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# F13b

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Staff: Ryan Moroney - SC  
Staff Report: 5/27/2022  
Hearing Date: 6/10/2022

## STAFF REPORT CDP APPLICATION

**Application Number:** A-3-SLO-19-0026

**Applicants:** David Tibbitts

**Project Location:** On the blufftop inland of the sandy beach at 1210 Pacific Street (APN 064-227-006) in the unincorporated community of Cayucos in San Luis Obispo County

**Project Description:** Demolition of an existing 1,116 square-foot single-story single-family residence and construction of a new 3,482 square-foot two-story single-family residence, attached garage, decking, and related development on a blufftop lot fronted by concrete-grouted riprap armoring structure

**Staff Recommendation:** Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to demolish an existing 1,116 square-foot single-story single-family residence and to construct a new two-story 3,482 square-foot single-family residence with attached garage, decking, and related development in its place. The project is located on an ocean and beach fronting blufftop property within the unincorporated community of Cayucos in San Luis Obispo County north of the City of Morro Bay along a very popular stretch of sandy beach located between Cayucos State Beach and Morro Strand State Beach that is part of an unbroken six-mile stretch of public sandy beach area extending from the northern end of Cayucos all the way south to Morro Rock in Morro Bay. The existing residence is fronted on its seaward side by an existing (and Coastal Commission-permitted in 1983) concrete-grouted riprap revetment at the base of the bluff, that itself is fronted by a natural rock outcropping of sorts embedded just above sand level.

On June 13, 2019, the Commission found that the County's action approving the project raised a substantial issue of conformance with the County's LCP due primarily to questions regarding allowing the new residence to rely on shoreline armoring for its safety and stability over time. By taking that action, the Commission took jurisdiction over the CDP application for the proposed project. Following that Commission action, the Applicant asked that the Commission wait to schedule the de novo review of the application until the Applicant could develop additional geotechnical analyses for consideration, which were submitted in December of 2019, and then additional geotechnical evaluation was subsequently submitted in July 2020.

The LCP prohibits permitting armoring to protect new development, such as this, and requires that such development be adequately set back to ensure 100 years of safety and stability without armoring (where such setback must be at least 25 feet). And the LCP also requires that replacement residential projects on lots that include legacy shoreline armoring, such as this, include an evaluation of ways to eliminate or reduce the coastal resource impacts of such shoreline armoring. In other words, the LCP establishes a process for evaluating both whether the proposed project can be sited and appropriately set back so as to be safe without relying on the existing armoring, and how to potentially modify and/or remove existing armoring as needed to address its coastal resource impacts.

Geotechnical analyses show that the new home can be sited and designed to meet the LCP's setback requirements without relying on the existing armoring, but it is not clear whether the existing armoring could be modified and/or removed to reduce its coastal resource impacts without significant impacts to the underlying landform, and potentially up and downcoast development. Such issues are exacerbated by the armoring's physical form, where the armoring was originally constructed by stacking large rock and pouring concrete over it just inland of what appears to be a natural rock outcropping. In this case, there are a variety of ways the Commission might address the existing armoring given the LCP evaluation required, but staff believes that the best approach, given the nature of the armoring itself and its relation to the natural landform and adjacent development, is to allow it to remain as is for now, but not to allow future repair and/or maintenance. The existing armoring would then be expected to degrade and eventually disappear over time as it passes its design lifetime (which may be relatively soon as it is nearly 40 years old), which helps implement the LCP in this regard appropriately, including as the new residence is not dependent on the armoring to meet its LCP stability and safety requirements. Of course, the Applicant would need to commit to 'cleaning up' any bits and pieces of the armoring that might become dislodged over time, and staff recommends conditions to this effect.

To further implement LCP hazard requirements, staff also recommends that the Commission condition the project to prohibit any future armoring to protect the proposed development, and to include requirements for the Applicant to assume all hazard risks, to disclose all risks to future buyers, and to monitor bluff retreat and remove/relocate development that becomes threatened by hazards in the future, consistent with the way in which the Commission has generally addressed such issues in similar circumstances up and down the state. Along with construction BMPs and other fairly typical shoreline development conditions (e.g., related to bluff edge landscaping, drainage, etc.), staff

believes that the proposed project can be found consistent with the requirements of the certified San Luis Obispo County LCP and the public access and recreation policies of the Coastal Act. The motion and resolution to approve the project subject to the staff recommendation are found on page 5 of this report.

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**EXHIBITS**

- Exhibit 1 – Location Map
- Exhibit 2 – Historical Aerial and Current Site Photos
- Exhibit 3 – Proposed Project Plans

## 1. MOTION AND RESOLUTION

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

***Motion:*** *I move that the Commission **approve** Coastal Development Permit Number A-3-SLO-19-0026 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number A-3-SLO-19-0026 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with San Luis Obispo County Local Coastal Program policies and Coastal Act access and recreation policies. 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.*

## 2. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

### 3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full-size sets of Revised Final Plans to the Executive Director for review and written approval. The Revised Final Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a graphic scale. The Revised Final Plans shall be in substantial conformance with the proposed plans (titled “Proposed Residence for David Tibbitts”; see **Exhibit 3**), except that they shall be modified to account for and address the following:
  - a. Landscaping.** The landscaping plan shall show the removal of all existing non-native plants (including all iceplant) on the portion of the site within 5 feet of the blufftop edge and the replanting of these areas with coastal bluff species native to the Cayucos bluffs and capable of leading to trailing vegetation (i.e., over the blufftop edge and down the bluff face). All landscaped areas shall be maintained in a litter-free, weed-free, and healthy growing condition, and plants shall be replaced as necessary to maintain the approved vegetation over the life of the project. Any irrigation system (if needed to ensure landscaping success consistent with CDP terms and conditions) shall limit water use to the maximum extent feasible, including using irrigation measures designed to facilitate reduced water use (e.g., micro-spray and drip irrigation). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site.
  - b. Fencing.** All fencing along the blufftop edge shall be removed.
  - c. Design.** All development shall be sited and designed to protect public views as much as possible, including through use of colors and natural materials that are sensitive to the bluff edge location. All windows shall be no glare windows and reflective surfaces shall be avoided. Outdoor lighting shall be minimized to protect against light and glare that could significantly affect public views.
  - d. Drainage:** All project runoff (meaning runoff from the resulting development as well as during construction) shall be directed away from the blufftop edge, and no runoff is allowed to extend seaward of the blufftop edge, whether by pipe, surface flow, or project design.
  - e. Approved Development Shown.** Only existing development allowed to be retained and the development approved by this CDP shall be identified on the plans.

