access, interpretive, and wayfinding signs and any other project elements that will be used to provide wayfinding assistance to the public or to otherwise identify public access entry points/amenities along the beach. Sign details showing the location, materials, design, and text of all public wayfinding and interpretive signs shall be provided. The signs shall be in both English and Spanish and designed so as to provide clear information without impacting public views and site character. All directional signs shall include the Commission's access program "feet" logo. In addition,
 - A. New signage shall replace broken or faded signs.
 - B. Additional interpretive and educational signage shall be installed containing information about the Marine Protected Area, nearshore marine and intertidal species, and the sensitive nature of terrestrial wildlife at the beach. Signage shall be included that describes the adverse impacts of shoreline armoring on coastal processes, including at this particular site,

as well as the mechanisms driving 'coastal squeeze' as exacerbated by sea level rise.

- C. Additional public access signage shall be installed at the north end of Strand Beach where the restrooms and rest areas are located.
 - D. For any shoreline monitoring camera installed pursuant to **Special Condition 3(c)(3)** above, a sign shall be installed in close proximity to the camera stating that the camera(s) will be used for shoreline measurements only and that personal information about beachgoers will not be collected.
- 6. Future Maintenance.** The permittee shall maintain the existing revetment in its approved state. Any change in the design of the revetment or future additions or reinforcement of the revetment, beyond exempt maintenance as defined in Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition, will require a coastal development permit or amendment. However, in all cases, if after inspection, it is apparent that repair and maintenance is necessary, the permittee shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment for the required maintenance.

The applicant agrees to remove (or deposit on the revetment) any debris, rock, or other materials from the beach which become dislodged after completion of the approved repair and maintenance through weathering, wave action, settlement or other action, on an as-needed basis and as soon as feasible after discovery, subject to the permitting requirements listed above.

- 7. Final Construction Plans.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final construction plans for the approved development. Said plans shall incorporate, but not be limited to, the following construction methods and responsibilities:
- A. **Storage and Staging Areas.** No storage of equipment or materials may occur on sandy beach, at the Salt Creek Beach Parking Lot, at the Strand Beach Parking Lot, or on the County-owned path that parallels the Strand Beach Funicular Cable Car, and the use of other public parking street spaces shall be minimized. All equipment shall be removed from the beach areas overnight and during any tidal condition that may inundate work areas. The permittee may not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery may be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to perform the approved repair and maintenance. Construction

equipment may not be washed on the beach or public parking lots or access roads.

- B. Access Corridors. Construction staging and access corridors shall not impede public access to or along the shoreline, to the maximum extent feasible, and the staging site and access corridors shall be removed and restored to their pre-construction condition within 72 hours following completion of project activities.
- C. No work shall occur on the beach from Memorial Day weekend to Labor Day weekend of any year.
- D. Water Quality Best Management Practices (BMPs). All necessary spill prevention and water quality measures for construction equipment shall be identified, implemented, and reported to the Executive Director as part of a BMP Plan. No construction byproduct shall be allowed onto the sandy beach or allowed to enter into coastal waters. More specifically, fueling and maintenance of construction equipment and vehicles shall be conducted offsite to the maximum extent feasible; any fueling and maintenance of mobile equipment conducted onsite shall not take place on the beach, and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills); the fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants, and; equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- E. The applicant shall submit evidence that the approved plans and plan notes have been incorporated into construction bid documents.

The permittee shall undertake the development in accordance with the approved final construction plans. Any proposed changes to the approved final construction plans shall be reported to the Executive Director. No changes to the final construction plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 8. Grunion Monitoring and Avoidance Plan.** PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a Grunion Monitoring and Avoidance Plan that provides for the following:

- A. Should construction activities on the beach be necessary between March 1 and May 28, the County shall avoid impacts to mature and/or spawning grunion and to grunion eggs. The applicant shall retain the services of a

biologist with appropriate qualifications. The annually published California Department of Fish and Wildlife (CDFW) expected grunion runs shall be used to determine possible grunion spawning periods. The plan shall, at a minimum, include:

- 1) Construction sites on the beach shall be monitored for grunion runs beginning at least two weeks prior to commencement of construction activities, and throughout the period of any work from March 1 through May 28. Monitoring is not necessary in areas where there is no sand, such as areas supporting 100% cobble or bluff backed beaches with no sand exposed during high tide.
- 2) Grunion monitoring shall be conducted by a qualified biologist for 30 minutes prior to, and two hours following, the predicted start of each daily spawning event. Sufficient qualified biologists shall be employed to ensure that the entire proposed construction area on the beach is monitored during the predicted grunion run. The magnitude and extent of a spawning event shall be defined in 300-foot segments of beach using the Walker Scale ([Exhibit 11](#)). Every individual fish (males and females) shall be counted to determine the Walker Scale value (e.g. 0, 1, 2, 3, 4, or 5) of each 300-foot segment within the proposed work area. Construction activities shall be modified according to the following plan:
 - A. If a grunion run consisting of 0-100 individual fish per 300-foot segment (Walker Scale 0 or 1) is reported within two weeks prior to, or during, construction activities, the applicant does not need to take any avoidance action for grunion eggs. No mature grunion may be buried or harmed as a result of construction activities.
 - B. Within two weeks prior to proposed work, if a grunion run consisting of 100 or more individual fish per 300-foot segment (Walker Scale 2, 3, 4, or 5) is reported, the applicant shall avoid work on the respective beach segment(s) and truck route and additionally, shall avoid a 100-foot buffer on either side of the segment(s) and route, for a minimum of two weeks, to ensure that no grunion eggs are buried or disturbed¹. These areas shall be memorialized through multiple GPS coordinates, and marked with irrigation flags for a minimum of two weeks when the next scheduled grunion run will be monitored. The applicant shall adapt the construction schedule to avoid operations on such beach segments and their

¹ During grunion spawning season, grunion spawn once every two weeks, on several nights, during the highest tides that occur during each month (called spring and neap tides). Grunion eggs take approximately 10 days to mature and hatch during the next high tide. Monitoring for grunion runs must happen, per the annual CDFW published grunion spawning schedule, because one cannot predict where grunion will spawn from one event to another.

associated buffers. No mature grunion may be harmed as a result of construction activities.

- C. If construction activities have already commenced, and a grunion run consisting of 100 to 500 individual fish, in one or more 300-foot segment (Walker Scale 2) in the work area is reported, the applicant shall avoid impacts to grunion eggs to the greatest extent feasible and then shall minimize impacts to grunion eggs through such measures as alteration of the truck route and relocation of construction activities.
- D. If construction activities have already commenced, and a grunion run consisting of 500 or more individual fish per segment (Walker Scale 3, 4, or 5) is reported, the applicant shall avoid work on the respective beach segment(s) and truck route and additionally, shall avoid a 100-foot buffer on either side of the segment(s) and route, for a minimum of two weeks, to ensure that no grunion eggs are buried or disturbed. These areas shall be memorialized through multiple GPS coordinates, and marked with irrigation flags for a minimum of two weeks when the next scheduled grunion run will be monitored. The applicant shall adapt the construction schedule to avoid operations on such beach segments and their associated buffers. No mature grunion may be harmed as a result of construction activities.

