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Staff: Breylen Ammen - SC
Staff Report: 12/1/2023
Hearing Date: 12/15/2023

STAFF REPORT
CDP APPLICATION

Application Number:	3-19-1287
Applicant:	Pebble Beach Company
Project Location:	Just upcoast of Cypress Point between Fanshell Beach and Seal Rock Beach, with armoring fronting 17-Mile Drive at Fanshell Beach and trail/restoration extending to Seal Rock Beach, in the Del Monte Forest area of unincorporated Monterey County
Project Description:	Removal of existing armoring and construction of new armoring consisting of vertical seawall sections surfaced to appear as natural bluffs along about a quarter-mile of 17-Mile Drive; construction of a new nearly one-mile segment of coastal trail; reconstruction of an existing beach access stairway; construction of a new public access overlook and other public access improvements; and restoration of nearly 9 acres of dune/bluff habitat.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project includes three main components: shoreline armoring, public access trail and other improvements, and dune/bluff restoration. With respect to armoring, the Applicant proposes to install roughly a quarter-mile of faux rock armoring to protect 17-Mile Drive, which is located atop the bluffs and dunes that back Fanshell Beach at this location. 17-Mile Drive, like all roads within the gated Del Monte Forest area, is a private road owned by the Pebble Beach Company (the Applicant), but it is open to the public via vehicle (for a fee) or bicycle/by foot (for free), and it provides the primary coastal access route along the shoreline from Pacific Grove (upcoast) to Carmel-by-the-Sea (downcoast), along which lie a series of stunning coastal vistas and public access destinations, including Fanshell Beach itself. In terms of public access,

currently pedestrian/bicycle access is available along this stretch of 17-Mile Drive, but there is also an off-street and separated trail that ends near Seal Rock Beach about a mile upcoast. To improve public access, the Applicant would extend that separated trail nearly a mile to the downcoast edge of the project area at the downcoast edge of Fanshell Beach. And in terms of restoration, the Applicant would restore nearly nine acres of dune/bluff habitat extending along the same stretch. Both the public access improvements and the restoration are proposed as a means to help mitigate for coastal resource impacts associated with the armoring portion of the project.

The Coastal Act is, at its core, a law that requires coastal resource protection, and only allows for armoring under very limited criteria, where armoring is probably best understood as a Coastal Act exception or override. In fact, as applicable here, the Coastal Act's armoring "override" only allows armoring that is required to protect an existing structure (considered by the Commission to be a structure that existed and has not been redeveloped since 1977) or to serve a coastal-dependent use in danger from erosion. And if it meets such tests, then such armoring must also avoid coastal resource impacts as much as feasible and provide mitigation for its unavoidable impacts. In short, allowable armoring must be the least environmentally damaging feasible alternative for protecting an existing endangered structure and/or coastal-dependent use, and it must eliminate/mitigate all its adverse impacts on coastal resources, including importantly in terms of impacts to beach/shoreline area resources. Put another way, Section 30235 'overrides' coastal resource requirements that would normally require denial of a project like this due to its unavoidable coastal resource impacts, but even when such impacts are allowed because of such an override, they must be commensurately and appropriately mitigated.

In this case, 17-Mile Drive was originally constructed at this location in the early 1900s, and can be considered an existing structure for this reason. 17-Mile Drive also provides public access, particularly along its shoulder at this location, where the road shoulder at this location constitutes the only footpath providing access to the beach and ocean, and thus the shoulder area can be considered coastal-dependent too for these reasons. 17-Mile Drive at Fanshell Beach is also very close to the eroding blufftop edge and can be considered in danger as well, all of which is further evidenced by a series of unpermitted[1] as well as emergency and regular armoring measures that have been installed over the years to protect it at this location. Finally, staff does not believe that there are any non-armoring options that could protect this existing endangered road segment, including because it is located on what is essentially a dune field (making soft solutions tenuous) and the Applicant only owns the property essentially to the inland edge of the road prism (making relocation infeasible).

Having reached those conclusions, staff also believes that there are a range of measures that can be applied to both limit impacts as much as possible with a project like this (armoring camouflaging measures, construction BMPs, tribal and archaeological monitoring, etc.), and to provide offsetting and commensurate mitigation

[1] Although some of the armoring at the site pre-dates CDP requirements, a roughly 40-linear foot section of grouted riprap, installed between 1979 and 1987, is unpermitted. In addition, two sections totaling roughly 70-linear feet combined received an ECDP, but not the requisite follow-up CDP.

for impacts emanating from the Section 30235 override that cannot be avoided. In terms of the latter, staff calculated a beach/shoreline access mitigation fee (using the Commission's typical methodologies) to be nearly $6 million for both the previously installed and unmitigated armoring (unpermitted and emergency development) and future impacts of the proposed armoring through the next twenty years, and this calculation represents a proxy value of sorts for the beach/shoreline resources that have been and will be lost going forward, including accounting for impacts from the expected three years of construction. Staff then worked with the Applicant to incorporate mitigations that could be applied in the project area to offset such impacts directly as opposed to through a fee, and these include the aforementioned nearly one-mile extension of the off-road coastal trail and other shoreline access improvements (e.g., replacement beach access stairs, ADA accessibility improvements, parking lot re-striping, benches, interpretive signage, bike racks, etc.). The Applicant has also committed to restoration of almost 9 acres of dune/blufftop habitat, and the removal of all previously installed armoring which, even though it is already reflected as a 'credit' to the fee identified above (without the credit, the fee amount would be nearly $11 million), will in any case free up about a half-acre of sandy beach.

In short, while staff recognizes that an armoring project like this in a sensitive and important resource area such as this raises concerns, and its coastal resource impacts would normally require denial if not for the Section 30235 override, staff is also convinced that there is no other way to protect 17-Mile Drive at this location, including the substantial public access benefits that it provides. In fact, if the road were to be abandoned at this location, the detour created would be over three miles long with significant grade changes. Staff further believes that the public access continuity – not to mention simple circulation continuity – through this area is important to the overall public access experience in the Del Monte Forest, and that the impacts associated with the project can be appropriately offset. And finally, as context, staff notes that not only is the Pebble Beach Company in the visitor-serving/hospitality business with objectives that mirror many in the Coastal Act, but the Company has also proven itself to be developers of truly high-quality coastal projects, and staff would expect no less in this case. Staff recommends that the Commission approve a conditioned CDP for the proposed project,[2] and the motion is found on page 5 below.

[2] After the CDP is issued and the Applicant subsequently implements the project consistent with the CDP's terms and conditions, the violations described herein will be considered resolved.

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EXHIBITS

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 3-19-1287 pursuant to the staff recommendation, and I recommend a yes vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 3-19-1287 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.*

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 Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Plans.** PRIOR TO ISSUANCE OF THIS CDP, the Permittee shall submit two full-size sets of Final Plans for the approved project to the Executive Director for review and written approval. The Final Plans shall: be prepared by a licensed professional or professionals (e.g., surveyors, geotechnical engineers, etc.); be based on current professionally surveyed and certified topographic elevations for the entire site; and include a graphic scale. The plans shall be substantially in conformance with the proposed plans (titled "Proposed 17-Mile Drive Coastal Protection Structure, Fanshell Beach, Pebble Beach, CA, Monterey County A.P.N. 008-271-007," prepared by Haro, Kasunich and Associates, Inc. (HKA), dated November 7, 2019, and dated received in the Coastal Commission's Central Coast District Office on November 22, 2019 (see **Exhibit 3**)) except that they shall be modified to meet the following requirements:

   a. **Public Access Elements and Areas.**

      1. **Blufftop Coastal Trail.** The new coastal trail segment shall be accommodated on the blufftop and shall be continuous from the downcoast Fanshell Beach parking lot to the Seal Rock Beach parking lot, as shown in the plans described above and as extended in the general alignment depicted in **Exhibit 4**. The trail shall utilize the footprint of existing informal trails along the blufftop if feasible and appropriate and shall be located as far from the road as possible while avoiding immediate risks associated with coastal erosion. Adequate trail connections of the same type shall be provided to 17-Mile Drive on-street parking areas and developed parking areas.

      2. **Rudimentary Stairs.** If feasible, the existing volunteer trail providing beach access from 17-Mile Drive to the upcoast portion of Fanshell Beach shall be improved with rudimentary stair and sloped walking features. The intent is not a formalized stairway, rather adding minimal structure to what is already there with the use of natural materials only, where such features shall be sited and designed to be built into the existing slope and visibly blend into the bluff area as much as possible.

      3. **Fencing/Barriers.** Symbolic (i.e., post and cable or similar type) fencing/barriers may be used within the project area if needed to protect dune and bluff habitat areas from trampling and to keep trail users on the trail, but all such fencing/barriers shall be limited as much as possible and only allowed where they are see-through, use natural materials to the maximum extent feasible, and do not adversely impact public views.

      4. **Signage.** Directional and other user signage shall be provided throughout the project area, where such signage shall be sited and designed to provide clear information while limiting public view impacts as much as possible. At least two interpretive signs shall be provided at Fanshell Beach, with one providing appropriate shoreline/climate adaptation content and the other describing the

timing and reasons for seasonal seal pupping protections. Sign details showing the location, materials, design, and text of all signs shall be provided. Public access and interpretive signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in helping to provide public access at this location.