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in conformance with this condition and the approved Revised Final Plans unless the Commission amends this CDP or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include the following:
  - a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall minimize impacts on public access, including public parking, and other coastal resources, including by using developed blufftop portions of the Permittee's property for staging and storing construction materials, and avoiding public properties and public use areas. Special attention shall be given to siting and designing construction areas and activities in order to minimize impacts on the ambiance and aesthetic values of the beach area, including but not limited to public views that include the site.
  - b. **Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep construction areas separated from public properties and public use areas (including through use of unobtrusive fencing and/or other similar measures to delineate construction areas), including verification that equipment operation and equipment and material storage will not significantly degrade public views during construction.
  - c. **Construction Timing.** All work shall take place during daylight hours (i.e., from one hour before sunrise to one hour after sunset), except for interior work. Nighttime work (other than interior work) and lighting of the exterior work area are prohibited.
  - d. **Construction BMPs.** The Construction Plan shall identify the type and location of all erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality and related coastal resources, including at a minimum all of the following:
    1. **Runoff Protection.** Silt fences, straw wattles, and/or equivalent apparatus shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from discharging from the construction area and/or seaward of the blufftop edge, and/or entering into storm drains or otherwise offsite. Special attention shall be given to appropriate filtering and treating of all runoff, and all drainage points, including storm drains, shall be equipped with appropriate construction-related containment equipment and treatment materials sufficient to ensure that potential pollutants in runoff are removed and/or neutralized.

- 2. Equipment BMPs.** Equipment washing, refueling, and/or servicing shall take place at an appropriate off-site location to prevent leaks and spills of hazardous materials at the project site.
  - 3. Good Housekeeping.** The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site; etc.).
  - 4. Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.
- e. Restoration.** All public recreational use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction.
  - f. Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
  - g. Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still minimizing impacts to public views, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (e.g., address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.
  - h. Construction Specifications.** All construction specifications and materials shall include appropriate penalty provisions that require remediation for any work done inconsistent with the terms and conditions of the CDP.



- i. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake development in conformance with this condition and the approved Construction Plan.

3. **Coastal Hazards Risk.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following:
  - a. **Coastal Hazards.** That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tsunamis, tidal scour, coastal flooding, landslides, bluff and geologic instability, bluff retreat, liquefaction and the interaction of same, many of which will worsen with future sea level rise.
  - b. **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such coastal hazards in connection with this permitted development.
  - c. **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards.
  - d. **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the development against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards.
  - e. **Property Owners Responsible.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owners.
4. **Coastal Hazards Response.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following:
  - a. **CDP Intent.** The intent of this CDP and its terms and conditions is to allow for the approved residential project to be constructed and used consistent with the terms and conditions of this CDP for only as long it remains safe for occupancy and use without additional measures (beyond ordinary repair and/or maintenance, as articulated in this condition below) to protect the structure from coastal hazards (as these hazards are defined by Special Condition 3(a) above). The intent is also to ensure that the approved residential project or portions of it are removed and/or relocated and the affected area restored to natural conditions (including

consistent with the landscaping and related requirements of Special Condition 1) under certain circumstances (as further described in this condition) consistent with the Removal and Restoration Plan required in subsection (d) below.

- b. Shoreline Armoring Prohibited.** Any repair, maintenance, and/or modification of any kind to the existing armoring at the site shall be prohibited. In addition, the Permittee shall properly dispose of (at an appropriate offsite disposal location) any portions of the existing armoring that become dislodged and/or that fall to the beach, and shall restore any associated exposed bluff areas at that time to natural conditions. In addition, any future shoreline armoring (including but not limited to seawalls, revetments, retaining walls, gabion baskets, tie backs, piers, groins, caissons/grade beam systems, etc.) to protect the approved residential project shall be prohibited.
- c. Section 30235 Waiver.** Any rights that the Permittee may have to construct and/or maintain shoreline armoring to protect the approved residential development, including rights that may exist under Coastal Act Section 30235, the San Luis Obispo County Local Coastal Program, or any other applicable laws, are waived.
- d. Removal and Restoration Plan.** If any of the following occurs, the Permittee shall, within the timeframe identified below, submit two copies of a Removal and Restoration Plan (RRP) to the Executive Director for review and written approval:
  - 1. Unsafe Conditions.** If any portion of the approved residential project (including but not limited to the house itself, the driveway, garage, utility infrastructure, subsurface elements, etc.) is threatened and/or damaged by coastal hazards and if a government agency with legal jurisdiction has ordered that the threatened and/or damaged portion of the approved development is not to be occupied or used, via a final order not overturned through any appeal or writ proceedings, due to that threat or damage, and if such government agency concerns cannot be abated by ordinary repair and/or maintenance, the RRP shall provide that all development meeting the “do not occupy or use” criteria is removed and/or relocated to the degree necessary to allow for such government agency to allow occupancy to and/or use of the remainder of the development after implementation of the approved RRP, including full removal if occupancy and use is not possible for a reduced-scale development. All areas from which structural elements are removed shall be restored to natural conditions. For purposes of this special condition, “ordinary repair and/or maintenance” shall include sealing and waterproofing and repair and/or maintenance that does not involve significant alteration to approved residential project’s major structural components, including exterior walls, floor and roof structures, and foundation.
  - 2. Essential Services.** If essential services to the site (e.g., utilities, roads, etc.) can no longer feasibly be maintained due to coastal hazards, including due to the degradation and/or failure of Pacific Street as a viable roadway, and/or degradation and/or failure of utilities serving the site, then the RRP shall

provide that all development on site is removed and the site restored to natural conditions. San Luis Obispo County and any other providers shall not be required to maintain access and/or utility infrastructure to serve the approved development in such circumstances.