9. Avian Monitoring and Avoidance Plan. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval an Avian Monitoring and Avoidance Plan that provides for the following:

- A. Construction activities that occur during western snowy plover breeding season (March 1 to August 31) and California least tern breeding season (April 1 to September 15) will take the following steps to mitigate impacts to these species. A designated avian biological monitor with stop-work authority will conduct pre- and during construction surveys as needed within the project area and within 500 feet of the work area to determine the location of any active special status avian roosting and nesting areas. If western snowy plovers or California least terns are observed during any survey, the following measures will be implemented:
 - 1) If western snowy plovers or California least terns are observed exhibiting nesting behaviors (scraping, territorial displays or calls, false brooding, etc.) during the breeding season, no project-related activities will occur within 500 feet of these areas until subsequent monitoring indicates that western snowy plovers or California least terns are no longer present.
 - 2) If an active western snowy plover or California least tern nest (nest containing eggs or an empty or partial nest with western snowy

plovers or California least terns actively exhibiting breeding behaviors) occurs within 500 feet of the proposed construction area, the following measures will be implemented:

- i. The biological monitor with stop-work authority will report the nest to the U.S. Fish and Wildlife Service. After initial identification of the nest, the biological monitor will not approach within 50 feet of an active western snowy plover or California least tern nest. Nest monitoring will occur with binoculars. The biological monitor will use the distance to the project limits and local topography to determine if construction activities are likely to damage a nest or significantly disturb nesting activities. Signage will be installed to deter people from entering any area with an active nest.
 - ii. Where damage or disturbance of any western snowy plover or California least tern nest(s) is likely, the designated biological monitor will implement further measures to avoid the likelihood of nest destruction or disturbance, including: temporarily halting construction activities until the nest fails or until at least 10 days after the young fledge from the nest, with construction activities directed to other areas further than 350 feet from the active nest(s) or where activities will not disturb the active nest(s), as directed by the biological monitor.
 - iii. The biological monitor will monitor nest progress, construction activity, and protective fencing to minimize potential construction-related disturbance and will submit a weekly nest status report to the U.S. Fish and Wildlife Service. A post-construction report will be submitted to the U.S. Fish and Wildlife Service summarizing the weekly nest status report and outcomes within 6 months of project completion.
- B. No activities are allowed within 100 feet of active roost areas for the western snowy plover or California least tern unless measures are implemented to minimize the noise and disturbance to those adjacent birds until subsequent monitoring indicates that western snowy plover and California least tern are no longer present. If these conditions cannot be met, the following measures will be implemented:
- 1) The biological monitor with stop-work authority will report the roost site to the U.S. Fish and Wildlife Service. After initial identification of the roost, the biological monitor will not approach within 50 feet of roosting western snowy plover or California least terns. Roost

monitoring will occur with binoculars. The biological monitor will use the distance to the project limits and local topography to determine if construction activities are likely to damage a nest or significantly disturb nesting activities. Signage will be installed to deter people from entering any area with an active nest.

- 2) Where damage or disturbance of any western snowy plover or California least tern roosting is likely, the biological monitor will implement further measures to avoid the likelihood of roost disturbance, including temporarily halting construction activities until the birds depart for the season, with construction activities directed to other areas that will not disturb the roost, as directed by the designated biological monitor.
- 3) A biological monitor will monitor the roost and construction activity to minimize potential construction-related disturbance and will submit a weekly nest status report to the U.S. Fish and Wildlife Service. A post-construction report will be submitted to the U.S. Fish and Wildlife Service summarizing the weekly nest status report and outcomes within 6 months of project completion.

C. All participants and contractors for the project will receive educational training concerning special status species within the project area. The program will be conducted during all project phases and will cover the potential presence of listed species; the requirements and boundaries of the project; the importance of complying with avoidance, minimization, and compensation measures; and problem reporting and resolution methods. The designated project biologist and/or other qualified project proponent shall conduct the training and provide a sign-in sheet for each training activity to ensure all participants and contractors are educated on the environmental conditions and associated constraints.

10. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. By acceptance of this permit, the permittee acknowledges, on behalf of itself and its successors in interest, that issuance of the permit and construction of the permitted development shall not constitute a waiver of any public rights that exist or may exist on the property now or in the future.

11. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this coastal development permit, the permittee acknowledges and agrees: (i) that the site may be subject to hazards, including but not limited to storms, flooding, landslide, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and

employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, 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;(v) that sea level rise could render it difficult or impossible to provide services or access to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, the structure may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.

- 12. Liability for Costs and Attorneys' Fees.** By acceptance of this coastal development permit, the landowner/permittee agrees to reimburse the California 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, which the Coastal Commission may incur in connection with the defense of any action brought by a party other than the landowner/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 defense of any such action against the Coastal Commission.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed development consists of repair and maintenance of an existing rock revetment located seaward of 23 blufftop residential lots along 1,250 ft. of Strand Beach. The existing revetment is approximately 13 ft. tall and approximately 30 ft. wide (10 ft. wide at crest elevation), although a substantial portion of the rock at the toe of the revetment has become dislodged seaward over time and is buried under sand. The revetment currently has a toe elevation on the beach of approximately +2.4 ft. NAVD88. The revetment consists primarily of 350- to 500-pound rock and has a low-profile concave alignment at a slope of 1.5:1 (H:V).

The proposed project consists of retrieval of revetment stones that have become dislodged and migrated seaward, and restacking of this strewn rock within the previously approved revetment footprint ([Exhibit 3](#)).

A geotechnical investigation conducted by AMEC Earth & Environmental, Inc. dated June 12, 2009 discovered that the most recent landslide activity in 1977 resulted in movement of the subsurface underlying a portion of the revetment ([Exhibit 2](#)). This is an approximately 232-ft.-long section (equal to 18.6%) of the revetment covering an area of approximately 15,740 square feet that sits atop the deeper landslide mass. The landslide reaches a depth of over 40 ft. below sea level. In this area, errant rock has slid further onto the beach and has become buried under sand at deeper levels than elsewhere along the revetment; thus, in the deeper slide area, the applicant proposes to temporarily remove almost all of the existing rock, excavate down to the base of the revetment, uncover errant rock buried deep under sand, reconstruct the bottom sand mattress, and restack the rocks on the revetment. In other areas, the applicant proposes to simply remove buried errant rock seaward beyond the toe of the revetment and restack those rocks so as to limit seaward encroachment beyond the allowed revetment footprint ([Exhibit 3](#)).

The applicant also proposes to import up to 1,000 tons of additional new larger-sized rock (1- to 1.5-ton armorstone) where over-steepened and undersized riprap occurs, as well as to fill exposed areas of the adjacent buttress slope. This represents slightly less than 20% of the existing revetment volume, which is approximately 5,000 tons.

The proposed development does not consist of any work to the buttress fill behind the revetment, will not include the addition of filter fabric, will not increase the footprint of the revetment, and will not increase the height of the revetment beyond the heights established in prior Commission action.

The construction itself will take approximately two to three months, will occur over a few hours each day during low tides and low wave conditions, and will require 2-3 wheel loaders and 1-2 trackhoes. Some removal and trimming of non-native, ornamental vegetation may be required to remove existing vegetation occurring within the allowed revetment footprint, mainly in areas affected by the deeper landslide mass.

The work will occur outside of the summer season when sand levels are naturally lower, and thus grading required to locate the strewn rocks will be minimized. During the winter season, it is also anticipated that fewer visitors will be recreating on the beach. Regardless, the applicant will maintain a full-time monitor on the beach during any construction activities to safely direct the public and provide safe passage near the construction area via access corridors. Equipment will access the site by following both the north access ramp from Salt Creek Beach and the main access ramp accessible from Niguel Shores Drive, which is a gated, private, residential road requiring arrangements with the homeowners association to obtain access through the gates. Equipment will likely be stored at the Niguel Shores Community Association's private parking lot located between Niguel Shores Drive and Breakers Isle, although the applicant must still coordinate use of the lot with the homeowners association ([Exhibit 3](#)). No dewatering or discharging of contaminated groundwater via surface erosion is proposed or allowed per this permit, and the applicant is proposing to dispose of all site

debris and materials (e.g., vegetation scraps, extraneous rock material, construction byproduct) outside the Coastal Zone in a controlled manner.