5. **Other Amenities.** Publicly-available amenities, such as offset picnic tables, viewing benches/sitting areas, bike racks, enclosed trash and recycling receptacles, doggie mitt stations, and/or other such publicly-available amenities shall be provided along the trail and near parking areas at appropriate locations commensurate with expected use and in a manner that maximizes their public utility and minimizes impacts to public views.

6. **Fanshell Parking Lot.** The Fanshell Beach Overlook parking lot at the downcoast end of the project area shall be re-surfaced and re-striped in a manner that maximizes parking utility and public view protection. At least two ADA compatible parking spaces shall be provided and the existing raised curb shall be removed or modified as needed to allow for direct ADA access to the adjacent unpaved blufftop overlook.

7. **Accessibility.** All public access elements and areas shall provide for ADA accessibility to the maximum extent feasible, and additional improvements to accessibility in the area shall be considered, including but not limited to the section of new trail that will run along the top of the armoring and the replacement beach access stairway at the midpoint of Fanshell Beach.

8. **Public Access Use Parameters.** All public access elements and areas shall be publicly available for general public pedestrian access and other public access for as long as any portion of the approved development exists at this site, consistent with the terms and conditions of this CDP. With the exception of the annual temporary seal pupping closure at Fanshell Beach, development and use of/within such elements/areas that disrupt or degrade public access, including areas set aside for private uses, barriers to public access (such as planters, temporary structures, private use signs, fences, barriers, ropes, etc.) shall be prohibited. All public access elements and areas shall be maintained in a manner that maximizes public use and enjoyment.

9. **Public Access Construction.** All public access elements and areas associated with the approved project shall be constructed and available for public use as soon as possible, but no later than three years from the start of construction of the approved development. The Executive Director may extend this deadline on demonstration of good cause, provided the Permittee has shown due diligence towards meeting such deadline.

10. **Public Access Elements and Areas Maintained.** All public access elements and areas shall be constructed in a structurally sound manner and maintained in their approved state consistent with the terms and conditions of this CDP, including through ongoing repair, maintenance, or relocation (if feasible and necessary to respond to shoreline erosion) of all public access improvements.

Prior to any modification, movement, or replacement of access improvements, the Permittee shall obtain an amendment to this CDP to authorize such development, unless the Executive Director determines that an amendment is not legally necessary.

b. Blufftop Landscaping and Habitat Restoration. The native dune and bluff habitat over the entirety of the project area blufftop seaward of 17-Mile Drive (i.e., from the Fanshell Beach Overlook to Seal Rock Beach) shall be restored pursuant to **Special Condition 4.** In the immediate vicinity of the armoring, native coastal bluff plant species capable of trailing vegetation shall be planted along the top of the armoring in all feasible locations in such a way as to cover and trail over the armoring as much as possible at maturity in order to help provide visual softening of the armoring features. The plans shall provide for remediation/replanting as needed to maintain compliance with this condition. All invasive and non-native species, including iceplant, shall be removed from the project area and not allowed to persist otherwise.

c. Armoring Surfacing. The concrete surfaces of all publicly visible portions of project shall be faced with a sculpted concrete surface that mimics the natural undulating bluff landform in the vicinity in terms of integral mottled color, texture, and undulation to the maximum extent feasible (other than stair tread areas, where only the coloring requirement applies). Any protruding elements (e.g., recurves, corners, edges, etc.) shall be contoured in a non-linear manner designed to evoke natural bluff undulations. For the recurves specifically, it is not enough to simply undulate their shape at the top of the armoring, rather the overall armoring needs to be surfaced in such a way as to account for recurve functions in a different way than protruding simply at the top of the structure, and in a way that mimics natural bluff landforms. All drainage and related elements within the sculpted concrete shall be camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden or inconspicuous as seen from public viewing areas, including camouflage of any expected drainage staining over time. The color, texture, and undulations of all such surfaces shall be maintained throughout the life of the approved development. All such surface treatments shall make use of paints, stains, sealants, and any other such materials that are appropriate for and safe for use in the marine environment. Such contouring and/or colorizing/staining shall also be required of any portion of the approved development that becomes visible due to erosion and/or displacement/removal of debris/riprap. At least 30 days prior to commencement of finish concrete surfacing, the Permittee shall submit to the Executive Director for review and written approval the qualifications of the contractor who will perform the finish concrete work, including photos and identification of (a) similar completed projects, and (b) expected finish results. Finish concrete work shall not commence until the Executive Director has approved the expected finish results in writing.

d. Armoring Buttress. The foundational buttress element at the three-culvert system shall be designed to limit its footprint as much as feasible, including through means such as cutting back the culvert pipes to be flush with the bluff

and/or seaward edge of the armoring, and limiting seaward extent as much as possible.

e. **Debris Removal.** All concrete and other debris, including concrete chunks, exposed rebar, and rubble from prior armoring efforts at this location, shall be removed as much as possible and properly disposed of. The required As-Built Plans (see **Special Condition 6**) shall include photographic evidence and an accompanying narrative description that demonstrates compliance with this requirement.

f. **Lighting Prohibited.** Lighting of any portion of the project area shall be prohibited, including as it relates to lighting atop the bluff directed seaward in any way.

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

2. **Construction Plan.** PRIOR TO ISSUANCE OF THIS 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, travel along 17-Mile Drive, and other coastal resources, including by maximizing use of the developed blufftop portions of the Permittee's property for construction staging and materials storage, and minimizing use of immediate shoreline public use areas for construction-related purposes as much as possible.

   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 use areas as much as possible (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. The Construction Plan shall limit construction activities to avoid coastal resource impacts as much as possible. The Construction Plan shall also identify methods to temporarily re-open public access during any work stoppages (for phasing purposes or otherwise) as much as possible.

   c. **Construction Timing.** No work shall occur when harbor seal pups are present (see **Special Condition 3**) or during weekends and holidays in the peak summer months (i.e., from the Saturday of Memorial Day weekend through Labor Day,

inclusive) unless, due to extenuating circumstances, the Executive Director authorizes such work. In addition, all work shall take place during daylight hours (i.e., from one-hour before sunrise to one-hour after sunset). Nighttime work and lighting of the work area are prohibited.

d. Construction BMPs. The Construction Plan shall identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality and other coastal resources, including at a minimum all of the following:

1. **Runoff Protection.** Silt fences, straw wattles, and equivalent apparatus shall be installed at the perimeter of the blufftop portion of the construction site to prevent construction-related runoff and/or sediment from discharging from the construction area, and/or entering into storm drains or otherwise offsite and/or towards the ocean. Similar apparatus shall be applied on the beach/shoreline recreational area for the same purpose when potential runoff is anticipated (and removed otherwise). 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 and treatment equipment.

2. **Equipment BMPs.** Equipment washing, refueling, and/or servicing shall take place at an appropriate off-site and inland location (at least 50 feet from the blufftop edge) chosen for its ability to facilitate collection of materials.

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.

5. **No Intertidal Grading.** Grading of intertidal areas is prohibited, except removal of concrete, riprap, rubble, and debris is allowed in these areas when tidal waters are not present.

6. **Rubber-tired Construction Vehicles.** Only rubber-tired construction vehicles are allowed on the beach/shoreline recreational area, except track vehicles may be used if the Executive Director determines that they are required to safely carry out construction. When transiting on the beach/shoreline recreational area, all such vehicles shall remain as close to the bluff edge as possible and avoid contact with ocean waters.

7. **Construction Material Storage.** All construction materials and equipment

placed seaward of the bluff during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from these areas by one hour after sunset each day that work occurs, except for necessary erosion and sediment controls and/or construction area boundary fencing where such controls and/or fencing are placed as close to the toe of the armoring/bluff as possible, and are minimized in their extent as much as possible.

e. **Restoration.** All beach/shoreline recreational area and other public recreational use areas and all beach/shoreline recreational area access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction in such areas. Any native materials impacted shall be filtered as necessary to remove all construction debris.

f. **Sand Retention.** All sand and/or sand generating materials excavated during the course of construction shall be placed on/near the beach in a manner that protects coastal resources as much as possible, and subject to Executive Director approval of a separate plan to accomplish same. Export of sand and/or sand generating materials excavated during the course of construction, and/or use of such sand/materials for construction purposes, shall be prohibited.

g. **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.

h. **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 their contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number (with message capabilities) 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 protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (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 during construction.

i. **Construction Specifications.** All construction specifications and materials, including construction contracts, shall include appropriate penalty provisions that require remediation for any work done inconsistent with the terms and conditions of this CDP.

j. **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 Executive Director-approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake construction in conformance with this condition and the approved Final Construction Plan, unless the Commission amends this CDP or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

3. **Marine Wildlife Monitoring and Contingency Plan.** PRIOR TO ISSUANCE OF THIS CDP, the Permittee shall submit a Marine Wildlife Monitoring and Contingency Plan (MWMCP) to the Executive Director for review and written approval that includes the following requirements and components:

   a. **Overall.** The MWMCP shall include a description of the project, anticipated timeline, project area (including staging areas), disturbance avoidance and minimization measures (visual and sound barriers, offsite staging of equipment, etc.) for marine wildlife (birds, marine mammals, etc.), and monitoring/reporting protocols, including work stoppage protocols.

   b. **Protections.** The MWMCP shall state that no construction shall occur at Fanshell Beach while harbor seal (*Phoco vitulina*) pups are present (historically February to June), or from April 1 to June 1 (the Monterey County LCP's listed beach closure season), whichever period is longer. The MWMCP should also identify protocols and appropriate buffers to accommodate other sensitive harbor seal seasons, including when pregnant females may use the beach (historically November to February), as well as the molting season (historically June to August), when seals may be most numerous on the beach. If work exceeds 90 dB (re 20 µPa) at Fanshell Beach at any time, or harbor seals are subject to construction-related disturbance, work shall be halted following the work stoppage protocol. The MWMCP shall identify that harbor seal disturbances are demonstrated by behaviors including, but not limited to, sustained head alerts, flushing, active or passive avoidance of the beach, a stop in feeding, and alarm calls. If disturbance of the harbor seals is anticipated, the MWMCP shall acknowledge that a NOAA incidental take permit may be needed.

   c. **Training.** The MWMCP shall also include provisions for marine wildlife training for project personnel and identify qualified marine mammal observers (subject to Executive Director approval) responsible for monitoring the beach and directly offshore at all times during construction. The observers shall send weekly sightings reports (including pre-construction harbor seal count numbers) to the

Executive Director and other appropriate resource agencies (e.g., MBNMS, NOAA Fisheries, etc.), and shall have the authority to stop any activity that has the potential to disturb and/or harm marine wildlife.