- 3. Major Structural Components.** If any portion of the approved residential project's major structural components (including exterior walls, floor and roof structures, and foundation) are subject to threat and/or damage due to coastal hazards requiring significant alteration (including renovation, replacement, and/or significant augmentation) to abate those coastal hazards, beyond ordinary repair and maintenance, then the RRP shall provide that such structural components be removed and all areas from which structural elements are removed shall be restored to natural conditions. For purposes of this special condition, "exterior wall major structural components" shall include exterior cladding and/or framing, beams, sheer walls, and studs; "floor and roof structure major structural components" shall include trusses, joists, and rafters; and "foundation major structural components" shall include any portion of the foundation.
- 4. Setback Triggers.** In the event that the edge of the blufftop recedes to within five feet of the approved residence, but no government agency has ordered that the approved residence not be occupied, then the RRP shall address whether any portions of the approved residence are threatened by coastal hazards. The RRP shall identify all those immediate or potential future measures that could stabilize the approved residence considering such coastal hazards threats without going beyond ordinary repair and maintenance and without reliance upon shoreline armoring, including, but not limited to, removal and/or relocation of portions or all of the approved residence and restoration of affected areas to natural conditions.
- 5. Daylighting.** If any portion of the approved foundation and/or other subsurface elements for the approved residence become exposed due to coastal hazards, then the RRP shall provide that all development supported by these subsurface elements, as well as the subsurface elements themselves, be immediately removed and all areas from which structural elements are removed shall be restored to natural conditions.
- 6. Public Trust Encroachment.** This CDP does not permit encroachment onto public trust lands, and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval.

The RRP shall be submitted as soon as possible after, but in no case later than 30 days after, any of the above criteria are met. In cases where one or more of the above criteria is met, the RRP shall be required to meet all requirements for all triggered criteria. In all cases, the RRP shall also ensure that: (a) all non-building

development necessary for the functioning of the approved residence (including but not limited to access and utilities) is modified/relocated as needed as part of the removal/relocation episode; (b) all removal areas are restored to natural conditions of a quality consistent with adjacent natural areas; and (c) all modifications necessary to maintain compliance with the terms and conditions of this CDP, including the objectives and performance standards of these conditions, are implemented as part of the RRP.

If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required to implement the approved RRP, then the Permittee shall submit and complete the required application within 30 days of such determination. The RRP shall be implemented immediately upon Executive Director or Commission approval of the RRP, as the case may be. The Permittee shall undertake development in accordance with the approved RRP.

- 5. Public Rights.** The Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights that may exist on the property. The Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist on the property now or in the future.
- 6. Future Permitting.** All future proposed development related to this CDP at this location, including any proposed improvements to the structures approved through this permit, shall require authorization from the Coastal Commission (whether via exemption determination, waiver of CDP requirements, CDP, or CDP amendment).
- 7. San Luis Obispo County Conditions.** This CDP has no effect on conditions imposed by San Luis Obispo County pursuant to an authority other than the Coastal Act. In the event of conflicts between terms and conditions imposed by the County and those of this CDP, the terms and conditions of this CDP shall prevail.
- 8. Real Estate Disclosure.** Disclosure documents related to any future marketing and sale of the subject property, including, but not limited to, specific marketing materials, sales contracts and similar documents, shall notify potential buyers of the terms and conditions of this CDP including, but not limited to, explicitly identifying all requirements associated with Special Conditions 3 and 4. A copy of this CDP shall be provided in all real estate disclosures.
- 9. Deed Restriction.** WITHIN ONE YEAR OF ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this CDP a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and site plan of the entire parcel or parcels governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or

termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**10. Minor Modifications.** Minor adjustments to the above conditions and their requirements may be allowed by the Executive Director if the Executive Director concludes that such adjustments: (1) are reasonable and necessary; (2) do not adversely impact coastal resources; and (3) do not legally require a CDP amendment.

## 5. FINDINGS AND DECLARATIONS

### A. Standard of Review

In this de novo review of the proposed CDP application, the standard of review is the San Luis Obispo County certified LCP and, because the project is located between the sea and the first public road parallel to the sea, the public access and recreation policies of the Coastal Act.

### B. Project Location

The County-approved project is located on an ocean and beach fronting blufftop property at 1210 Pacific Avenue within the unincorporated community of Cayucos in San Luis Obispo County north of the City of Morro Bay along a very popular stretch of sandy beach located between Cayucos State Beach and Morro Strand State Beach that is part of an unbroken six-mile stretch of public sandy beach area extending from the northern end of Cayucos all the way south to Morro Rock in Morro Bay. Several public vertical accessways, situated between residential structures, provide access from Pacific Avenue to the beach, including a public staircase approximately 50 feet upcoast from the site. The existing residence is fronted on its seaward side by an existing concrete-grouted riprap revetment at the base of the bluff, that itself is fronted by a natural rock outcropping of sorts embedded just above sand level. The adjacent residence to the north is fronted by a riprap revetment, and the adjacent residence just to the south includes a stepped concrete patio/seawall that butts into a natural promontory that extends seaward of the general shoreline orientation some 100 unarmored feet. See **Exhibit 1** for a location map and **Exhibit 2** for photos of the site and surrounding area.

### C. Site Permitting History

Available records indicate that the existing 1,116 square-foot dwelling currently located on the site was originally constructed in 1932. Aerial photos show that the house appears relatively unchanged in terms of its general configuration and orientation since that time, although available photographic evidence suggests that a rear deck and patio area were constructed sometime in the 1990s. Neither the Commission nor the County has identified any CDPs associated with any house improvements, including with respect to the 1990s era rear yard improvements, since the time coastal permits have been required for development at this location starting in the early 1970s. Thus, the Commission considers the rear yard improvements to be unpermitted.

With respect to the shoreline armoring at the site, the Commission issued an emergency coastal development permit (ECDP) in 1983 for the temporary installation of grouted riprap at this location (ECDP No. 4-83-155-G), and the Commission also approved a follow-up CDP application later in 1983 to allow the retention of the armoring project that was installed under the ECDP (CDP No. 4-83-155).

#### **D. Project Description**

The Applicant proposes to demolish the existing 1,116 square-foot single-story single-family residence and related development, and to construct a new two-story 3,482 square-foot single-family residence with new attached garage, decking, and related development. See **Exhibit 3** for the proposed project plans.

#### **E. Project History**

On March 15, 2019, the San Luis Obispo County Planning Department Hearing Officer approved a CDP for the project, and that CDP action was appealed to the Commission. On June 13, 2019, the Commission found that the County's action approving the project raised a substantial issue of conformance with the County's LCP due primarily to questions regarding allowing the new residence to rely on shoreline armoring for its safety and stability over time. By taking that action, the Commission took jurisdiction over the CDP application for the proposed project. Following that Commission action, the Applicant asked that the Commission wait to schedule the de novo review of the application until the Applicant could develop additional geotechnical analyses for consideration, which was submitted in December of 2019, and then additional geotechnical evaluation was subsequently submitted in July 2020. On December 10, 2021, the Applicant filed suit against the Commission in San Luis Obispo County Superior Court, primarily based upon claims that the Commission was taking too long to schedule the de novo review of the application.<sup>1</sup> That de novo review is now scheduled for June 10, 2022.