Finally, the County recognizes that Strand Beach is vulnerable to wave attack and beach scour, both of which will be exacerbated by sea level rise, and as such has proposed various measures to enhance and maintain existing public access and recreation at the site and along the beach. First, the applicant proposes to repair and stabilize the north and south beach access ramps and northern set of beach access stairs, all located north of the subject revetment segment. Specifically, the applicant proposes to temporarily remove rock flanking the ramps as necessary to reinforce the concrete stem walls (including corbels and 6" embedment) beneath the ramp slabs, as well as reconstruct the damaged stair footing and fill voids beneath the stairway ([Exhibit 3](#)). Second, the applicant proposes to monitor short-term trends in the beach profile and nearshore environment (termed "shore zone") of Strand Beach, using drones, cameras, or other similar observational methods, which would serve to better inform the Commission of this pocket beach system and the potential effects that the revetment structure would have on it. This proposal is memorialized in **Special Condition 3**. The applicant is also proposing to undertake an alternatives (and feasibility) study, including identification of a preferred alternative and potential funding streams, that will assess the future implementation of beach maintenance and/or restoration as a means to enhance and maintenance public access laterally along the beach, as memorialized in **Special Condition 4**. Third, the applicant is proposing to install and maintain public access, wayfinding, and interpretive signage at various key points throughout the beach area, as memorialized in **Special Condition 5**. Lastly, the applicant is proposing to retain stones with particularly distinctive bedding or other visually attractive features at the forefront of the revetment to increase the visual appeal as much as possible, as further required in **Special Condition 1**.

Project History and Background

The proposed revetment repair and maintenance project would be located in the City of Dana Point, entirely on the public beach and bluff directly seaward of a private residential neighborhood within the Niguel Shores community, which includes private roads, graded slopes, and a private bluff top park and parking lot. The first public road in this location is Pacific Coast Highway, approximately ¼ mile inland from the site ([Exhibit 1](#)). The Niguel Shores residential community sits atop a massive landslide complex that affects nearly one mile of coastline north of the Dana Point Headlands ([Exhibit 7](#)). The landslide complex reaches a depth of nearly 40 ft. below sea level and encompasses the first three rows of homes directly landward of the subject rock revetment within the Niguel Shores community. According to the applicant, the original revetment was constructed in late 1969 and consisted of a one-ft. bedding layer overlain by two layers of 350- to 500-pound armor stone placed on a 1.5 horizontal to 1 vertical slope. The revetment was constructed in conjunction with a buttress fill that spans the entire shorefront bluff slope, which is intended to stabilize the toe of the landslide. The applicant asserts that at the time of its construction, the revetment was deemed necessary to protect the toe of the buttress fill from erosion resulting from wave action in order to maintain its integrity and ability to stabilize the landslide.

At or about the same time that the buttress fill and revetment were being constructed, extensive grading of the site was occurring in order to prepare the site for the eventual construction of the Niguel Shores residential community. The development included remedial grading measures to enhance the stability of a large ancient landslide in the area. During the heavy rainfall season of 1977-78, evidence of landslide movement was discovered within several of the vacant building pads. Remedial grading and reconstruction of the buttress fills took place and were completed in 1980-81, authorized by the Commission under Emergency Coastal Development Permit No. EME-134.

Further reconstruction and stabilization of the bluff due to the landslide activity in 1977 was approved under Coastal Development Permit No. P-80-7056. On September 8, 1980, the Commission approved P-80-7056 for the reconstruction and stabilization of six contiguous coastal bluff lots² heavily damaged by landslide activity in 1977. [Exhibit 7](#) depicts the limits of the 1977 landslide.

The severe El Niño storms of 1983 caused additional damage to the Niguel Shores bluff slope. Since the revetment stone was too small to resist severe storm wave attack, the existing revetment was overtopped and damaged and wave attack eroded the back bluff slope. Many of the existing rocks in the revetment were dislodged by wave attack. In response to the precarious state of the revetment, in 1986, the County proposed “Enlargement of an existing 1,400-ft. long³ rock revetment from +13-ft. Mean Sea Level (MSL) to +18-ft. Mean Sea Level (MSL) resulting in an approximately 7-ft. encroachment on a public beach,” approved by the Commission pursuant to CDP No. 5-86-109. However, the permit was never issued, and the work was never undertaken.

Subsequent storms in January 1988 prompted emergency repairs to the bluff slope and the revetment. On December 28, 1988, the Commission issued an exemption for the following repairs to the revetment: “The replacement of an existing rip-rap revetment damaged during the January 1988 storms. Replacement shall be of the same material and shall be placed in the same location as previously existed and shall not result in any increase in height, bulk or seaward extension beyond that which existed prior to the 1982-83 and 1988 winter storms (commonly referred to as “Phase I”) ([Exhibit 5](#)). The plans used to undertake these repairs were named the “1988 Converse Plans” after the County’s geotechnical consultants. The repairs and rehabilitation included replacement of the degraded 4,000-ton revetment with 5,000 tons of 1-ton and smaller cobble throughout the revetment footprint. As further discussed in subsequent sections of this staff report, the Converse Plans included a typical cross section noting the plans for where rock as part of the emergency exemption work would be placed. This typical

² The affected lots included 18-23 Breakers Isle.

³ The length of the revetment approved in 1986 was 150 ft. longer than the length of the revetment currently proposed for re-construction (1,400 sq. ft. vs. 1,250 sq. ft.). It is not clear based on the 1986 file materials why a large portion of this particular revetment segment was proposed for repair at that time. There are revetments located both north and south of the subject site and it is likely that the limits of each ‘individual’ revetment are not clearly defined. Thus, the 1986 application likely proposed repair of portions of the existing revetments to the north and south of the project site.

cross section showed rock being placed directly on the buttress fill but also noted that "material shall be placed on bedrock or competent riprap of comparable size as required by engineer." Because rock from the failed 1969 revetment was strewn across the buttress fill slope and bedrock, the 1988 revetment was constructed on top of any "competent riprap" resulting in a revetment slightly seaward of the typical cross section shown in the Converse Plans. Thus, there are slight discrepancies between the Converse Plans and the 1988 as-built typical cross sections ([Exhibit 4](#)).

On July 12, 2012 the Commission denied a CDP application by the County to reconstruct the revetment fronting the Niguel Shores community (CDP Application No. 5-11-053). In its denial findings, the Commission found that although past evidence of erosion indicates some form of shoreline armoring was required to protect the existing development in danger from erosion, the project had not been designed to eliminate or mitigate its adverse impacts on local shoreline sand supply, public access, or recreational opportunities. To deal with these impacts, the Commission suggested that appropriate mitigation should be evaluated and proposed, such as the inclusion of a public walkway on top of the revetment and additional mitigation for impacts on local shoreline sand supply and beach width. The Commission also questioned whether the proposed revetment had been designed such that it was placed as far landward as possible in order to reduce the footprint on the public beach. In addition, the Commission found that the proposed revetment had not been designed to withstand the effects of sea level rise or to adapt to it during its estimated 50-year project life.⁴

In response, the County submitted CDP Application No. 5-19-0288 for the reconstruction of the revetment that would increase its height by approximately by 3 ft. and replace the smaller-sized rock with 4-ton stone. In addition, the County proposed a 10 ft. wide public walkway adjacent to the landward side of the new revetment along its entirety, connecting the existing southerly public walkway along the southern section of Strand Beach with the small County park area and the County's Salt Creek Beach Recreational area to the north. On February 13, 2020, the Commission denied this CDP because the County's proposed mitigation package was not sufficient in offsetting impacts to public access on the beach and the homeowners benefitting from the development were not co-applicants, so they were unable to provide mitigation required to address the adverse impacts of the project.