4. **Dune and Blufftop Restoration Plan.** PRIOR TO ISSUANCE OF THIS CDP, the Permittee shall submit two copies of a Dune and Blufftop Restoration Plan to the Executive Director for review and written approval. The Dune and Blufftop Restoration Plan shall be prepared by a qualified resource specialist approved by the Executive Director and shall provide for dune/blufftop habitat restoration and monitoring of all dune and blufftop areas, including drainages, between 17-Mile Drive and the sea within the project area (from the downcoast edge of the parcel on which Fanshell Beach Overlook is located, APN 008-271-007, to the existing beach access stairway at the Seal Rock Beach parking area), excluding development such as existing roadway turnouts and the new coastal trail segment. The restoration plan shall, at a minimum, include the following components:

   a. **Site Preparation.** A survey identifying existing habitat and sensitive biological resources within the project area shall be included in the restoration plan. Sensitive native plant species shall be flagged and avoided to the maximum extent feasible during restoration activities. Mitigation measures to avoid impacts to other sensitive biological resources shall also be included.

   b. **Restoration Activities and Timing.** Restoration shall include the removal of invasive species (as recognized by the California Invasive Plant Species Council or California Department of Fish and Wildlife) and the seeding or planting of native dune and blufftop species. Native species shall be grown from seed and/or cuttings sourced from within the coastal areas between Point Piños and Cypress Point, unless otherwise approved by the Executive Director. Detailed methods for invasive species removal and subsequent maintenance shall be included and aim to use the least environmentally damaging alternative available. If any type of pesticide is proposed, it should be supported by a clear rationale as well as details on the proposed products (including any additives and registration numbers), how they will be used, an application schedule, precautions to limit runoff, and triggers for remedial action. Any plans for active revegetation shall be provided with supporting rationale and detail species palette(s), the size and number of container plants, and the rate and method of seed application, along with any planting supplements and/or temporary irrigation plans. Grading shall be minimized, and confined to measures designed to achieve natural contours in the restoration area. The plan shall detail proposed grading, if any, and appropriate measures to minimize erosion, particularly on steep slopes and blufftops while restoration is underway, including symbolic or temporary fencing/barriers and phasing of restoration along blufftops if necessary. Active restoration actions shall be completed as soon as possible, but no later than three years after the start of construction of the approved development, with the exception of any phasing needed to ensure the stability of the bluffs. The Executive Director may extend this deadline on demonstration of good cause, provided the Permittee has shown due diligence towards meeting such deadline.

a. **Monitoring.** A detailed description of the monitoring methods, a clear rationale for method selection, and the analytical framework intended to be used for performance assessments shall be provided. Power analyses should inform design of the sampling scheme, in order to ensure that there will be adequate statistical power to detect differences between success criteria and on-the-ground conditions within the restoration areas.

b. **Success Criteria.** Final success criteria based upon either reference sites or literature review (e.g., the Manual of California Vegetation community membership rules) shall be provided, and shall include native species cover, non-native species cover tolerance thresholds, and species diversity, and specifics for all sensitive species identified. Statistical thresholds shall be established as assessment rules.

c. **Reporting.** Once initial restoration activities (i.e., non-native and invasive plant removal and initial native plantings) are completed, the Permittee shall submit annual restoration monitoring reports to the Executive Director for review and approval for at least five years and no less than three years absent any maintenance or remedial activity apart from weeding, whichever is longer, and if necessary, continuing until all final success criteria have been achieved. Annual reports shall identify restoration implementation and progress (including a presentation of monitoring results, assessment of progress toward meeting final success criteria, and any adaptive management recommendations). Raw data and associated metadata shall be provided with the reports. The Permittee shall implement any changes identified in the annual restoration monitoring reports once approved by the Executive Director.

   Following achievement of final success criteria, a cumulative restoration monitoring report shall be prepared by a qualified resource specialist and shall summarize the prior annual reports, provide a detailed timeline of the overall project's progress and success, and include sufficient detail to demonstrate restoration success as well as photos of plant species and plant coverage. The cumulative restoration monitoring report shall certify conformance with completion of the Executive Director-approved Dune and Blufftop Restoration Plan.

   If the certified cumulative report or Commission ecologist's inspections indicate that the restoration is not in conformance with or has failed to meet the success criteria specified in the approved Dune and Blufftop Restoration Plan, the Permittee shall submit a revised or supplemental restoration plan to the Executive Director for review and approval. The revised or supplemental restoration plan shall be prepared by a qualified specialist approved by the Executive Director, and shall specify measures to remediate those portions of the original approved plan that have failed or have not been implemented in conformance with the original approved plan. These measures, and any subsequent measures necessary to carry out the approved plan, shall be carried out in coordination with the direction of the Executive Director until the approved plans are established to the Executive Director's satisfaction.

d. **Restoration Maintained.** All restoration activities pursuant to the approved Dune and Blufftop Restoration Plan shall be the Permittee's responsibility to maintain for as long as any portion of the approved development exists at this site.

5. **Protection of Archaeological and/or Tribal Cultural Resources.** The Permittee shall undertake the approved project in compliance with the following measures to protect archaeological and/or tribal cultural resources to the maximum extent feasible.

   a. **Notification.** At least one month prior to commencement of any ground-disturbing construction activities, the Permittee shall (1) notify the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list, including but not necessarily limited to the Esselen Tribe of Monterey County; (2) invite all Tribal representatives on that list to be present and to monitor ground-disturbing activities; and (3) arrange for any invited Tribal representative that requests to monitor and/or a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources.

   b. **Monitoring.** A qualified, locally experienced archaeologist and a tribal monitor, approved by relevant tribe(s) including but not limited to the Esselen Tribe of Monterey County, shall be on site to monitor all activities with the potential to impact archaeological and/or tribal cultural resources, including all ground disturbing activities. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended tribal procedures for the inadvertent discovery of tribal cultural and/or archaeological resources and/or human remains.

   c. **Discovery Protocol.** If any tribal cultural deposits are discovered during the course of the project, all construction within 200 feet of such deposits shall cease and shall not re-commence until a qualified cultural resource specialist (which could be a person identified in subpart (b), above), in consultation with the relevant tribe(s), analyzes the significance of the find and, if deemed significant, prepares a supplementary archaeological plan for the review and approval of the Executive Director that evaluates and provides suggested measures related to the discovery. The Executive Director shall review the plan and either: (1) approve it and determine that its recommended changes to the project or mitigation measures do not necessitate an amendment to this CDP, or (2) determine that the changes proposed therein necessitate a CDP amendment. The location of any and all identified archaeological and tribal cultural resources shall be kept confidential, and only those with a "need to know" shall be informed of their locations.

   d. **Human Remains.** Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and/or tribal monitor shall notify the Monterey County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the

remains can be identified. If the County Coroner determines that the human remains are those of a Native American, the Coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The Permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to discuss and confer with the descendants all reasonable options regarding the descendants' preference for treatment. Within five (5) calendar days of notification to NAHC, the Permittee shall notify the Coastal Commission's Executive Director of the discovery of human remains. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site.

6. **As-Built Plans.** WITHIN THREE MONTHS OF COMPLETION OF CONSTRUCTION, the Permittee shall submit two copies of a complete set of As-Built Plans to the Executive Director for review and written approval showing all development authorized by this CDP and all nearby elements that contextualize such development (e.g., property lines, roads, fences, trails, signs, utilities, etc.) The As-Built Plans shall be substantially consistent with the Executive Director-approved Final Plans required by **Special Condition 1**, and any changes between the two shall be highlighted. The As-Built Plans shall include color photographs (in hard copy and jpg format) that clearly show the as-built project, and that are accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, the photographs shall be from inland, seaward, upcoast, and downcoast viewpoints, and from a sufficient number of viewpoints as to provide complete photographic coverage of the permitted development. Such photographs shall be at a scale that allows comparisons to be made with the naked eye between photographs taken in different years and from the same vantage points; recordation of GPS coordinates would be desirable for this purpose. The As-Built Plans shall include vertical and horizontal reference markers from inland surveyed benchmarks for use in future monitoring efforts. The As-Built Plans shall be submitted with certification by a licensed civil engineer with experience in coastal structures and processes, acceptable to the Executive Director, verifying that the armoring has been constructed in conformance with the Executive Director-approved Final Plans required by **Special Condition 1**.