#### **F. Standard of Review**

The standard of review for the CDP application is the certified San Luis Obispo County LCP and, because the project is located seaward of the first through public road and the sea, the public access and recreation policies of the Coastal Act. The San Luis Obispo County LCP is made up of a Land Use Plan (LUP) (in two documents, the "Coastal Zone Framework" and the "Coastal Plan Policies" documents) and an Implementation Plan (IP) (identified as the "Coastal Zone Land Use Ordinance" (CZLUO)) that are applicable throughout the County's coastal zone, as well as all four LCP Area Plans that provide additional provisions applicable to each of the four LCP-identified geographic

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<sup>1</sup> Note that under the Coastal Act and the Permit Streamlining Act, there is no specific deadline for Commission action after the Commission has taken jurisdiction over a CDP application on appeal. As a result, and although Commission staff does its best to move all projects in the portfolio forward expeditiously, matters with defined regulatory deadlines necessarily take presence when faced with competing workload demands.

areas.<sup>2</sup> Cayucos and the subject property are located within the area governed by the LCP's Estero Area Plan (EAP).

Per the LCP, LUP provisions generally prevail over IP provisions in cases of internal inconsistency or conflict, with some exceptions. Specifically, the LUP's Framework for Planning document states that if a policy listed in the LUP's Coastal Plan Policies document is implemented by an IP ordinance, the ordinance prevails in case of a conflict, and if a policy listed in an LUP area plan conflicts with a policy in the LUP Coastal Plan Policies document or an IP ordinance, the area plan policy prevails in both cases. For this site, any internal questions are thus to be resolved in favor of the Estero Area Plan. In addition, the LCP is also required to be read and interpreted consistent with the Coastal Act, from which it derives its statutory authority.<sup>3</sup>

## **G. LCP and Coastal Act Consistency Analysis**

### **1. Coastal Hazards**

#### ***Applicable LCP Provisions***

The LCP includes a series of provisions that address development that may be subject to coastal hazards. Such provisions include both more general provisions, as well as certain more specific provisions, including from the LCP's EAP. The LCP states:

***LUP Hazard Policy 1. New Development.*** *All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. Along the shoreline new development (with the exception of coastal-dependent uses or public recreation facilities) shall be designed so that shoreline protective devices (such as seawalls, cliff retaining walls, revetments, breakwaters, groins) that would substantially alter landforms or natural shoreline processes, will not be needed for the life of the structure. Construction of permanent structures on the beach shall be prohibited except for facilities necessary for public health and safety such as lifeguard towers.*

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<sup>2</sup> The County's four coastal zone areas extend from north to south geographically, called out as North Coast, Estero, San Luis Bay, and South County areas.

<sup>3</sup> See *McAllister v. California Coastal Commission* (2009), 169 Cal. App. 4th 912, 930-932, wherein the Sixth District Court of Appeal overturned a project approval by the Commission in the early 2000s in which the Commission had interpreted an LCP's provisions regarding the protection of environmentally sensitive habitat areas (ESHAs) to allow a non-resource-dependent use (in that case residential use) and development in ESHA. The Court found that such an interpretation was improper, and that the LCP must be understood in relation to the requirements of Coastal Act Section 30240, from which LCP ESHA policies derive their authority, even if the LCP policies were drafted in a manner that provide an argument to allow a non-resource-dependent use in ESHA. In other words, the Court determined that an LCP cannot be read to allow non-resource-dependent development or use in ESHA, but rather that it must be understood first in terms of Section 30240 requirements, and more broadly that an LCP derives its statutory authority from the Coastal Act, and it must be understood in ways that are Coastal Act consistent, and not in ways that are not consistent with the Act. As a published appellate court decision, that decision requires the Commission to interpret LCPs, including the County LCP here, based on those principles.

**LUP Hazard Policy 2. Erosion and Geologic Stability.** *New development shall ensure structural stability while not creating or contributing to erosion or geologic instability.*

**LUP Hazard Policy 6. Bluff Setbacks.** *New development or expansion of existing uses on bluffs shall be designed and set back adequately to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures which would require substantial alterations to the natural landforms along bluffs and cliffs. A site stability evaluation report shall be prepared and submitted by a certified engineering geologist based upon an on-site evaluation that indicates that the bluff setback is adequate to allow for bluff erosion over the 75 year period. Specific standards for the content of geologic reports are contained in the Coastal Zone Land Use Ordinance.*

**CZLUO Section 23.070.986. Geologic Study Area Special Standards.** *All uses within a Geologic Study Area are to be established and maintained in accordance with the following, as applicable:...*  
*c. Erosion and geologic stability. New development shall insure structural stability while not creating or contributing to erosion, sedimentation or geologic instability.*

**CZLUO Section 23.04.118(a). Blufftop Setbacks.** *Bluff retreat setback method: New development or expansion of existing uses on bluffs shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures that would in the opinion of the Planning Director require substantial alterations to the natural landforms along bluffs and cliffs. A site stability evaluation report shall be prepared and submitted by a certified engineering geologist based upon an on-site evaluation that indicates that the bluff setback is adequate to allow for bluff erosion over the 75 year period according to County-established standards.*

**EAP Chapter 7 Section III. Policy I.3. Application Content.** *In addition to the application requirements of the Coastal Zone Land Use Ordinance and other Estero Urban Area Plan Standards, applications for new development or expansion of existing uses proposed to be located on or adjacent to a beach or coastal bluff shall include the following:*

*a. An analysis of beach erosion, wave run-up, inundation and flood hazards prepared by a licensed civil engineer with expertise in coastal engineering and a slope stability analysis, prepared by a licensed Certified Engineering Geologist and/or Geotechnical Engineer or Registered Civil Engineer with expertise in soils, in accordance with the procedures detailed by Appendix G of this Plan. The report shall include an alternatives analysis to avoid or minimize impacts to public access.*

*b. On lots with a legally established shoreline protective device, the analysis shall describe the condition of the existing seawall; identify any impacts it may be having on public access and recreation, scenic views, sand supplies, and other*



*coastal resources; and evaluate opportunities to modify or replace the existing armoring device in a manner that would eliminate or reduce these impacts. The analysis shall also evaluate whether the development, as proposed or modified, could be safely established on the property for a one hundred year period without a shoreline protective device. ...*