As discussed below, the County is obligated to maintain the revetment to a standard that is not less than Phase I construction and repair of the revetment. The County is proposing to restore the revetment profile to the footprint of the 1988 as-built condition, which is the least environmentally damaging alternative available to the County, given the site history and circumstances.

The County recognizes that Strand Beach is vulnerable to wave attack and beach scour, both of which will be exacerbated by sea level rise, and as such has proposed various measures to enhance and maintain existing public access and recreation at the

⁴ The 50-year project life is the applicant's engineer's assumption as discussed in the Noble, 2009 investigation.

site and along the beach. The County is proposing to undertake monitoring and reporting of the state of the revetment structure and of the beach/nearshore environment, which are memorialized as **Special Conditions 2 and 3**. **Special Condition 4** memorializes the County's proposal to study implementable and feasible alternatives that would maintain lateral public access along the beach in the face of increasing beach erosion and sea level rise. These measures may additionally inform the Commission of future actions that may be necessary to enhance and maintain public access and recreation at this site and along the beach.

Legal History and Ownership

There are 23 discrete private lots developed with single-family residences on the bluff top directly adjacent to and landward of the subject site of the proposed revetment repair and maintenance project. The individual blufftop lots each include a portion of the steep vegetated and previously graded coastal bluff from the bluff top to approximately 17.7 ft. NAVD88 (known as the property line). The County owns the lower portion of the bluff and the beach out to the mean high tide line (MHTL) ([Exhibit 8](#)). Strand Beach is located seaward and beneath the proposed revetment.

Subsequent to the 1983 El Niño storm and resultant damage to the Niguel Shores bluff slope and revetment, Niguel Shores Community Association sued the Orange County Harbor, Beaches and Parks District and the developer of Niguel Shores, regarding the alleged failure of the slope. The County states that the claims were in connection with maintenance of the slope based on a 1971 agreement, which obligated the developer of Niguel Shores to build improvements and obligated the County to maintain those improvements for a period of 15 years. In 1989, the parties settled the litigation and the County agreed to maintain and repair the existing rock revetment, and also to accept all liability and responsibility for any damages resulting to the Niguel Shores Community Association and/or the Association's property benefiting from the revetment arising from the County's failure to repair the revetment in a timely manner. In 2013, a lawsuit was filed by individual Breakers Isle homeowners against the Niguel Shores Community Association and the County to enforce the terms of the 1989 agreement and covenant.⁵ Through mediation, the County and the homeowners agreed to a stipulated, court ordered settlement in 2015 requiring that the County prepare a CDP application to reconstruct the revetment and incorporate a walkway on the new revetment, and to be responsible for constructing and maintaining the upgraded revetment. This settlement was the subject of the project proposal in CDP Application No. 5-19-0288.

Since the Commission did not approve the County's prior CDP applications, the County Counsel has obtained a five-year extension of the statute from the County Board of Supervisors until June 1, 2024, and the County Counsel has prepared a draft amendment to the 2015 settlement agreement that incorporates the new repair and maintenance plan, in place of the previous plan that the Commission rejected. The settlement agreement will remain the same except for the repair and maintenance plan,

⁵ *Dovey v. Niguel Shores Community Association*, Orange County Superior Court Case No. 30-2013-00651468-CU-OR-CJC, filed on May 23, 2013.

and the case may be dismissed subject to approval of the CDP. The County has provided a document titled “Legal History of County Obligation to Repair Niguel Shores Revetment” and provided copies of the two settlements to Commission staff. The summary of the legal history and the two settlements are included in their entirety in [Exhibit 9](#).

The revetment repair and maintenance project is being proposed in order to provide protection for the homes and private roads within the identified landslide limit. In a typical situation, the blufftop property owners would either be the permit applicants, or at a minimum, co-applicants for this coastal development permit, as they are the primary beneficiaries of the continued function of the revetment. However, the County has indicated to Commission staff that they believe it is unnecessary for the Niguel Shores Community Association and/or individual homeowners to join as co-applicants for the repair and maintenance CDP application. First and foremost, the County has reiterated that the project will take place on County lands only, without directly implicating the homeowners and their private property. Second, the County states that repair and maintenance does not constitute redevelopment; as such, the scope of the Commission’s review is limited and would not require the involvement of the homeowners. Finally, the County cites the following section of the 2015 settlement agreement with the homeowners as a rationale for why it is not necessary for the homeowners to be co-applicants:

“2.5 During construction, the Association, Plaintiffs and Cross-Defendants will provide County with all necessary access to their lots, including the Slope Control Area, and any necessary encroachment permit or equivalent access rights necessary for construction of the revetment, as well as any related drainage improvements encroaching onto private property.”

In association with CDPs 5-11-053 and 5-19-0288, at the request of Commission staff, the County had nonetheless asked the homeowners receiving the primary benefit of the proposed revetment projects if they would join the County as co-applicants. The homeowners had responded that they do not want to be included as co-applicants. The County did not ask the homeowners again to join as co-applicants for this repair and maintenance project, citing the reasons above, although it notified the Association’s General Manager of the proposal and sent a copy of an informational presentation. The homeowners were provided with the opportunity to be co-applicants on the current permit application pending before the Commission, and thus the requirements of Coastal Act Section 30601.5 have been met.

Standard of Review

The seaward edge of the revetment begins on the top of the bedrock formation at approximately +2.2 to +2.4 ft. NAVD88. The Mean High Water (MHW) tidal datum is at +4.5 ft. NAVD88. The evidence submitted with the subject application, including the applicant’s 2014 MHTL survey and the 2017 State Lands Commission MHTL Determination Letter, indicate that with typical summer season beach sand levels, the revetment is located on the beach and not on tidelands or other public trust lands. However, the revetment extends to elevations below MHW, and the MHTL is

ambulatory and may shift with sea level rise or if surveys are undertaken in the future with lower beach sand levels. Aerial imagery provides evidence that beach widths fluctuate at the site likely due to seasonal changes in the dominant wave direction. Since the boundaries of public trust lands are ambulatory and move with the MHTL, and during low sand levels, construction activities may occur seaward of the MHTL and/or lower portions of the revetment could sit on top of or underneath the MHTL, then the proposed project is (partially) subject to Commission retained jurisdiction under Coastal Act Section 30519(b).

Because portions of the project are within the Commission's retained original jurisdiction, the County and City of Dana Point agreed in writing on June 25, 2021 to consolidate the permitting under Coastal Act Section 30601.3 and Section 9.69.030(c) "Authority to Grant Permit" of the City's Certified Implementation Plan (IP)/City's Zoning Code. Thus, the standard of review is Chapter 3 of the Coastal Act, with provisions of the certified Dana Point LCP used for guidance.

B. Permit Authority, Extraordinary Methods of Repair and Maintenance, Shoreline Protection Structures

Coastal Act Section 30610(d) generally exempts from Coastal Act permitting requirements the repair or maintenance of structures that does not result in an addition to, or enlargement or expansion of the structure being repaired or maintained. However, the Commission retains authority to review certain extraordinary methods of repair and maintenance of existing structures that involve a risk of substantial adverse environmental impact as enumerated in Section 13252 of the Commission regulations.

Section 30610 of the Coastal Act provides, in relevant part:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

[...]

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Section 13252 of the Commission regulations provides, in relevant part:

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

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

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

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

[...]

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

[...]

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

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

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

[...]