7. **Monitoring and Reporting.** The Permittee shall ensure that the location, condition and performance of the approved development is regularly monitored and maintained. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that would adversely impact future performance, and identify any structural or other damage or wear and tear requiring repair to maintain the armoring and its related development in a structurally sound manner and in its approved and/or required state. Monitoring shall at a minimum include:

   a. **Armoring.** All armoring components shall be regularly monitored by a licensed civil engineer with experience in coastal structures and processes to ensure structural and cosmetic integrity including, at a minimum, evaluation of concrete

competence, spalling, cracks, movement, outflanking and undercutting; and evaluation of all required surface treatments. Such evaluation shall also describe the ways in which the armoring footing/foundation has become more visible due to rock shelf erosion and shall identify steps necessary to contour and/or color/stain such exposed areas as required by this CDP.

b. **Public Access Elements.** All public access elements and areas shall be regularly monitored to ensure that their public access utility and condition are maintained as much as possible, including an evaluation of the potential need to move such elements and areas in response to bluff retreat and other coastal hazards. If any portion of the public access elements and areas is lost, then that portion shall be promptly replaced in a location that most appropriately balances the risks of future erosion events, the pedestrian experience, and habitat needs, subject to Executive Director approval.

c. **Photo Documentation**. All project elements shall be photographed annually from an adequate number of inland and seaward locations as to provide complete photographic coverage of the approved project, where all photo requirements associated with the Executive Director-approved As-Built Plans shall also apply here. All photographs shall be documented on a site plan that notes the location of each photographic viewpoint and the date and time of each photograph to allow naked eye comparison of the same views over time.

d. **Mean High Tide Line Surveys.** The mean high tide line (MHTL) on the subject property shall be surveyed at least every 5 years. Such surveys of the subject property shall be based on field data collected within 12 months of the date submitted, that may include multiple surveys from more than one season in a given survey year, but must include at least one survey during winter months (December through March). Such surveys shall be at the landowner's expense and shall be conducted in consultation with California State Lands Commission (CSLC) staff. Prior to submitting each survey, it must be approved by the CSLC as compliant with CSLC survey standards. Such surveys shall: (1) use either the published Mean High Water elevation from a National Oceanic and Atmospheric Agency (NOAA) published tide station closest to the project or a linear interpolation between two adjacent tide stations, depending on the most appropriate approach in light of tidal regime characteristics; (2) use the most current tidal epoch; (3) use local, published control benchmarks to determine elevations at the survey site (control benchmarks are the monuments on the ground that have been precisely located and referenced to the local tide stations and vertical datum used to calculate the Mean High Tide elevation); (4) match elevation datum with tide datum; (5) reference all elevations and contour lines to the most recent U.S. vertical datum in effect at the time of the survey (currently NAVD88, but soon to be updated by the National Geodetic Survey); and (6) note survey date, datum, and MHW elevation.

e. **Reporting.** Monitoring reports covering the above-described evaluations shall be submitted to the Executive Director for review and written approval at five-year intervals by May 1st of each fifth year (with the first report due May 1, 2028 and

subsequent reports due May 1, 2033, May 1, 2038, and so on) for as long as the approved development exists at this location. The reports shall identify the existing configuration and condition of the armoring and public access elements and areas, shall recommend actions necessary to maintain all project elements in their approved and/or required state, and shall include the above-described photographic documentation (in color hard copy and jpg format) and the above-described MHTL surveys. In addition to meeting all **Special Condition 8** requirements below, actions necessary to maintain the approved development in a structurally sound manner and its approved state shall be implemented within 30 days of Executive Director approval, unless a different time frame for implementation is identified by the Executive Director. In addition to the every five year requirement, separate and additional monitoring reports subject to the same requirements shall be submitted within 30 days following either (1) an El Niño storm event comparable to a 20-year or larger storm, or (2) an earthquake of magnitude 5.5 or greater with an epicenter in or offshore of Monterey County.

8. **Future Maintenance.** This CDP authorizes future maintenance as described in this special condition. The Permittee acknowledges and agrees on behalf of itself and all successors and assigns that it is the Permittee's responsibility to: (a) maintain the approved project in a structurally sound manner, visually compatible with the shoreline surroundings, and in its approved and required state, including that the camouflaging surfacing of the armoring shall be maintained throughout the life of the structure; (b) retrieve any failing portion of the approved structures or related improvements that might otherwise substantially impair the use, aesthetic qualities, or environmental integrity of the beach, shoreline, and/or ocean; and (c) annually or more often inspect all approved armoring components for signs of failure and/or structural issues. All public access elements and areas shall be maintained for as long as any portion of the approved development remains. Any maintenance-oriented development associated with the approved project shall be subject to the following:

   a. **Maintenance.** "Maintenance," as it is understood in this condition, means development that would otherwise require a CDP whose purpose is to repair and/or maintain the approved development in its approved and/or required state, including retrieval of any project components that may be displaced from the approved development .

   b. **Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits and/or other authorizations from other agencies for any future maintenance episodes.

   c. **Maintenance Notification.** Prior to commencing any maintenance event, the Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office, in writing, regarding the proposed maintenance. Except for necessary emergency interventions (see below), such notice shall be given by first-class mail at least 30 days in advance of commencement of work. The notification shall include a detailed description of the maintenance event proposed, and shall include any plans, construction BMPs, engineering and/or

geology reports, proposed changes to the maintenance parameters, other agency authorizations, and other supporting documentation describing the maintenance event. The maintenance event shall not commence until the Permittee has been informed by Central Coast District planning staff that the maintenance event complies with this CDP. If the Permittee has not received a response within 30 days of receipt of the notification by the Central Coast District Office, the maintenance event shall be authorized as if Commission planning staff affirmatively indicated that the event complies with this CDP. The notification shall clearly indicate that the maintenance event is proposed pursuant to this CDP, and that the lack of a response to the notification within 30 days of its receipt constitutes approval of it as specified in this CDP. If the notification does not explicitly indicate same, then the automatic authorization provision does not apply.

d. **Non-compliance Proviso.** If the Permittee is not in compliance with any of the conditions of this CDP, or is in violation of the Coastal Act and/or LCP otherwise, at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition may not be allowed by this condition, subject to a determination by the Executive Director.

e. **Emergency.** Nothing in this condition shall serve to waive any Permittee rights that may exist in cases of emergency pursuant to Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).

f. **Duration and Scope of Covered Maintenance.** Future maintenance under this CDP may be allowed subject to the above terms throughout the duration of the armoring authorization (see **Special Condition 9**) subject to Executive Director review and written approval every 5 years (with the first approval due December 1, 2028, and subsequent approvals December 1, 2033, December 1, 2038, and so on) to verify that there are not changed circumstances, understandings, or other issues associated with such allowance of maintenance events that necessitate re-review. It is the Permittee's responsibility to request Executive Director approval prior to the end of each 5-year maintenance period (i.e., with the first period culminating on December 1, 2028). Maintenance can be carried out beyond December 1, 2028 (and beyond subsequent five-year periods) pursuant to these maintenance provisions only if the Permittee requests an extension and only if the Executive Director extends the maintenance term in writing, both prior to the end of each 5-year maintenance period. The intent of this CDP is to allow for 5-year extensions of the maintenance term for as long as the approved development remains authorized unless there are changed circumstances, understandings, or other issues that may affect the consistency of this maintenance authorization with the policies of Chapter 3 of the Coastal Act and thus warrant a re-review of this maintenance condition.

9. **CDP Authorization Duration.** This CDP authorizes the approved development described in **Special Condition 1** for as long as all approved and required public recreational access areas and features remain in good condition and available for public use, and for as long as the Permittee is in compliance with all terms and conditions of the CDP, whichever leads to a shorter time frame. At such time, and unless the Permittee brings such areas and features into proper condition and available for public use and/or resolves any compliance issues, both to the Executive Director's satisfaction, then the Permittee shall remove the approved development and appropriately restore the affected area to natural conditions subject to Executive Director approval of a plan to accomplish same with the least coastal resource impacts.

10. **Future Coastal Resource Impact Mitigation.** This CDP accounts for mitigation of coastal resource impacts due to the armoring described in **Special Condition 1** for the first 20 years from the date of the approval (i.e., until December 15, 2043). If the Permittee (or any subset thereto) intends to keep the armoring in place after December 15, 2043, such Permittee must submit a complete CDP amendment application prior to that time that analyzes the continued need for armoring, the feasibility of less coastal resource impactful alternatives, and any necessary and/or desired project modifications. If the information in the CDP amendment application demonstrates that the public access improvements installed under this approval will not sufficiently mitigate for the adverse coastal resource impacts associated with the retention of the armoring beyond the preceding 20-year period, additional mitigation may be required. Similarly, if the Permittee applies for a separate CDP or an amendment to this CDP to modify the armoring, or to perform repair work affecting 50 percent or more of the armoring, such Permittee shall be required to provide additional commensurate mitigation for the impacts of the enlarged or redeveloped armoring on public views, public recreational access, shoreline processes, environmentally sensitive habitat area (ESHA), and all other affected coastal resources that have not already been mitigated through this CDP.

11. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (a) that the project area is subject to extreme coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tidal scour, storms, tsunami, coastal flooding, sea level rise, landslides, bluff and geologic instability, and the interaction of same; (b) to assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such hazards in connection with the permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of this project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims due to such hazards), expenses, and amounts paid in settlement arising from any injury or damage; and (e) that any adverse effects to properties caused by the permitted development shall be fully the responsibility of the Permittee.