***EAP Chapter 7 Section III. Policy I.4. Bluff Setbacks.*** *The bluff setback is to be determined by the engineering geology analysis required in I.3a. above adequate to withstand bluff erosion and wave action for a period of 100 years. In no case shall bluff setbacks be less than 25 feet. Alteration or additions to existing development that is non-conforming with respect to bluff setbacks that equals or exceeds 50 percent of the size of the existing structure, on a cumulative basis beginning July 10, 2008, shall not be authorized unless the entire structure is brought into conformance with this setback requirement and all other policies and standards of the LCP. On parcels with legally established shoreline protective devices, the setback distance may account for the additional stability provided by the permitted seawall, based on its existing design, condition, and routine repair and maintenance that maintain the seawall's approved design life. Expansion and/or other alteration to the seawall shall not be factored into setback calculations.*

***EAP Chapter 7 Section III. Policy I.5. Seawall Prohibition.*** *Shoreline and bluff protection structures shall not be permitted to protect new development. All permits for development on blufftop or shoreline lots that do not have a legally established shoreline protection structure shall be conditioned to require that prior to issuance of any grading or construction permits, the property owner record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development, and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235 and the San Luis Obispo County certified LCP.*

Read together, these policies prohibit new development from relying on shoreline armoring to establish a safe building site, including with respect to establishing the LCP-required 100-year (or minimum 25-foot) blufftop setback.<sup>4</sup> They also require that replacement residential projects that include legacy shoreline armoring, such as this, include an evaluation of ways to eliminate and/or reduce the coastal resource impacts of such shoreline armoring. In other words, these policies recognize that a new home can no longer rely on that existing armoring, and they establish a process for evaluating how to potentially modify and/or remove that armoring as needed to address its coastal resource impacts.

## **Analysis**

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<sup>4</sup> Note that the LCP's LUP policies require at least a 75-year setback whereas the LCP's Estero Area Plan requires a 100-year setback. As described above, the Estero Area Plan governs in such a circumstance, and thus the applicable setback requirement for this project is a minimum setback to account for 100 years or 25 feet, whichever is greater.

Thus, the LCP prohibits the permitting of shoreline armoring to protect new development, such as the proposed new residential development in this case (LUP Hazard Policies 1, 2 and 6; CZLUO Sections 23.070.986 and 23.04.118(a)); and EAP Chapter 7 Section III Policy I.5). But the LCP is somewhat equivocal as to how to address cases where a site is already legally armored, also such as in this case. On the one hand, the LCP suggests that such armoring, and the protection it provides, might be able to be taken into consideration for setback calculation purposes (EAP Chapter 7 Section III Policy I.4). On the other it requires an evaluation of ways to eliminate or at least reduce impacts from such armoring (EAP Chapter 7 Section III Policy I.3.b), which, by logical extension, could mean up to and including armoring removal (i.e., to be able to eliminate impacts entirely). And LCP hazard policies elsewhere are less equivocal, stating that armoring is not allowed to be countenanced (see LUP Hazard Policies 1 and 6 and CZLUO Section 23.04.118(a)). To help resolve the any ambiguity resulting from a reading of these LCP provisions, the Commission looks to the Coastal Act for guidance,<sup>5</sup> and Section 30253 stands for the premise that armoring is not allowed to protect new development,<sup>6</sup> such as this, mimicking the unequivocal LCP policies in this respect. Thus, the LCP requires that the project be set back a sufficient distance from the blufftop edge to ensure that it will be safe and stable for 100 years, where the setback must be at least 25 feet, all without relying on armoring.

The Applicant's geotechnical evaluation estimated average annual bluff retreat at this location to be 0.54 inches per year (equal to 0.045 feet per year), which equates to a required 100-year setback of 4.5 feet. Because 4.5 feet is less than the 25-foot minimum setback, a minimum 25-foot setback would be required by the LCP under the Applicant's assessment. However, this bluff retreat rate estimate is based on an analysis of historical aerial photographs between 1953 and 2013 at a nearby property (at 1168 Pacific Avenue, two lots upcoast) that has been protected by a bluff toe

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<sup>5</sup> Again, see previously referenced *McAllister* case. In addition, California law affords "great weight" to the Commission's interpretation of the statutes and regulations under which it operates (see *Ross v. California Coastal Commission* (2011), 199 Cal.App.4th 900, 922-23; and *Reddell v. California Coastal Commission* (2009), 180 Cal.App.4th 956, 965). This is precisely because the Act is designed to ensure "that state policies prevail over the concerns of a local government" making "the Commission, not the [local government], the final word on the interpretation of the LCP" (see *Charles A. Pratt Constr. Co., Inc. v. California Coastal Commission* (2008) 162 Cal.App.4th, 1068, 1076, 1078; and cf. *Pacific Palisades Bowl Mobile Estates, LLC v. California Coastal Commission* (2012), 55 Cal.4th 783, 794). And finally, the Coastal Act requires that it be "liberally construed to accomplish its purposes and objectives" (see Coastal Act Section 30009).

<sup>6</sup> Section 30253 requires new development such as this to assure stability and structural integrity without armoring. Specifically, Section 30253 states: "New development shall do all of the following: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. ..." And armoring (referred to as "protective devices" in that section), as a general rule, leads to substantial natural landform alteration along bluffs and cliffs (see, for example, CDPs 3-07-019 (Pleasure Point seawall), 3-09-025 (Pebble Beach Company Beach Club seawall), 3-09-042 (O'Neill seawall), 2-10-039 (Land's End seawall), 3-14-0488 (Iceplant LLC seawall), 2-17-0702 (Sharp Park Golf Course), 3-16-0345 (Honjo), 2-16-0684 (Aimco) and A-3-SCO-06-006 (Willmott), 3-12-030 (Pebble Beach Company), 2-16-0784 (2 Mirada), and 2-17-0438 (AMJT Capital/BCPUD)), and it is not clear that there could be a shoreline case where it didn't.

revetment for a significant portion of the period evaluated. The Applicant's analysis also did not attempt to evaluate the effects of future sea level rise on the bluff retreat rate over the 100-year project life. Rather, the Applicant's analysis concluded that adding 20.5 feet to their 4.5 foot 100-year buffer estimate (i.e., to meet the 25-foot minimum setback) would be adequate to account for any future increases in the bluff retreat rate (due to sea level rise or otherwise).