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

After the severe El Niño storms of 1983 and subsequent storms in January 1988 that affected the adjacent bluff slope and completely undermined the revetment, the Commission approved an exemption on December 28, 1988. The exemption authorized the replacement of the revetment, including replacement of the degraded 4,000-ton revetment with 5,000 tons of 1-ton riprap and smaller cobble material, a seaward extension of 7 ft. from the buttress fill slope, deeper keying of the revetment toe to

bedrock or competent riprap, and the installation of filter fabric behind the cobble layer ([Exhibit 5](#)). Due to differences between actual observed site conditions and the conditions presumed on the plans, the 1988 work resulted in 120% replacement of riprap material, filter fabric was never installed, and the revetment was placed atop approximately 2.5 ft. of the degraded 1969 revetment material instead of the buttress fill slope.

Structures in existence prior to the effective date of the Coastal Act that have been altered in such a way that greater than 50% of the structure is replaced, or structures that have been increased in size by greater than 50%, are typically considered new development or redevelopment and not an existing structure for purposes of Section 30235. However, California Code of Regulations Title 14 Section 13252(b) provides that the replacement threshold of 50% does not apply in the case an existing structure that is “destroyed by natural disaster.” Thus, the Commission considers the 1988 as-built project as the baseline for the existing revetment structure.

The currently proposed project consists of re-stacking dislodged rock and the addition of new rock. New rock constitutes up to 20% the existing revetment’s volume. The proposed development does not consist of any work to the buttress fill behind the revetment, will not include the addition of filter fabric, nor will there be any increase in the height and size of the revetment. Therefore, the scope and scale of the project is appropriately considered repair and maintenance under Section 13252(b) of the Commission’s regulations.⁶

Section 13252 of the Commission’s regulations requires that certain extraordinary methods of repair and maintenance require approval via a coastal development permit. The proposed development involves repair to an existing revetment, placement of additional riprap on the beach, and the presence of mechanized construction equipment on the sand. Thus, the proposed repair and maintenance requires a coastal development permit under Section 13252(a)(1)(A-B, D) and (a)(3)(A-B) of the Commission’s regulations. **Special Condition 6** memorializes that only work specifically described in this permit is authorized and any changes, including importation of new rock beyond that identified in this permit, will require separate authorization from the Commission.

In considering a permit application for a repair or maintenance project pursuant to the above-cited authority, the Commission reviews whether the proposed method of repair or maintenance is consistent with the Chapter 3 policies of the Coastal Act. The Commission’s evaluation of such repair and maintenance projects does not extend to an evaluation of the conformity with the Coastal Act of the underlying existing development. In this case, the revetment was initially constructed in 1969, prior to the enactment of the Coastal Act, and thereafter reconstructed pursuant to the

⁶ Likewise, IP Section 9.69.040(d)(7) of the Dana Point certified LCP contains the same language as the implementing regulations.

Commission's exemption determination in 1988; the existing structure has thus not yet been subject to the terms and conditions of a Commission-issued CDP.

C. Coastal Hazards and Shoreline Protection

Section 30235 of the Coastal Act states:

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

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

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.

Section 30270 of the Coastal Act states:

The Commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

The policies of the City of Dana Point LCP are also applicable as guidance ([Appendix B](#)).⁷

The applicant has established that the revetment structure itself, as well as the existing single-family residences above, are in danger of serious damage or destruction due to increasing beach erosion, wave scour, and the relatively large ancient landslide complex that could be promptly reactivated should the buttress fill behind the revetment be exposed. Without the continued existence of adequate armoring at the site, the stabilization system will be susceptible to damage and destabilization from wave attack. The landslide movement during the heavy rainfall season of 1977-79 and the slope damage resulting from the severe El Niño storms of 1983 and subsequent storms in January 1988 provide further evidence of the risk to the structures.

⁷ The geologic hazards policies in the City's certified LCP are similar to the Coastal Act hazards policies. The findings in this staff report are based on application of the Coastal Act, which is the standard of review for this application.

The proposed repair and maintenance activities include restacking the revetment as far landward as possible and limiting further subsidence. As documented by the applicant's geotechnical engineer, the height of the revetment currently varies from about +14 to +15 ft. NAVD88. The applicant provided an updated survey of the revetment from 2020 and compared the results to the measurements previously taken in 2009 and 2014. A comparison of the surveys indicates that the revetment has settled down in some locations. According to the applicant, the revetment has lowered about a foot from the top of rock observed in the 2009 AMEC survey. More notably, the revetment toe is nearly completely scattered. In many locations, riprap has rolled off the structure and onto the public beach and has become buried under sand, some of which can be found as far as 20 feet seaward of the approved toe. Beach conditions and sand levels vary substantially at the site. When sand levels are low, waves can reach the revetment and cause wave overtopping and scour. Beach loss and the resulting wave energy that reaches the revetment are expected to increase with sea level rise. In light of requirements set forth in Coastal Act Section 30270 for precautionary analysis of sea level rise, the applicant has submitted Coastal Hazards Study Update dated December 10, 2021, which evaluates the impacts of sea level rise to the subject revetment under medium- and high-risk aversion scenarios. The study concluded that, even with the proposed repair and maintenance, the revetment is at risk of failure during a major storm and increasingly vulnerable to overtopping and undermining with sea level rise.

Section 30253 requires that new development minimize risks to life and property and assure stability and structural integrity, and neither create nor contribute to erosion or geologic instability. These requirements are particularly critical in highly dynamic shoreline environments, such as the subject site. The purpose of the proposed project is to maintain and repair an existing revetment that was authorized by the Commission through an emergency exemption. The project is designed to improve the stability and structural integrity of the revetment and buttress fill behind it. By restacking rocks that have migrated from the revetment structure and limited import of new rock, the proposed repair and maintenance will return the revetment to a more stable condition, as authorized by the emergency exemption.

Shore Zone Monitoring

The applicant is proposing to repair and maintain the existing revetment at the site, and the proposed import of new rock constitutes less than 20% of the volume of the existing revetment. Thus, the proposal does not constitute new development, and any coastal resource impacts of the existing revetment cannot be analyzed for consistency with Chapter 3 policies. The Commission, instead, evaluates whether the proposed methods of repair and maintenance are consistent with Chapter 3. While the location of the existing revetment along the beach has already modified the normal sand interaction and movements along this shoreline, and repair and maintenance of the revetment in the proposed location would function to continue 'fixing' the back of the beach and interrupt natural sediment transport processes, the Commission cannot require mitigation for the impact of the revetment itself at this time, as the scope of work is limited to repair and maintenance.

Nonetheless, the applicant is proposing a “shore zone” monitoring and reporting program, to observe short-term fluctuations and trends in the beach profile found seaward of the revetment, as memorialized in **Special Condition 3**, in an effort to provide information and recommendations that would enhance and maintain public access along the beach and assist in potential sea level rise planning and implementation efforts in the future.

Approximately 28% of the California coastline consists of pocket beaches, usually backed by coastal bluffs and cliffs. In Southern California, pocket beaches make up most of the stretch of the Orange County coastline from Corona del Mar to the Dana Point Headlands and are some of the most treasured beaches in the State. Pocket beaches also pose particularly challenging conditions for public access, where the only way to get to many of the beaches is through a few vertical access points. Pocket beaches are different from other sandy beaches in that they have relatively constrained littoral sediment systems; sand moves on and off the beach or a short distance along the beach. There are also typically limited sand inputs beyond minor creeks and eroding coastal bluffs. This aspect tends to complicate analyses of how pocket beaches will respond to major storms, sea level rise, and strategies like sand replenishment. By monitoring multiple cross-shore beach transects along a pocket beach, the State can start to understand how the system responds to various environmental factors, including how sand moves around the constrained system and how resources like rocky subtidal habitat and dry beach area change with different climatic conditions. This data and analysis will help inform the Commission’s understanding of how this pocket beach system, from Monarch Bay in the north to Dana Point Headlands in the south, and other similar systems like it, would respond to sea level rise. The analysis would also elucidate the benefits and impacts of future management strategies, such as continued armoring with sand replenishment, nature-based adaptation solutions, or other feasible alternatives.