12. **Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and/or assigns challenging the approval or issuance of this CDP, the interpretation and/or enforcement of CDP terms and conditions, or any other matter related to this CDP. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission, its officers, employees, agents, successors and/or assigns.

13. **Public Rights.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights that may exist on the affected property, and that the Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist now or in the future.

14. **Future Permitting.** Except as authorized by **Special Condition 8**, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required.

15. **Other Agency Approvals.** PRIOR TO ISSUANCE OF THIS CDP, the Permittee shall provide to the Executive Director for review and written approval, a written determination from the California State Lands Commission (CSLC) or other designated trustee agency that: (a) no State lands are involved in the development; or (b) State lands are involved in the development, and all permits required by the CSLC or other designated trustee agency have been obtained; or (c) State lands may be involved in the development, but pending a final determination of State lands involvement, an agreement has been made by the Permittee with the CSLC or other designated trustee agency for the project to proceed without prejudice to the determination.

    In addition, PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Executive Director copies of all other permits, permissions, or other authorizations from the U.S. Army Corps of Engineers, Monterey Bay National Marine Sanctuary, NOAA Fisheries, and Central Coast Regional Water Quality Control Board or evidence that no permits, permissions, or other authorizations from these agencies are required. The Permittee shall inform the Executive Director of any changes to the Commission-approved project required by other agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP, unless the Executive Director issues a written determination that no amendment is legally required.

16. **Minor Changes.** The Permittee shall undertake development in conformance with the terms and conditions of this CDP, including with respect to all Executive Director-approved plans and other materials, which shall also be enforceable components of this CDP. Any proposed project changes, including in terms of changes to identified requirements in each condition, shall either (a) require a CDP amendment, or (b) if the Executive Director determines that no amendment is legally required, then such changes may be allowed by the Executive Director if the Executive Director determines that such changes: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

4. FINDINGS AND DECLARATIONS

A. Project Location, Background, and Description

1. Project Location

The project site is located on the shoreline in the Del Monte Forest area of unincorporated Monterey County. The Del Monte Forest occupies much of the Monterey Peninsula and is bounded roughly by the cities of Pacific Grove and Monterey to the north and northwest, and Carmel-by-the-Sea to the south. State Highways 1 and 68 generally act as the eastern, inland limit of the Del Monte Forest.

The proposed project is located on the blufftop and bluff face, at the toe of the bluff, and on the beach between 17-Mile Drive and the sea at roughly the midpoint of the Del Monte Forest shoreline just upcoast of Cypress Point. The project area spans a distance along the shoreline of almost one mile, from the Fanshell Beach parking lot and overlook on the downcoast end to the Seal Rock Beach parking lot on the upcoast end. This area is characterized by white sand beaches and rocky outcroppings, a natural blufftop comprised of low-lying dune and coastal scrub habitat, and the winding two-lane 17-Mile Drive, which is bound on its inland edge at this location by the private Cypress Point Club golf course, a 2.4-acre area of protected wetland and dune habitat adjacent to the golf course (owned by the Del Monte Forest Conservancy), and single-family residences (see **Exhibit 1** for location maps and **Exhibit 2** for site photos).

17-Mile Drive is the primary roadway through the Del Monte Forest and is described in the Del Monte Forest Area segment of the Monterey County LCP as “a defining element of the circulation system for both residents and visitors.” It is heavily used by the public in vehicles and on bicycles alike for not only through access, but also recreational and sightseeing travel and as an accessway to popular shoreline public access attractions, including the Lone Cypress, Bird Rock, Seal Rock Beach, Sunset Point, and Fanshell Beach. 17-Mile Drive is widely considered worldwide to be a destination in and of itself, including for the unobstructed views it provides through the Del Monte Forest’s defining landscapes of Monterey pine and cypress forests, coastal bluffs and dunes, and the Pacific Ocean.[3]

[3] The Del Monte Forest roadway system, including 17-Mile Drive, is owned and maintained by the Pebble Beach Company (the Applicant in this case), and access into the Forest is controlled through five gates for which an entrance fee is required for the general public to gain vehicular access (bicyclists and

At the Fanshell Beach project area, 17-Mile Drive was historically constructed on a fill embankment in the early 1900s, and ranges in elevation from of approximately +20 to +28 feet NAVD88.[4] Fanshell Beach itself is an approximately 1,400-foot long crescent-shaped beach, lined by dunes and a bluff that is a mix of vegetation, natural rock, and armoring that represents the downcoast extent of the Asilomar Dunes system that starts at Point Piños in Pacific Grove. The beach is punctuated by a large rock outcropping at its midpoint, and the upcoast half of the crescent is a wide sandy beach, while the downcoast half is comprised of a more narrow beach and a combination of cobbles, loose rock rip rap, and some granitic bedrock outcrops. A small turnout on 17-Mile Drive at the midpoint of the beach provides parking for 3 to 5 vehicles and beach access stairs. The more formal Fanshell Beach parking area and overlook, located at the downcoast end of the crescent, provides a larger paved parking lot with a staircase to a small downcoast pocket beach, and views of the beach, shoreline, and the northern Del Monte Forest ridgeline beyond. No separated pedestrian access to Fanshell Beach proper exists from the existing parking lot, and visitors must traverse along the narrow shoulder of 17-Mile Drive to the small turnout and stairs to reach the sandy beach.

The shoreline area upcoast of Fanshell Beach consists of rocky bluffs and vegetated dunes that transitions to sandy beach (at Seal Rock Beach). Just upcoast of the Seal Rock Beach parking lot is the Bird Rock Vista Point, which provides public parking and public restrooms. Both Fanshell Beach and Seal Rock Beach are identified in the Del Monte Forest area segment of the Monterey County LCP as public shoreline access and scenic vista points and are popular stopping points along 17-Mile Drive.

The Monterey Bay National Marine Sanctuary, the largest marine sanctuary in the United States, extends offshore at this location. Fanshell Beach is a known harbor seal pupping site and the Applicant closes the beach and public parking areas each spring during the pupping season.

2. 17-Mile Drive/Fanshell Beach Armoring Background

The approximately 800-foot long downcoast half of Fanshell Beach and approximately 20 to 24-foot high near vertical bluff between the road and the beach are largely covered by existing rock and rubble that appears to be a mix of exposed and eroded roadway fill material, natural bluff material, and rock rip rap placed over many years prior to implementation of the Coastal Act. This pre-Coastal Act rock covers roughly 500 linear feet of shoreline. According to a geotechnical report prepared for the Applicant in

pedestrians are allowed free entrance). The vehicular entrance fee – including allowable fee increases over time – is written into the LCP as LUP Policy 98 ("The vehicular entrance fee as of January 1, 2011 was $9.50, and it was last increased to that amount on April 1, 2010. The entrance fee may be increased over time, as long as it is not increased by more than the increase in the Consumer Price Index (CPI) or more than 5% per year, whichever is less, on a cumulative basis as measured from the date of the last gate fee increase."). The current vehicular access fee is $11.75.

[4] NAVD88 stands for the North American Vertical Datum of 1988. This is the vertical control datum of orthometric height established for vertical control surveying in the United States based on the general adjustment of the North American Datum of 1988. The elevations of 17-Mile Drive on the project plans are based on NAVD88 elevations taken from a topographic map prepared by WWD Engineers in 2001 using photogrammetric techniques. The mean high tide line is located near +5 NAVD88 and mean sea level is approximately +3 NAVD88.

2000,[5] in addition to the pre-Coastal rock, rock rip rap was placed along this downcoast section of the beach in response to El Nino-related erosion in both 1983 (approximately 39 linear feet) and 1998 when the Applicant deemed 17-Mile Drive to be threatened.[6] The rock placed in 1998 was subsequently replaced in 2000 when the Applicant constructed a grouted rip rap revetment with artificial rock facing and performed roadway repairs at two sections (45 linear feet and 75 linear feet) of eroded bluff at the downcoast half of the beach in response to a high tide and high wave action event in 1999 that eroded the bluff and threatened 17-Mile Drive.[7] In 2010, in response to large ocean swells and strong storms in the 2009-2010 winter season that again undermined 17-Mile Drive, the Applicant constructed another revetment (with no artificial rock facing) over a 20-foot long and 230 square-foot beach and bluff surface area and performed roadway repairs at a small single culvert at about the midpoint of the downcoast half of Fanshell Beach.[8] Because of the nature of the 2010 emergency, the Applicant's geotechnical engineer recommended the use of rip rap as the most expedient and simplest solution to temporarily bridge the exposed alluvium and buttress, and support the roadway, and ultimately to allow easiest removal if deemed appropriate through the required regular follow-up CDP.

The approximately 600-foot long upcoast half of the beach (from the midpoint beach access stairs northward) is generally wider and the bluff slopes more gradually between the beach and the road than on the downcoast end. The bluff and roadway along this section is armored in three locations with rip rap that was installed in 1983,[9] including at an existing three culvert drainage system that outlets onto the back beach from under 17-Mile Drive. A 50-foot long and approximately 800 square-foot area of beach and bluff surface area at the culvert system was again reinforced with loose rip rap in 2010 and the road was repaired under the above 2010 ECDP to address the emergency conditions resulting from the above-described 2009-2010 winter storm season.

It also appears that the beach access stairway, which was constructed between 1993 and 2003, from the informal parking turnout at the midpoint of the beach crescent that enables pedestrian access to the beach from the turnout located at the midpoint of Fanshell Beach did not receive a CDP.