The Commission's Geologist, Dr. Joe Street, has reviewed the Applicant's geotechnical materials along with other locally-relevant studies, has visited the site, has evaluated the adequacy of the proposed 25-foot setback, and has arrived at slightly different conclusions, as discussed below. Here, the lower portion of the bluff is composed of hard, relatively erosion-resistant bedrock (extending to an elevation of approximately +18.5 feet NAVD88) that provides a degree of natural protection against wave action under most conditions. The upper bluff above +18.5 feet NAVD88 is, however, composed of more geologically-recent marine terrace deposits and colluvium, which are much less resistant to erosion and are susceptible to retreat when subject to wave action. And although the Applicant's analysis suggests that wave runup could reach an elevation of approximately +13 feet NAVD88 during a 100-year wave event (i.e., this hitting below the bedrock-terrace deposit contact), current FEMA 100-year base flood elevation at this site is actually +19 feet NAVD88, indicating that 100-year wave runup can reach the elevation of the marine terrace deposits during large coastal storm events. And past large events suggest that the 25-foot buffer could be lost through one or two 100-year storms,<sup>7</sup> which could be exacerbated under higher sea level rise scenarios. Even assuming the 1983 El Niño was the *only* year in which bluff retreat occurred at the site between the years the Applicant evaluated (1953 to 2013), the annualized retreat rate would still have been on the order of 0.17 to 0.25 feet per year<sup>8</sup> (and not 0.045 feet per year as estimate by the Applicant). The upper end of that range would equate to a 100-year setback of 25 feet, but both the rate of sea level rise and the sensitivity of bluff erosion are highly uncertain, and should be factored into the siting of new development.

To evaluate such potential accelerated bluff retreat, Dr. Street consulted the USGS Coastal Storm Modeling System (CoSMoS) bluff retreat tool,<sup>9</sup> which models several transects in the immediate project area, but also modified his output due to known CoSMoS errors<sup>10</sup> using the "factor of increase" projected by CoSMoS for a given

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<sup>7</sup> For example, there was widespread bluff erosion throughout Cayucos during the strong El Niño winter of 1982-83 (often referred to as a 100-year storm in California). Up to 20 feet of retreat was noted in certain Cayucos locations (Parsons 1985), and 10 to 15 feet of retreat was identified at the subject site (Coy 1983), all of which triggered the installation of much armoring, including at the subject site.

<sup>8</sup> Where these rates are generally consistent with previous estimates of 2 to 4 inches per year (or 0.17 to 0.33 feet per year) for historical bluff retreat in Cayucos as reported in other CDP application materials in Commission files.

<sup>9</sup> Barnard, PL, Erikson, LH, Foxgrover, AC, Limber, PL, O'Neill, AC, and Vitousek, S, 2018, Coastal Storm Modeling System (CoSMoS) for Central California, v3.1 (ver. 1f, May 2020): U.S. Geological Survey data release, <https://doi.org/10.5066/P9NUO62B>.

<sup>10</sup> The historical erosion rates used as inputs to the CoSMoS model are based on analysis of older USGS topographic maps and thus have large measurement errors (i.e., CoSMoS applies the USGS rates

amount of sea level rise over the next 100 years.<sup>11</sup> The result, as one might expect, is that the 100-year bluff retreat projections depend heavily on the initial, historical retreat rate and the amount of future sea level rise, both of which are uncertain at the project site. Ultimately, the 25-foot setback without factoring in any armoring would provide protection for many years, and would generally only begin to fall short closer to the 100-year end point, and only with relatively large amounts of sea level rise. Ultimately, based on Dr. Street's analysis, there is broad a range of potential bluff retreat distances over 100 years,<sup>12</sup> and Dr. Street believes that a setback of 35 to 40 feet has a reasonable likelihood of assuring the safety and stability of the proposed development, without reliance on armoring, for the next 100 years based on his review of historical erosion rates and applying the "medium high risk aversion" sea level rise scenario for the Cayucos area.<sup>13</sup>

However, as the foregoing discussion has noted repeatedly, both the past and future bluff retreat rates at the project site are highly uncertain, and the potential effects of sea level rise could result in bluff retreat greater than 35 to 40 feet in the next 100 years that could impact the proposed residence. It is also possible that the Applicant's proposed setback may be sufficient to protect the proposed new structure for the required 100-year period as well, due to the same types of uncertainties. In such cases there are a variety of ways that the Commission could address such uncertainties. For example, the Commission could adopt Dr. Street's more conservative setback as appropriate in this case, and would be justified in doing so under the LCP. At the same time, it is also important to consider the objectives of the setback policies of LCP in this sense, namely where the setback is intended to allow for natural bluff landform and beach processes to continue without armoring to impede them. Provided the approval is conditioned to ensure that that is the case (see below), then any uncertainties and risks associated with the setback are internalized by the Applicant. In other words, the setback will last as long as nature allows, and when the house is threatened in way that might lead to armoring, then it has reached its lifetime. Thus, given the uncertainties related to the setback distance at this site, and the fact that the Applicant's proposed setback distance is fairly close to Dr. Street's, the Commission may, in its discretion accept the Applicant's proposed setback number of 25 feet. Ultimately, this meets the intent of the

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identified in the 2007 Hapke and Reid report), and, in this case are somewhat higher (0.22 to 0.51 feet per year) than the historical bluff retreat rates observed in previous site specific studies in Cayucos.

<sup>11</sup> Namely, for sea level rise scenarios of 1 to 2 meters (3.3 to 6.6 feet) in 2100, CoSMoS projects that average bluff erosion rates (for the period between 2016 and 2100) in the project vicinity could increase by factors of 1.5 to 2.5 (150 to 250%) above the historical baseline. Dr. Street also considered potential bluff retreat through the year 2120 with 8.2 feet of SLR (the "medium high risk aversion" scenario provided in the State Sea Level Rise Guidance (OPC 2018)). The resulting bluff retreat rate projections were then multiplied by 100 years to generate bluff retreat distances over a 100-year timeframe.

<sup>12</sup> Depending on which erosion rate is used (e.g., ranging from the low end with the Applicant's rate of 0.045 feet per year, to current 'averaging' analysis by Dr. Street of 0.12 feet per year, to higher rates from previous studies in Cayucos between 0.17 to 0.33 feet per year), and which sea level rise projections are applied (from none to factors of increase of 1.5 (3.3 feet of sea level rise by 2100), 2 (4.9 feet by 2100), 2.5 (6.6 feet by 2100), and 3.1 (8.2 feet by 2120)), 100 year erosion estimates range from 4.5 feet to 102 feet at this site.

<sup>13</sup> See, for example, the Commission's 2018 State Sea Level Rise Guidance.

LCP's setback requirement, which is to ensure that the new development not rely on shoreline armoring that will substantially alter natural landforms and natural processes along the shoreline, and allows for such natural processes to continue as much as is possible with a project of this sort.