As discussed further below, the recommendations made in the shore zone monitoring report would directly lead to required action, as imposed under **Special Condition 4**, to study alternatives (and their feasibility), including the financial feasibility and public and private funding sources for the most preferable alternative, for the enhancement and maintenance of lateral public access along the beach when sand supplies are severely diminished for prolonged periods of time.

As such, the proposed repair and maintenance activities will also provide valuable shoreline monitoring data for this location, consistent with Coastal Act Sections 30253 and 30270.

Long-Term Stability and Maintenance

Also critical to the task of ensuring long-term stability, as required by Section 30253, is a formal long-term monitoring and maintenance program for the revetment structure itself. If the subject armoring were damaged in the future (e.g., as a result of flooding, landsliding, wave action, storms, etc.), it could lead to a degraded public access

condition. In addition, such damages could adversely affect nearby beaches and recreational use areas by resulting in debris on the beaches and/or creating a hazard to the public using the beaches and offshore areas.

Therefore, in order to find the proposed project consistent with Coastal Act Section 30253, the project must be maintained in its approved state. To ensure the proposed shoreline armoring repair work has been constructed properly and consistent with the approved plans, **Special Condition 1** requires that, within 90 days of completion of the project, as-built plans certified by a registered civil engineer be submitted verifying that the revetment has been repaired in accordance with the approved plans.

Further, in order to ensure that the applicant and the Commission know when repairs or maintenance are required, the applicant must regularly monitor the condition of the subject armoring, particularly after major storm events. Such monitoring will ensure that the applicant and the Commission are aware of any damage to or weathering of the armoring and other project components, and can determine whether repairs or other actions are necessary to maintain the armoring and the offsetting access improvements in their approved state before such repairs or actions are undertaken. **Special Condition 2** requires the applicant to submit a monitoring report every five years that evaluates the condition and performance of the revetment and overall site stability, and to submit recommendations, if any, for necessary maintenance, repair, changes or modifications to the project. The Special Condition also requires the applicant to submit measurements and analysis of trends for the erosion of the bluffs, the stability of the overall bluff face (including the upper bluff area), changes in sea level, and the impact of the structure on the beach. The monitoring will include measurements from permanent benchmarks, which will be fixed reference points from which the elevation and seaward limit of the revetment can be referenced for measurements in the future and will ensure that no seaward encroachment occurs. The as-built plans required per **Special Condition 1** must identify the permanent benchmarks.

Due to the inherent risk of shoreline development, **Special Condition 11** requires the applicant to waive liability and indemnify the Commission against damages that might result from the proposed repair and maintenance of the existing shoreline device. The risks of the proposed development include that the proposed project scope will not protect against damage to the structures from bluff collapse and erosion. In addition, the structure itself may eventually cause damage to neighboring structures and properties by redirecting wave action, undermining the beach's sand supply, and potentially even increasing erosion of the bluffs. Such damage may directly result from wave action that damages the revetment. Although as conditioned the project minimizes these risks, the risks cannot be eliminated entirely. Given that the applicant has chosen to undertake the proposed repair and maintenance despite these risks, the applicant must assume the risks. The Special Condition further requires that the County must submit a written agreement to the Commission incorporating all the terms of the condition.

Finally, **Special Condition 6** requires the applicant to perform necessary repairs and maintenance through the coastal development permit process in a prompt manner. Because some of the rocks that have migrated seaward are currently buried, it is

possible that additional strewn rock will become exposed over time as sand levels vary. Therefore, the Special Condition allows for very minor repairs to occur following issuance of this CDP, pursuant to Executive Director review and approval. Such work shall be limited to the collecting and restacking of a small amount of rock, shall not include importation of any new rock or installation of filter fabric, and shall not increase the footprint of the revetment as approved herein, unless the applicant submits a new CDP or CDP amendment application.

In summary, the purpose of the proposed project is to maintain and repair an existing revetment that was originally built to protect blufftop structures, and the project is designed to improve the stability and structural integrity of the existing structures it was designed to protect. By restacking revetment stones that have migrated from the revetment structure, the proposed repair and maintenance will return the revetment to its previously approved state, which the Commission finds to be beneficial by removing strewn and errant revetment rock that is encroaching upon the beach. Therefore, the Commission finds that the proposed revetment repair and maintenance activities, as conditioned, are consistent with Sections 30253 and 30270 of the Coastal Act.

D. Public Access and Recreation

Section 30210 of the Coastal Act states:

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

Section 30221 of the Coastal Act states:

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

Section 30223 of the Coastal Act states:

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

The policies of the City of Dana Point LCP are also applicable as guidance ([Appendix B](#)).⁸

⁸ The public access policies in the City's certified LCP are similar to the Coastal Act access policies. The findings in this staff report are based primarily on the Coastal Act policies, which is the standard of review for this application.

The existing revetment is located on Strand Beach, a public beach utilized by local residents and visitors for a variety of recreational activities. Lateral access is also available to the public along the beach seaward of the existing revetment. Vertical access to the public beach is provided to the subject site via the north using a ramp, and two sets of stairs, as well as to the south using the main ramp adjacent to the Strands Revetment Trail and Strand Beach Funicular Cable Car.

The project has been designed and conditioned to minimize impacts on public access. A simple analysis of typical revetment cross sections ([Exhibit 4](#)) suggests that the project as proposed could potentially result in minor seaward encroachment along the toe of the existing revetment due to engineering constraints, which would not be anticipated to have significant adverse impacts to public access. However, the plans authorized by the emergency exemption were of a typical cross-section which does not usually depict exact toe elevations, and the plans stated that the revetment “shall be placed on bedrock or competent riprap” for the revetment’s long-term stability; thus, analysis of the revetment within this context indicates that there is likely no encroachment beyond the 1988 as-built footprint. At such time when the revetment requires substantial replacement or redevelopment, any encroachment on public beach will be evaluated, and if impacts to public access or recreation cannot be avoided, mitigation will be required.

As proposed, the rocks that have become dislodged from the revetment and are currently occupying beach area will be relocated back within the existing revetment footprint. Because the project includes collecting rocks that have migrated seaward, in some cases up to 20 feet seaward, the post-development conditions will result in a beach area that is free of dislodged revetment stones and will provide enhanced space for public access and recreation. Thus, the project may increase beach area in front of the revetment and improve public access along the subject site.

If rocks become dislodged from the revetment in the future, they could obstruct public access along the beach inconsistent with the Coastal Act and the City’s LCP. Therefore, **Special Condition 2** requires the applicant to survey the rock revetment and report the conditions to the Executive Director every five years, including a description of any migration or movement of rock that has occurred on the site and recommendations for repair and maintenance to the revetment, thereby preventing future debris from impeding public access on the beach. In addition, **Special Condition 6** requires the applicant to perform necessary repairs and maintenance through the coastal development permit process in a prompt manner. Together, these conditions ensure that the beach fronting the revetment will remain free from any rock dislodged from the revetment, and that lateral access along the beach will not be impeded, consistent with Coastal Act requirements.