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[5] Haro, Kasunich and Associates, Inc., *Geotechnical/Coastal Engineering Assessment – Coastal Erosion Road Undermining*, prepared for Pebble Beach Company, January 13, 2000.

[6] The Coastal Commission has not found any evidence of ECDPs or CDPs (either from Monterey County or the Coastal Commission) for such armoring development, and the Commission is tracking such rock placement as a violation (see also violation findings later in this report).

[7] Monterey County ECDP number PLN000060 and follow-up County CDP number PLN000595 (Coastal Commission reference number 3-MCO-01-543).

[8] Pursuant to Coastal Commission ECDP number 3-10-012-G, issued March 29, 2010. The Applicant submitted follow-up CDP application number 3-10-043 on August 29, 2010, which was subsequently withdrawn. As such, the emergency development in this area has yet to be recognized by regular CDP as required, and remains unpermitted. The Applicant intends for the current CDP application to cover the required follow-up CDP requirement of ECDP 3-10-012-G.

[9] Pursuant to Coastal Commission CDP 3-83-204. The armoring at the culvert system was initially constructed prior to coastal permitting requirements and augmented under CDP 3-83-204.

Thus, in short, there exists about 730 linear feet of pre-Coastal Act and/or regular CDP permitted armoring, about 70 linear feet of armoring that received an ECDP but did not obtain the required follow up regular CDP, and about 39 linear feet of other unpermitted armoring. Thus, while most of the existing armoring is pre-Coastal Act or permitted at this location, just over 100 linear feet (or 13%) is not, and the midpoint public access stairway is not (see also Violation findings that follow).

3. Project Description

The proposed project would remove all existing armoring in the vicinity of Fanshell Beach and replace and augment it with the construction of four new vertical tied back seawall segments totaling 1,272 linear feet between 17-Mile Drive and Fanshell Beach. The project includes an additional buttress structure totaling 380 cubic yards at the existing three pipe storm drain culvert system at the upcoast part of the beach that is intended to provide additional foundational support for this part of the seawall and dissipate storm outflow energy. Most of the buttress would be buried below the beach sand elevation except during winter beach scour conditions and/or during high storm runoff conditions.

The armoring sections range in height over the bluff face from 7 to 27 feet (covering bluff elevations ranging from -1 to +30 NAVD88), some of which would be buried below the beach sand profile during non-scoured beach conditions. The seawall sections would be secured by a total of 343 tiebacks that would extend 20 to 45 feet diagonally into the granitic bedrock beneath the dunes below 17-Mile Drive. Some sections of the armoring closest to the road and integrated blufftop trail (described below) are proposed to include recurves, or wave runup barriers, to further dissipate wave energy. The entirety of the armoring, including the foundational buttress at the culvert system, would be textured and colored with faux rock facing to mimic natural bluffs and would hug the natural indentations and undulations in the bluff and bedrock platform. The Applicant intends for the proposed armoring to be colored, textured, and sculpted similar to other existing armoring in the vicinity (see **Exhibit 5**).

The project also includes a clean-up and beach restoration effort that includes excavation and removal of all imported rock and concrete rubble from the bluffs and beach, described above and as shown in **Exhibits 1 and 2**, to free up approximately 19,000 square feet of usable sandy beach and natural weathered granite platform on Fanshell Beach as well as some intertidal area. Much of this armoring exists legally at the site, and the portion that does has been credited towards directly reducing the mitigation fee calculated in the Coastal Hazards section below. Removal of the remaining ECDP-temporarily-authorized armoring and unpermitted armoring is required irrespective of this permit, and thus receives no mitigation credit.

To address the lack of a separated pedestrian accessway between the Fanshell Beach parking lot and overlook and the midpoint stairs, the proposed armoring would include an integrated five-foot wide lateral coastal trail that would begin at the parking lot and extend northward along the top of the armoring and bluff to the midpoint beach access stairs. This new integrated trail would be constructed with a decomposed granite surface and would include an approximately three-foot high split rail safety fence and interpretive signage. It would continue beyond the beach stairs and terminate just

before the upcoast end of the armoring at a new coastal overlook with bench seating and additional signage. Similarly, to address a missing segment of coastal trail along this shoreline area, the trail would continue northward (upcoast) for another approximately 0.5 mile (see approximate alignment in **Exhibit 4**). This section of trail would be constructed on the blufftop between Fanshell Beach and the Seal Rock Beach parking lot and stairs and would be a mix of decomposed granite and compacted sand surfaces to match the existing bluff trail network along 17-Mile Drive to the north of this area. The trail would then connect to the existing trail network along the bluffs and beaches that continues to Pacific Grove and beyond. Trail connections to 17 Mile Drive and the shoreline would also be provided for along the new segment of trail.

In addition to the new coastal trail segment totaling approximately 0.8-mile, the project also includes replacement of the existing undermined wooden beach access stairway at the midpoint of Fanshell Beach with a new concrete stairway integrated with the armoring, as well as a new blufftop overlook with a bench above Fanshell Beach. Other proposed public access improvements include formalization of public parking spaces at the Fanshell Beach parking lot, new benches, picnic tables, interpretive and directional signage, bike racks, and ADA accessibility improvements.

Finally, the project includes restoration of approximately 8.4 acres of dune and coastal blufftop habitat throughout the entire project area (i.e., between the Fanshell Beach parking lot and Seal Rock Beach).

See **Exhibit 2** for photos of the site and **Exhibit 3** for proposed project plans.

B. STANDARD OF REVIEW

The project is located within both the Commission's retained CDP jurisdiction area (for the proposed armoring, armoring removal, and beach cleanup) as well as the County's CDP jurisdiction (for the trail, other public access improvements, and habitat restoration) and is the subject of prior Coastal Commission CDP decisions and requirements, including the requisite follow-up regular CDP application for the 2010 Commission-issued ECDP for rip rap revetments and roadway repairs. The Applicant, the County, and the Executive Director have all agreed to a consolidated CDP processing pursuant to Coastal Act Section 30601.3, and thus the standard of review for the proposed project is the Coastal Act, with the Monterey County LCP providing non-binding guidance.

C. CDP DETERMINATION

1. COASTAL HAZARDS

A. Applicable Coastal Act and LCP Provisions

The Coastal Act is, at its core, a law that requires coastal resource protection. In adopting the Act in 1976, the State Legislature included a series of goals and objectives. For example, Coastal Act Sections 30001 and 30001.5 state:

> ***Section 30001.*** *The Legislature hereby finds and declares: (a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.*

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation. (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction. (d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

Section 30001.5. *The Legislature further finds and declares that the basic goals of the state for the coastal zone are to: (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state. (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners. (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast. (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone. (f) Anticipate, assess, plan for, and, to the extent feasible, avoid, minimize, and mitigate the adverse environmental and economic effects of sea level rise within the coastal zone.*

In short, it is clear from the law that the coastal zone is to be recognized as a special place, where coastal resources are of "paramount concern," and required not only to be protected against degradation, but enhanced where feasible. To implement these objectives, Coastal Act Chapter 3 includes a series of specific provisions that clearly and emphatically require the protection of coastal resources, from public recreational access to coastal habitats to public views and landforms.[10] And, perhaps just as clearly, and as explained in detail subsequently, armoring has significant adverse impacts on all such protected coastal resources, including leading to unavoidable impacts on natural landforms, public recreational access, natural processes (which also significantly impacts public recreational access) and public views.[11] These impacts are all unavoidably inconsistent with these Coastal Act resource protection requirements, and these inconsistencies direct that armoring be denied in order to meet such Coastal Act requirements. In other words, the plain language of the Act is actually best understood

[10] See, for example, the over 40 sections nested in Chapter 3, including sections related to public access, recreation, the marine environment, and land resources.

[11] See, for example, Commission findings in LCP-3-MRB-21-0047-1 (Morro Bay Land Use Plan Update), and CDPs A-3-SCO-07-095/3-07-019 3-07-019 (Pleasure Point seawall), 3-09-025 (Pebble Beach Company Beach Club seawall), 3-09-042 (O'Neill seawall), 2-10-039 (Lands End seawall), 3-14-0488 (Iceplant LLC seawall), and 2-17-0702 (Sharp Park golf course).

as 'anti-armoring,' where the Act's resource protection policies generally prohibit armoring, including Section 30253, which makes clear that armoring is not allowed to protect new development when it would cause erosion or destruction of the site, or substantially alter natural landforms,[12] which is essentially always the case with armoring.[13]

In fact, as contrasted with the numerous Coastal Act resource protection policies, both broad and specific, there is exactly one policy that includes any language that specifically authorizes armoring, Section 30235, and it includes important – and severely limiting – criteria. Section 30235 states, in applicable part:

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

Thus, Section 30235 only requires that the Commission approve armoring under very limited circumstances, namely when required to serve coastal-dependent uses or to protect public beaches or existing structures in danger from erosion, and only when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In other words, when there are qualifying uses, beaches, or structures,[14] armoring must be allowed only if it is required to serve/protect them, meaning when there are no other less environmentally damaging feasible alternatives that can perform that same function. Put another way, given that armoring is has significant adverse impacts on myriad protected coastal resources and is only required to be approved in limited circumstances, the Coastal Act should be understood to actually prohibit armoring as its default, and then to allow that prohibited thing only as a limited exception to the rule.[15]

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[12] Section 30353 states, in applicable part, that "New development shall…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" (emphasis added).

[13] Ibid.