To allow for such a finding, it must be clear that armoring is not allowed moving forward, and coastal hazard response is limited to non-armoring methods (see **Special Condition 4**).<sup>14</sup> Further, specific trigger points for determining when the approved development is at risk from coastal hazards in a way that cannot be addressed without armoring (and/or the approved development comes to be located on land that is subject to the public trust) are necessary, as are requirements that, in lieu of armoring, hazards abatement response is through removal and/or relocation over time, and restoration of affected areas to natural conditions (see **Special Condition 4**).<sup>15</sup> Essentially, the amount/level of development necessary to abate the hazard defines the point at which the site is deemed hazardous.<sup>16</sup> Finally, any future removal/relocation needs to be through an approved plan (see **Special Condition 4**).

As to the treatment of the existing armoring, the LCP requires an evaluation of potential modifications to the armoring in order to minimize or eliminate ongoing coastal resource impacts,<sup>17</sup> which necessarily must include consideration of possible removal of the armoring. Here, currently available evidence suggests that it is not clear that the

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<sup>14</sup> Including identifying 'ordinary' repair work, including waterproofing and alterations to non-structural components. For example, if high seas and waves from a large storm caused some minor damage to the structure, but that damage was very minimal and could be addressed by simple repair work, then such a situation does not rise to the threshold for deeming the site hazardous and unsafe for continued use without requiring shoreline armoring (which is not allowed). However, when the hazard causes enough damage that significant alteration, including replacement of the residence's major structural components is necessary, then the site is subject to hazards at a level unsafe for continued human use and occupancy which cannot be remediated by work other than that beyond ordinary repair and maintenance.

<sup>15</sup> Requiring the Applicant to submit a plan that evaluates options for removal and/or relocation of threatened elements: (1) if a government agency has ordered that any portion of the approved residence is not to be occupied or used due to one or more coastal hazards, and such government agency concerns cannot be abated by ordinary repair and/or maintenance; (2) If essential services to the site (e.g., utilities, roads, etc.) can no longer feasibly be maintained due to coastal hazards; (3) if any portions of the residence's major structural components, including exterior walls, floor and roof structures, and foundation, must be significantly altered (including renovation and/or replacement) to abate coastal hazards; (4) if the blufftop edge recedes to within five feet of any portion of the development; and (5) if any portion of the approved foundation becomes exposed due to coastal hazards.

<sup>16</sup> When hazards are infrequent and/or weak enough to where simple repair or other types of work are sufficient to abate concerns, then such work does not trigger an evaluation of removal/relocation. Conversely, if such hazards are strong and/or frequent enough that major work to address damaged project elements, up to and including armoring, is necessary, then such evaluation is triggered.

<sup>17</sup> For example, armoring not only occupies beach and shoreline space that would otherwise be available to public recreational uses, but it also blocks the normal transmittal of beach-generating materials from bluffs, and it also leads to loss of beaches over time as an eroding shoreline bumps up against such armoring (also referred to as the 'coastal squeeze' or passive erosion). Again, see for example CDPs 3-07-019 (Pleasure Point seawall), 3-09-025 (Pebble Beach Company Beach Club seawall), 3-09-042 (O'Neill seawall), 2-10-039 (Land's End seawall), 3-14-0488 (Iceplant LLC seawall), 2-17-0702 (Sharp Park Golf Course), 3-16-0345 (Honjo), 2-16-0684 (Aimco) and A-3-SCO-06-006 (Willmott), 3-12-030 (Pebble Beach Company), 2-16-0784 (2 Mirada), and 2-17-0438 (AMJT Capital/BCPUD).

armoring can be removed without significant impacts to the underlying landform, and potentially up and downcoast development. Such issues are exacerbated by the armoring's physical form, where the armoring was originally constructed by stacking large rock and pouring concrete over it just inland of what appears to be a natural rock outcropping. And although this armoring structure undoubtedly raises coastal resource concerns of the type described, it is a relatively small armoring structure (40 linear feet) along a stretch of coast with many, it is inland of a natural rock outcropping and near the downcoast unarmored natural promontory that extends some 100 feet seaward of it, and is fronted by what is typically a fairly wide sandy beach (see site area photos in **Exhibit 2**). In other words, while certainly not without coastal resource concern, the coastal resource benefits for removal would be relatively small in light of the potential problems with complete removal. In this circumstance, there are variety of ways the Commission might address the existing armoring given the LCP evaluation of it required, but the Commission believes that the best approach here, given the nature of the armoring itself and its relation to natural landforms and adjacent development, is to allow it to remain as is for now, but not to allow new repair and/or maintenance. The existing armoring would then be expected to degrade and eventually disappear over time as it passes its design lifetime (which may be relatively soon as it is nearly 40 years old), which helps implement the LCP in this regard appropriately, including as the new residence is not dependent on the armoring to meet its LCP stability and safety requirements. See **Special Condition 4**.

As to the rear yard improvements violation (i.e., the deck, patio and fencing), other than the bluff edge fencing that adversely impacts back beach aesthetics (and needs to be removed as part of the project; see **Special Condition 1**), such rear yard development does not lead to significant coastal resource concerns by itself, and any potential issues can be addressed via the above described conditions. In addition, bluff retreat uncertainties can be further addressed through revised landscaping plans that require removal of all existing non-native plants (including all iceplant) on the portion of the site within 5 feet of the blufftop edge, and the replanting of these areas with appropriate California native coastal bluff species capable of trailing vegetation, including to help minimize visual impacts associated with the existing armoring. Moreover, it remains important that drainage be appropriately collected and directed inland, and that bluff edge landscaping be maintained, especially with long-rooted native species that can help protect and preserve the natural landform. Such drainage and landscaping measures can help to extend the useful life of the setback established by this approval. See **Special Condition 1**.

Even as conditioned, the site is not without ongoing coastal hazards risk. While the Commission has sought to minimize such risks in this approval, it is the Applicant that has chosen to develop in this location, and it is the Applicant who must assume all of the risks for that decision (see **Special Condition 3**). In addition, and more broadly, the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the tens and hundreds of millions of dollars.

As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. See **Special Condition 3**.

As conditioned, the proposed project can be found consistent with applicable LCP coastal hazards provisions.

## **2. Public Access and Recreation**

### ***Applicable Coastal Act and LCP Provisions***

Coastal Act Sections 30210 through 30224 specifically protect public access and recreational opportunities, including visitor-serving resources. In particular:

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

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

**Section 30212(a).** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects....*

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

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

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

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

These overlapping policies clearly protect access to and along the shoreline and to offshore waters for public access and recreation purposes, particularly free and low-cost access. Projects along the immediate shoreline (such as this project) that affect significant coastal public recreational access areas have the potential to adversely

impact public access and recreation. Section 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access to the sea. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save for certain limited exceptions, such as if there is existing adequate access nearby. Finally, the Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and it provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.