Construction on and adjacent to the sandy beach could also impact public access and recreation. The construction itself will take two to three months, will occur over a few hours each day during low tides and low wave conditions, and will require truck earthmoving equipment. The work is anticipated to occur during the winter season, when sand levels are naturally lower, and thus grading required to locate the strewn

rocks will be minimized. During the winter season, it is also anticipated that fewer visitors will be recreating on the beach; regardless, the applicant will maintain a full-time monitor on the beach during any construction activities to safely direct the public and provide safe passage near the construction area via access corridors. Equipment will access the site by following both the north access ramp from Salt Creek Beach and the main access ramp accessible from Niguel Shores Drive, which is a gated, private, residential road requiring arrangements with the homeowners association to obtain access through the gates. Equipment will likely be stored at the Niguel Shores Community Association's private parking lot located between Niguel Shores Drive and Breakers Isle, although the applicant must still coordinate use of the lot with the homeowners association ([Exhibit 3](#)). There will be no impacts to public parking resulting from the project.

Special Condition 7 requires that construction access and staging not affect public access and prohibits construction on the sandy beach during the summer months from Memorial Day to Labor Day of any year. Therefore, impacts to the public will be minimized to the greatest extent feasible. The Special Condition also requires that beach sand at the site be restored to pre-construction conditions, and that construction staging areas and access corridors be removed within 72 hours following completion of project activities.

In addition to temporary measures to limit impacts to public access and recreation, the County recognizes that Strand Beach is increasingly vulnerable to wave attack and beach scour over the longer-term, exacerbated by sea level rise, and as such has proposed various other measures to enhance and maintain existing public access and recreation at the site and along the beach.

First, the applicant proposes to repair and stabilize the north and south beach access ramps and northern set of beach access stairs, all located north of the subject revetment segment. Second, the applicant proposes to monitor short-term trends in the beach profile and nearshore environment (termed "shore zone") of Strand Beach, using drones, cameras, or other similar observational methods, which would serve to better inform the Commission of this pocket beach system and the potential effects that the revetment structure would have on it. This proposal is memorialized in **Special Condition 3**.

Special Condition 4 further memorializes the applicant's proposal to study alternatives and their feasibility, including financial feasibility and funding sources. The preferred alternative would maintain and/or restore the beach to ensure lateral beach access when sand levels are evaluated to be severely diminished for prolonged periods of time to the detriment of public access and recreation. The County recognizes that a new proposal for beach maintenance and/or restoration at the site may be needed in the future in the face of increasing beach erosion and sea level rise. However, the County has cited logistical obstacles and difficulty in currently obtaining funding for the undertaking of such a project. The County proposes to conduct the study, including identification of potential funding sources for the most preferable alternative determined,

within, at most, two years following the conclusion of the monitoring program proposed and required in **Special Condition 3**.

If, before the two-year period ends, the County's shore zone monitoring indicates that lateral public access along the beach fronting the revetment is not available, then the County must submit the study to the Executive Director earlier. While the applicant's latest submitted Coastal Hazards Study Update dated December 10, 2021 finds safe lateral access along the beach during average wave conditions and average high tide conditions, complete inundation of the beach may occur sooner rather than later given projected sea level rise in combination with a net loss of sand from the pocket beach system (due in part to low sand inputs from creeks and continued armoring of the coastal bluffs). For reference, the beach currently appears to be approximately 50 ft. wide in average winter conditions based on recent aerial imagery, and the MHTL was approximately 90 ft. from the revetment in the 2014 surveys provided ([Exhibit 8](#)). The study, feasibility analysis, and exploration of funding availability will thus help both the County and Commission understand the next steps that may need to be taken to maintain the beach at this site.

Third, the applicant is proposing to install and maintain public access, wayfinding, and interpretive signage at various key points throughout the beach area, as memorialized in **Special Condition 5**. Lastly, the applicant is proposing to retain stones with particularly distinctive bedding or other visually attractive features at the forefront of the revetment to increase the visual appeal as much as possible, as further required by **Special Condition 1**.

The applicant asserts that the project has been determined to be repair and maintenance, the proposed project will not encroach any further seaward than the existing revetment, and the work will include removing rock that has migrated onto the beach and restacking the rocks onto the revetment structure, thus improving conditions for the public and minimizing the revetment's seaward extent as much as possible. However, the MHTL is ambulatory and dependent on changing ocean and sand levels, and it is likely that at this site, the portion of the revetment below the mean high water (MHW) tidal datum could become increasingly exposed over time with sea level rise. It is of vital importance to the County and Commission that revetments and other shoreline protective devices, to the extent feasible, not take up public beach or affect coastal resources.

As the revetment becomes increasingly inundated, and the MHTL retreats landward, the California State Lands Commission could acquire jurisdictional authority of the public trust lands in the project area and become responsible for the management, including permit and leasing authorization, of these trust lands. **Special Condition 11** ensures that the applicant take the necessary steps should the revetment be found to encroach upon public tide lands. Also, **Special Condition 10** is imposed to require the applicant to acknowledge that public rights may exist on the property and that the issuance of the permit does not waive such public rights.

Therefore, as conditioned, the proposed development conforms to Sections 30210, 30221, 30223 of the Coastal Act.

E. Biological Resources and Water Quality

Section 30230 of the Coastal Act states:

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 of the Coastal Act states:

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

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

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

The policies of the City of Dana Point LCP are also applicable as guidance ([Appendix B](#)).⁹

The proposed project will occur on sandy beach area immediately adjacent to coastal waters. Construction will include the use of mechanized equipment on the beach and storage of such equipment immediately inland of the revetment and beach area, which could adversely impact marine resources and coastal waters, inconsistent with Coastal Act policies. Thus, **Special Condition 7** requires submittal of final construction plans

⁹ The biological resource policies in the City's certified LCP are similar to the Coastal Act biological resource policies. The findings in this staff report are based on the Coastal Act policies, which is the standard of review for this application.

and requires that all equipment be removed from the beach areas overnight and during any tidal condition that may inundate work areas. To further protect water quality, this condition prohibits the storage of any construction materials or waste where it could potentially be subject to wave erosion and dispersion. In addition, only the minimum equipment necessary may be placed, stored or otherwise located in the intertidal zone at any time. Finally, this condition requires spill prevention measures for equipment to be identified and prohibits washing equipment on the beach or public parking lots or access roads.

The majority of the coastal bluff landward of the subject revetment is composed of non-native ornamental landscaping species with only a small percentage of the bluff composed of native shrubs ([Exhibit 10](#)). Thus, any of the proposed development which may affect the face of the bluff (e.g., restacking of rock, removal and trimming of vegetation within and at the landward edge of the revetment footprint) is not expected to result in adverse impacts to native habitat on the bluff. Also, while there is important intertidal habitat in the nearshore area seaward of the project site, the project is not expected to impact the nearshore habitat because no beach replenishment is currently proposed at the subject site.

However, the project's 2017 biological report indicates that grunion may spawn on nearby Salt Creek Beach. The biological report also indicates that two wildlife species listed as threatened or endangered, western snowy plover and California least tern, were identified to have the potential to occur within the general project area. Thus, it is likely that the beach fronting the subject site would be used by grunion and avian species of concern. **Special Condition 8** requires the applicant to prepare and implement a grunion monitoring and avoidance plan, using the Walker Scale¹⁰ to monitor grunion runs and spawning events, which is used to track California grunion runs and spawning events by observing the number of fish and their proximities on a beach ([Exhibit 11](#)). **Special Condition 9** requires the applicant to prepare and implement an avian monitoring and avoidance plans, which surveys bird activities such as nesting and roosting prior to project commencement, adequately prepares the site for construction, retains a biological monitor with work-stop authorization throughout the duration of the project, and that avoids areas of high nesting activity using necessary buffers. All participants and contractors for the project will receive educational training concerning special status species within the project area, and the associated monitoring and avoidance protocols required.