[14] Where two of the three are based on protecting important State shoreline priorities (coastal-dependent uses and public beaches), and where armoring rarely actually protects beaches so much as reduces them. In fact, when public beaches are in danger of erosion, such danger is typically exacerbated by armoring as opposed to protected by it because armoring typically 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). Thus, bracketing groins in certain circumstances, armoring is typically the opposite of what is necessary to protect a public beach in danger from erosion. Finally, past these two important State shoreline priorities, the only other development allowed armoring by Section 30235 are existing structures, including private structures (e.g., residences, etc.). In this case the existing structure and coastal dependent criteria are applicable.

[15] In very rare circumstances, a project may include shoreline armoring elements and the overall project may still be consistent with Coastal Act and the Commission may not need to invoke Section 30235.

When framed in this way, Section 30235's limited requirement to approve shoreline armoring is probably best understood as an exception with respect to the Coastal Act's coastal resource protection provisions.

The purpose and structure of the Coastal Act support such an interpretation as well, as reflected in numerous policies of the Act. For example, not only does Section 30009 require a liberal interpretation to protect shoreline and beach resources,[16] but Section 30007.5 also directs the Commission to resolve conflicts in a manner that is "most protective of significant coastal resources."[17] And courts have relied on Section 30009 to find that exceptions to the Act's requirements must be read narrowly,[18] and have also found that 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."[19,20] The Coastal Act is thus the arbiter for understanding LCPs on these points. And in fact, courts have also previously found that LCP provisions must be understood in relation to the relevant Coastal Act section or sections from which a specific LCP provision derives its authority.[21]

It is thus perhaps unsurprising that the Del Monte Forest area segment of the Monterey County LCP echoes the Coastal Act construct in this regard. Similar to the Act, the LCP includes a series of provisions focused on resource protection, with a special emphasis on protection of the Forest's unspoiled natural and scenic resources.[22] The LCP too speaks to minimizing risks due to hazards, including shoreline hazards, and provides a very limited exception for armoring. Of note, the LCP provides additional clarity on what is entitled to armoring, namely only existing substantial structures, and provides the examples of primary residences, major roads, and significant facilities or access areas

[16] Section 30009 requires that: "This division [i.e., the Coastal Act] shall be liberally construed to accomplish its purposes and objectives."

[17] Section 30007.5 states, in applicable part: "The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources."

[18] See, for example, *Citizens for a Better Eureka v. California Coastal Com.* (2011) 196 Cal.App.4th 1577, 1586-87 ("[i]n light of the legislative directive to construe the Act liberally...it is appropriate to construe the exceptions narrowly"", *quoting Capon v. Monopoly Game LLC* (2011) 193 Cal.App.4th 344, 355).

[19] See, for example, *Charles A. Pratt Const. v. California Coastal Commission* (2008) 162 Cal.App.4th 1068, 1076, 1078.

[20] California law affords "great weight" to the Commission's interpretation of the statutes and regulations under which it operates (see, for example, *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).

[21] See, for example, *McAllister v. Coastal Commission* (2008) 169 Cal.App.4th 912.

[22] See, for example, the introductory text of the Resource Management Element of the Del Monte Forest LUP: "The spectacular meeting of forest, land, and sea in the Del Monte Forest area is more than an important scenic attraction of the Monterey Peninsula; it is also a vital habitat for a variety of vegetation and wildlife species, including several rare and endemic species dependent on the unique ecosystem. That so much of the Forest's natural and scenic resources remain unspoiled is also significant; it provides a sharp contrast to urban developments in most areas of the nearby cities of Carmel-by-the-Sea, Pacific Grove, and Monterey."

used by the public.

> ***Del Monte Forest Area LUP Policy 43 and IP Section 20.147.060.B.6.*** *No habitable structures shall be permitted along the shoreline in areas subject to storm wave run-up. New development shall be sited and designed in such a manner as to avoid the need for shoreline armoring and/or other such shoreline altering development over the development's lifetime, and shall include enforceable provisions for addressing any future bluff retreat/erosion danger to the development without shoreline armoring (e.g., moving the development, removing the development, etc.). In addition, bluff and cliff top development shall be permitted only if design and setback provisions are adequate to assure stability and structural integrity for the development's lifetime and if the development (including associated storm runoff, foot traffic, grading, and irrigation) will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area. Development on bluff faces shall be prohibited except for public access pathways, including stairways.*
>
> ***Del Monte Forest Area LUP Policy 44 and IP Section 20.147.060.B.7.*** *Revetments, seawalls, retaining walls, groins, 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. For the purposes of application of this policy, existing structures shall mean existing substantial structures (such as a primary residence,* ***a major road, or a significant facility or access area used by the public****). Shoreline armoring and/or other such shoreline altering development shall be allowed to protect existing structures if they are in danger from erosion, and if: (a) less-environmentally damaging alternatives to such armoring/development are not feasible (including relocation of endangered structures); and (b) the armoring/development has been sited, designed, and accompanied by measures to proportionately mitigate any unavoidable negative coastal resource impacts (on views, sand supply, public access, etc.). Development, including land divisions, that would require shoreline armoring and/or other such shoreline alteration over the lifetime of the development shall be prohibited. (emphasis added)*

Although these LCP policies are non-binding with respect to the standard of review for this application, they do provide guidance, and only further reinforce the key Coastal Act understanding that the Act's coastal resource protection requirements, including protections of shorelines, natural landforms, and beaches, would suggest that armoring is essentially prohibited under the Coastal Act, but for the one policy (Section 30235) that 'overrides' such provisions and requires approval of armoring when certain exacting criteria are met. Thus, applications for armoring, such as this one, not only need to be evaluated against that criteria, but also need to be understood in terms of the overall Coastal Act context as it relates to coastal resource protection being a "paramount concern" and clearly the underlying objective in the coastal zone, which area is required to be understood as "a distinct and valuable natural resource of vital and enduring interest to all the people."

B. Consistency Analysis

As indicated above, Coastal Act Section 30235 is an override over other Coastal Act provisions that allows armoring if required to serve a coastal-dependent use or to protect an existing structure in danger from erosion (as applicable to this proposed project) subject to the requirement that adverse impacts to local shoreline sand supply are mitigated or eliminated. The Coastal Act provides for these limitations because shoreline armoring can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beaches.[23]

Thus, the applicable questions here under Coastal Act Section 30235 are whether: (1) there is an existing structure and/or a coastal-dependent use; (2) that existing structure is in danger from erosion and/or that coastal-dependent use needs to be served; (3) shoreline-altering construction is required to protect that existing endangered structure and/or to serve that coastal-dependent use; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply.[24] The first three criteria relate to whether the proposed armoring is necessary, while the fourth criterion applies to mitigating some of the impacts from the proposed armoring if it is deemed necessary.

Existing Structure/Coastal-Dependent Use

The issue of what constitutes an "existing structure" for Section 30235 purposes has been debated for many years, where some, including some local governments in their LCP implementation, have argued at times that it means whether a structure is simply 'extant' at the time of armoring application. Another interpretation is that the Legislature intended the word to mean exactly what it meant at the time when the Legislature chose to use the word. In other words, in enacting the statute in 1976, the Legislature included the word "existing" in the natural sense, to mean existing at that time.

This controversy over these competing interpretations did not fully arise until roughly the early 2000s. This is likely due, in large part, to the fact that, prior to then, the only structures for which the distinction would be relevant (those built along the shorefront after 1976) were relatively new, and the parties who had secured permits to construct them had had to demonstrate that they would be safe without requiring armoring. Thus, even if that showing would eventually prove to have been mistaken, coastal erosion had not yet progressed far enough for that error to have become evident and problematic. Since 2000, as the issue has become increasingly contentious, with a few exceptions,

[23] See, for example, Commission findings in LCP-3-MRB-21-0047-1 (Morro Bay Land Use Plan Update), and CDPs A-3-SCO-07-095/3-07-019 3-07-019 (Pleasure Point seawall), 3-09-025 (Pebble Beach Company Beach Club seawall), 3-09-042 (O'Neill seawall), 2-10-039 (Lands End seawall), 3-14-0488 (Iceplant LLC seawall), and 2-17-0702 (Sharp Park golf course).

[24] CDP approval also requires that projects be found consistent with other Coastal Act provisions that independently protect coastal resources in addition to these Section 30235 (and related LCP as guidance) requirements. The discussion in this Coastal Hazards analysis speaks to consistency with 30235, but overlapping and distinct discussions regarding consistency with other Coastal Act provisions are covered separately below.

the Commission has not found that a structure built after 1977 qualifies as an "existing structure" for purposes of Section 30235. Rather, it has been increasingly consistent in finding that "existing structures" as the phrase is used in Section 30235 refers to structures that were legally in existence as of January 1, 1977, the effective date of the Coastal Act.

The interpretation that 'existing' means 'extant' fails for other reasons as well. For example, Section 30253, the only other Coastal Act policy that explicitly refers to armoring, prohibits new development that would "in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." Thus, development approved since the Act's effective date is not allowed such armoring[25] that leads to substantial natural shoreline landform alteration (which, in the case of shoreline armoring, is essentially all armoring cases)[26] pursuant to Section 30253. If Section 30235's 'existing' meant 'extant' at the time of an application, then it would require approval of armoring that Section 30253 prohibits, and the two cannot readily be harmonized.