The County's LCP in EAP Chapter 8 Section VI Policy b also reflects this fundamental principle, requiring maximum public recreational access and prohibiting interference with the public's right of such access, including to the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. The LCP states:

***EAP Chapter 8 Section VI. Policy B.2. Prevent interference with the public's right of access to the sea, whether 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.***

***EAP Chapter 8 Section VI. Policy B.3. Require new development between the nearest public roadway and the shoreline and along the coast to provide public access consistent with sound resource management and consistent with public safety, military security needs, and the protection of fragile coastal resources and agricultural operations.***

### **Analysis**

There are two main public access and recreation questions raised by the proposed project; one specific to issues associated with the existing armoring at the site, and the second associated with potential construction impacts. In terms of the former, the armoring contributes to known impacts to public recreational access, including to the loss of beach over time. Allowing it to degrade and be removed over time, as described above, will slowly reduce (and eventually eliminate) such impacts.

As to construction, although it will be limited to the blufftop portion of the site, there is still the potential for impacts due to the nature of construction and its location immediately adjacent to the beach. For example, the project will: require the movement of large equipment, workers, materials, and supplies above the shoreline area and near the upcoast vertical public access point; include large equipment operations in these areas; and generally intrude and negatively impact the aesthetics, ambiance, and serenity of the public recreational access experience at this location. These public recreational use impacts can be minimized through construction parameters that limit



the area of construction, limit the times when work can take place (to avoid both weekends and peak summer use months when recreational use is highest), clearly fence off the minimum construction area necessary, clearly delineate and avoid to the maximum extent feasible public use areas, and restore all affected public access areas at the conclusion of construction. A construction plan is required to implement these measures (see **Special Condition 2**).

The original approval of the armoring in 1983 included the dedication of a public access easement (subsequently accepted by San Luis Obispo County in December 1997) covering the beach area extending from the toe of the armoring to the mean high tide line. Although the Commission is unaware of any other public access rights that might accrue to the remainder of the property, this CDP action is not intended to be determinative on that point. Accordingly, **Special Condition 5** provides that this approval does not constitute a waiver of any public rights that may exist on the property. As conditioned, the project can be found consistent with Coastal Act and LCP public access and recreation provisions.

### **3. Marine Resources**

#### ***Applicable LCP Provisions***

The LCP protects the marine resources and habitat offshore of this site. Applicable LCP policies include:

***EAP Areawide Water Quality Policy A.1. Maintain, and where feasible, restore the quality and biological productivity of coastal waters, streams, wetlands, estuaries, and lakes in order to protect human health and maintain optimum populations of marine and other wildlife.***

***EAP Areawide Water Quality Policy A.3. Avoid, and if not feasible, minimize impacts to watershed from erosion, runoff, pollution, and water diversions by new public and private development.***

#### ***Analysis***

As discussed above, the project is located on an oceanfront, blufftop parcel overlooking the public beach. The proposed project has the potential to negatively impact marine resources, both during construction and longer term, due to site runoff. Runoff (even filtered but untreated runoff) that flows directly to the beach and the Pacific Ocean could negatively impact marine and recreational resources and water quality by contributing additional urban contaminants to ocean waters. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics such as pesticides. Urban runoff can also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms. Such impacts raise questions of consistency with the above-referenced LCP policies protecting these resources. To address these concerns, **Special Condition 2** requires that these impacts be contained through construction parameters that limit the area of construction, clearly fence off the minimum construction area necessary, require good water quality construction practices, and require treatment and control BMPs, including

for all drain inlets and all areas drainage may go. And all drainage is required to be directed away from the blufftop edge (see **Special Conditions 1 and 2**). As conditioned, the project is consistent with the above referenced policies regarding protection of marine resources and offshore habitat.

#### 4. Other

##### ***Future Permitting***

To guard against the possibility that future improvements would exacerbate any of the impacts discussed above without the ability for Commission review to ensure the mitigation of those impact, the Commission intends that any future development at this site related to this CDP and the approved project, including repair and maintenance development, be subject to the Commission's CDP application and review process. See **Special Condition 6**.

##### ***County Conditions***

The Commission's action on this CDP has no effect on conditions imposed by the San Luis Obispo County pursuant to an authority other than the Coastal Act. Thus, **Special Condition 7** specifies that in the event of conflict between the terms and conditions imposed by the local government pursuant to an authority other than the Coastal Act/LCP and those of this CDP, the terms and conditions of this CDP shall prevail.

##### ***Disclosure***

The terms and conditions of this approval are meant to be perpetual. **Special Condition 8** therefore requires the Permittees to notify any prospective purchasers of the property about these permit requirements, thus ensuring that future owners are made aware of these conditions. This approval is also conditioned for a deed restriction to be recorded against the property involved in the application (see **Special Condition 9**). This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

##### ***Minor Modifications***

The terms and conditions of this approval are meant to be binding and perpetual. However, issues often come up during the design and build phases of project development. Thus, **Special Condition 10** allows for minor changes to the project conditions so long as they are reasonably necessary and do not adversely impact coastal resources.

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

CEQA Section 21080.5(d)(2)(A) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The County, acting as lead CEQA agency, exempted the proposed development from environmental review (citing CEQA Sections 15061(b)(3) and 15282(h)).

The Commission's review, analysis, and decision-making process for CDPs and CDPAs has been certified by the Secretary of the Natural Resources Agency as being the

functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has analyzed the relevant coastal resource issues with the proposal, including with respect to comments received to date, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All above findings are incorporated herein in their entirety by reference.

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

## 6. APPENDICES

### **A. Appendix A – Substantive File Documents<sup>18</sup>**

- ECDP 4-83-155-G (Williams armoring)
- CDP 4-83-155 (Williams armoring)
- Geological Coastal Bluff Evaluation, GeoSolutions, Inc. (June 13, 2008)
- Review of Geologic Coastal Bluff Evaluation, LandSet Engineers, Inc. (December 30, 2008)
- Discussion of Bluff Rock-Revetment Structure, GeoSolutions, Inc. (December 9, 2019)
- Discussion of Bluff Rock-Revetment Structure, GeoSolutions, Inc. (July 28, 2020)

### **B. Appendix B – Staff Contact with Agencies and Groups**

- San Luis Obispo County Planning Department

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<sup>18</sup> These documents are available for review in the Commission's Central Coast District office.