As conditioned, the Commission finds that the proposed project, as conditioned, will ensure that all environmental impacts will be minimized to the maximum extent feasible. Therefore, the proposed project can be found consistent with Coastal Act Sections 30230, 30231, and 30240.

¹⁰ The Walker Scale is used for monitoring California grunion runs. For more information, visit <http://grunion.pepperdine.edu/sighting.asp>

F. Reimbursement of Costs and Fees

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. See also 14 C.C.R. § 13055(g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 12** requiring reimbursement of any costs and attorneys' fees the Commission incurs in connection with the defense of any action brought by a party other than the permittee challenging the approval or issuance of this permit.

G. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. On June 24, 2021, the City of Dana Point, as the lead agency, determined that the proposed development does not require any local permits, qualifies as repair to an existing facility, and is categorically exempt from CEQA under Classes 1, 2, 4, and 8 (Cal. Code of Regs., Tit. 14, Sec. 15301).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- CDP No. 5-11-053 Staff Report
- CDP No. 5-19-0288 Staff Report
- Niguel Shores/Breakers Isle Biological Resources Report prepared for TerraCosta Consulting Group, Inc. and County of Orange, OC Parks prepared by Chambers Group, Inc. dated July 2017
- MHTL Survey, Record of Survey 2014-1152, by David Woolley, dated October 31, 2014
- Letter from California State Lands Commission staff dated August 21, 2017
- Response to CCC August 5, 2021 Letter from ENGEO, Inc. dated January 2022, 2022
- Geotechnical Review and Evaluation Proposed Rock Revetment Rehabilitation Design, Salt Creek Beach At Niguel Shores, Orange County Parks, Dana Point, California (Job No. 8-212-100128); prepared by AMEC Earth & Environmental, Inc. dated June 12, 2009
- Basis of Design Report; Niguel Shores Pedestrian Walkway and Revetment prepared for Orange County Parks, Irvine, California; prepared by TerraCosta Consulting Group, Inc., San Diego, California (Project No. 2923) dated October 21, 2016
- Coastal Hazards Study Update prepared by ENGEO, Inc., dated December 10, 2021

APPENDIX B – RELEVANT LCP POLICIES

Coastal Hazards Policies:

Land Use Element Policy 4.2: Consider the constraints of natural and man-made hazards in determining the location, type and intensities of new development. (Coastal Act/30240, 30253)

Land Use Element Policy 4.10: Regulate the construction of non-recreational uses on coastal stretches with high predicted storm wave run-up to minimize risk of life and property damage. (Coastal Act/30253)

Conservation and Open Space Element Policy 2.5: Lessen beach erosion by minimizing any natural changes or man-caused activities which would reduce the replenishment of sand to the beaches. (Coastal Act/30235)

Conservation and Open Space Element Policy 2.7: Require geotechnical studies for developments that are proposed for steep slopes (4:1 or steeper), on or adjacent to coastal or inland blufftops, and where geological instability may be suspected. (Coastal Act/30253)

Conservation and Open Space Element Policy 2.8: Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Recreation/Open Space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential. (Coastal Act/30233, 30253)

Conservation and Open Space Element Policy 2.13: Bluff repair and erosion control measures such as retaining walls and other similar devices shall be limited to those necessary to protect existing structures in danger from erosion to minimize risks to life and property and shall avoid causing significant alteration to the natural character of the bluffs. (Coastal Act/30251, 30253)

Conservation and Open Space Element Policy 2.14: Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas. (Coastal Act/30210-12, 30235).

Section 09.27.030(f) of the City's certified Implementation Plan states, in part:

(f) Shoreline Protective Devices. Seawalls, revetments, and other such shoreline protective devices or construction that alters natural shoreline processes shall be permitted only if nonstructural alternatives are found to be infeasible, and when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures or shoreline protective devices causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible. Any shoreline protective device which may be permitted shall be placed so that no part of a new shoreline protective device is built further onto the beach than a line drawn between the nearest adjacent corners of the nearest adjacent shoreline protective devices.

Public Access Policies:

Land Use Element Policy 2.9: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area. (Coastal Act/30221)

Land Use Element Policy 3.3: Priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. (Coastal Act/30213, 30222, 30223)

Land Use Element Policy 3.7: Encourage safe and convenient bicycle and pedestrian access throughout the community. (Coastal Act/30210-212.5, 30250, 30252)

Land Use Element Policy 3.11: 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. (Coastal Act/30211)

Land Use Element Policy 3.12: Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, or where adequate access exists nearby, including access as identified on Figures UD-2 and COS-4. (Coastal Act/30212)

Land Use Element Policy 4.3: Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (Coastal Act/30210)

Urban Design Element Policy 2.2: Improve public spaces and recreational facilities as focus points for each community. (Coastal Act/30213)

Urban Design Element Policy 4.3: Develop stronger pedestrian, bicycle and visual linkages between public spaces and to and along the shoreline and bluffs. (Coastal Act/30210, 30212)

Urban Design Element Policy 4.4: Encourage development of community cultural and recreational facilities. (Coastal Act/30213)

Conservation and Open Space Element Policy 3.8: Development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas through, among other methods, creative site planning and minimizing visual impacts, and shall be compatible with the continuance of those parks and recreation areas. (Coastal Act 30240)

Conservation and Open Space Element Policy 7.3: Preserve public and private open space lands for active and passive recreational opportunities. (Coastal Act/30213)

Biological Resource and Water Quality Policies:

Land Use Element Policy 4.4: Preserve, maintain and, where feasible, enhance and restore marine resource areas and coastal waters. Special protection shall be given to areas and species of special biological or economic significance. (Coastal Act/30230)

Conservation and Open Space Element Policy 2.20: The biological productivity and quality of coastal waters, streams, wetlands, estuaries, and lakes and the restoration of optimum populations of marine organisms shall be ensured by, among other means, minimizing adverse effects of waste water discharges. Any specific plans and/or planned development district policies and specific development proposals, site plans and subdivision maps shall control runoff, prevent depletion of ground water supplies and substantial interference with surface water flow, encourage waste water reclamation, maintain natural vegetation buffer areas that protect riparian habitats, and minimize alteration of natural streams. (Coastal Act/ 30231).

Visual Resource Policies:

Land Use Element Policy 4.6: Ensure land uses within designated and proposed scenic corridors are compatible with scenic enhancement and preservation. (Coastal Act/30251)

Urban Design Element Policy 1.4: Preserve public views from streets and public places. (Coastal Act/30251)

Conservation and Open Space Element Policy 1.7: Maintain and, where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing the adverse effects of waste water discharges, controlling runoff, preventing the depletion of groundwater supplies, preventing substantial interference with surface water flow, maintaining vegetation buffer areas protecting riparian habitats, minimizing alteration of natural streams, and street sweeping, shall be encouraged. (Coastal Act/30231)

Conservation and Open Space Element Policy 2.1: Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas and potentially hazardous areas. (Coastal Act/30235, 30236, 30240, 30253)

COSE Policy 2.2: Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. (Coastal Act/30250)

COSE Policy 2.3: Control erosion during and following construction through proper grading techniques, vegetation replanting, and the installation of proper drainage, and other soil related problems. (Coastal Act/30243)

COSE Policy 2.9: Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural land forms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with land forms. (Coastal Act/30240, 30250, 30251, 30253)

COSE Policy 6.4: Preserve and protect the scenic and visual quality of the coastal areas as a resource of public importance as depicted in Figure COS-5, "Scenic Overlooks from Public Lands", of this Element. Permitted development shall be sited and designed to protect public views from identified scenic overlooks on public lands to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (Coastal Act/30251)