More appropriately, the application of Section 30253 since 1977 creates two types of development under the Coastal Act: pre-Coastal Act development that may not have been built to meet Section 30253 requirements to avoid armoring, and post-Coastal Act development that has (including because it is required by Section 30253). Put another way, the Section 30235 requirement to allow for armoring regardless of its coastal resource impacts or its inconsistencies with other Coastal Act resource protection provisions is intended to only apply to pre-Coastal Act development, and not anything else, essentially 'grandfathering' pre-Coastal Act structures and allowing them armoring as an exception to the otherwise applicable Coastal Act requirements.[27] In addition,

[25] It is noted that some have argued that the use of the term "require the construction of" in Section 30253 means that Sections 30253's provisions in that sense only apply prospectively to the future construction of armoring, and do not extend to armoring that may exist at the time that proposed development is being pursued, and thus that such proposed development can rely on such armoring notwithstanding it may may lead to the types of prohibited impacts. However, such an interpretation completely ignores the qualifying language that proceeds such text, which states that the development cannot "in any way" require armoring construction. Proposed development attempting to rely on existing armoring is still dependent on that armoring having been constructed, which falls under the rubric of "in any way" requiring the construction of armoring to protect it. That such construction may have been constructed before the proposed development is being considered is immaterial to Section 30253's application for that reason (and such conclusion is bolstered by the Section 30009 requirement to liberally construe the Act to protect coastal resources). In addition, if new development relies on armoring that is already present, it will also have to rely on the continued upkeep, expansion, or eventual rebuilding of that armoring. If the armoring needs to be expanded or rebuilt, then the new development would be relying on the construction of new armoring, in violation of Section 30253.

[26] Ibid.

[27] As described in the Commission's 2015 Sea Level Rise Policy Guidance, the Commission interprets the term "existing structures" in Section 30235 as meaning structures that were in existence on January 1, 1977, the effective date of the Coastal Act, and that have not been redeveloped since in way that would require them to be reevaluated against the Coastal Act/LCPs as if new. In other words, Section 30235's directive to permit shoreline armoring for structures in certain circumstances applies to development that lawfully existed as of January 1, 1977, and that has not subsequently been redeveloped (i.e., where changes to it since 1977 have been extensive enough that it is considered a replacement

such pre-Coastal Act structures lose their 'existing' status under Section 30235 if they are modified in such a way that they are no longer the same structure, but rather a replacement structure (often referred to by the Commission as a 'redeveloped' structure).[28]

In short, the Coastal Act reflects a broad legislative intent to allow armoring only under certain very limited circumstances, and only for structures that existed when the Coastal Act was adopted and when such structures are in danger from erosion (Section 30235), but to prohibit such armoring for new development constructed after adoption of the Act (Section 30253). This interpretation to allow protection only for certain structures that predate the Coastal Act is also supported by the Commission's duty to protect public trust resources, and the Coastal Act requirement that the Act "shall be liberally construed to accomplish its purposes and objectives" (Section 30009, previously described), where, as described, the Act on this point protects these natural shoreline and beach resources and only allows for armoring as an exception – or, put another way, as an override – under extremely narrow criteria.

Furthermore, Section 30270 requires the Commission to "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;" and recognizing the inevitability of ever increasing impacts from armoring in an era of sea level rise underlines the importance of limiting the circumstances under which armoring can be approved. Thus, the only types of structures allowed armoring under Section 30235 are those that existed before January 1, 1977 and have not been redeveloped since.

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structure required to conform to applicable Coastal Act and LCP provisions). This interpretation is the most reasonable way to construe and harmonize Sections 30235 and 30253, which together evince a broad legislative intent to allow armoring for development that existed when the Coastal Act was passed, when such development is in danger from erosion, but to avoid such armoring for development constructed consistent with the Act, which does not allow shoreline altering armoring development to support same. This interpretation, which narrowly allows protection for development that predates the Coastal Act, is also supported by the Commission's duty to protect public trust resources and interpret the Coastal Act in a liberal manner to accomplish its purposes.

[28] Coastal Act Section 30610(d) and Title 14 of California Code of Regulations (CCR) Section 13252(b) help define when structures meet or don't meet the redevelopment threshold. CCR Section 13252(b) specifically states that replacement of 50% or more of a structure, including single-family residences, is not repair and maintenance under Coastal Act Section 30610(d) but instead constitutes a replacement structure that must be evaluated for Coastal Act compliance purposes. In applying Section 13252(b)'s 50% criteria, the Commission has, in the past, found that a structure will be considered a replacement structure (also referred to as redevelopment) if at least one of the following takes place: 1) 50% or more of the major structural components (i.e., including exterior walls, floor, roof structure, or foundation, where alterations are not additive between individual structural components) are replaced; 2) there is a 50% or more increase in gross floor area; 3) replacement of less than 50% of a major structural component results in cumulative alterations exceeding 50% or more of that major structural component (taking into account previous replacement work undertaken since January 1, 1977); and 4) a less than a 50% increase in floor area where the alteration would result in a cumulative addition of 50% or more of the floor area, taking into account previous additions to the structure since January 1, 1977 (see, for example, LCP amendments LCP-2-MAR-13-0224-1 Part A and LCP-3-MRB-21-0047-1 and CDP 3-16-0345 (Honjo armoring).

In this case, 17-Mile Drive atop the dunes and bluff has existed at this location since the early 1900s, well before the passage of 1972's Proposition 20 (The Coastal Initiative)[29] and the subsequent adoption and enactment of the Coastal Act in 1976 and 1977, respectively. Thus, 17-Mile Drive at this location can be considered existing as that term is understood in the Section 30235 context.[30] And even if it did not qualify as an existing structure, this roadway is the primary public accessway through the Del Monte Forest and has been consistently and heavily used by the public (vehicles, bicycles, and pedestrians alike) for more than 100 years. The narrow roadway shoulder functions as the de facto and informal coastal trail through this area for pedestrians and provides the only way for pedestrians to traverse in a continuous, through north-south direction along the shoreline (see **Exhibits 1 and 2**). Furthermore, the shoulder provides the only means for pedestrians to access Fanshell Beach via the existing midpoint beach access stairs from the designated parking lot just downcoast. For these reasons, the road (and more specifically the informal trail alongside it) can also be considered coastal-dependent inasmuch as a critical component of their function is to provide shoreline/ocean access at this location. The critically important nature of the pedestrian accessway to the beach at this particular location distinguishes this stretch of 17 Mile Drive from others in the Del Monte Forest, and indeed other shoreline roads across the state. Furthermore, the project also involves removal of the existing undermined beach access stairs and construction of a new stairway that is integrated into the armoring itself. Under these circumstances, the proposed new trail and stairway can also be considered coastal-dependent, inasmuch as this trail connecting to a well-used public beach stairway to the beach/ocean requires a site adjacent to the sea to function for its intended public purposes.[31] The express purpose of the trail and stairway are to facilitate and improve access to the beach and immediate shoreline/sea for ocean viewing, ocean access, and tidepooling. The Commission has historically found similar trails and public access features to be coastal-dependent in other cases.[32] So, not only does the road constitute an existing structure, but the road and the proposed coastal trail/stairway also constitute coastal-dependent uses.

Thus, the proposed project meets the first test of Section 30235, as there are both existing structures and coastal-dependent uses.[33]

Danger from Erosion/Serving Coastal-Dependent Uses

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[29] Proposition 20, approved by California voters in 1972, introduced coastal permitting requirements in February 1973.

[30] In addition, major public utilities (sewer, water, and electrical lines) also underlie 17-Mile Drive in the project vicinity.

[31] Coastal Act Section 30001 states that: ""Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all."

[32] See, for example, CDP 3-16-0446 (Rockview Seawall and Accessway) and CDPs 3-18-0720, 3-20-0166, and 3-22-0440 (Pleasure Point Armoring and Accessway).

[33] Although the LCP provides only non-binding guidance in the Commission's review of this application, it is important to note that the Del Monte Forest area LCP also defines 'existing substantial structures' in its Section 30235-equivalent provisions to include major roads and significant facilities and accessways used by the public. Both 17-Mile Drive and the public access utility it provides meet this LCP definition of existing structure.

The second Section 30235 and LCP test is whether the existing structure is in danger from erosion, or whether the coastal-dependent use would be served by the proposed project. In this case, the Commission finds that the public utility of coastal-dependent use is supported by the proposed project, and is 'served' for that reason. As to the degree of danger at the site, the Coastal Act does not define the term "in danger." There is risk involved in maintaining development along a California coastline that is actively eroding and can be directly subject to violent storms, large waves, flooding, earthquakes, and other coastal hazards. Sea level rise and localized geography that can focus storm energy at particular stretches of coastline can exacerbate these risks. In a sense, all development along the immediate California coastline is in a certain amount of "danger." It is a matter of the degree of threat that distinguishes between danger that represents an ordinary and acceptable risk, and danger that requires shoreline armoring per Section 30235. Lacking a Coastal Act definition, the Commission has in the past evaluated the immediacy of any threat in order to make a determination as to whether an existing structure is "in danger" for the purposes of Section 30235 considerations. While each case is evaluated based upon its own particular set of facts, the Commission has in the past interpreted "in danger" to mean that an existing structure would be unsafe to use/occupy within the next two or three storm season cycles (generally, the next few years) if nothing were to be done (i.e., in the no project alternative).[34]

Erosion can be highly episodic and dependent on various geologic, climatic, and geomorphic processes, making short term erosion predictions challenging. That said, the Applicant's geotechnical report found a significant history of erosion at this site, with blufftop recession at the most sensitive location between 50 and 70 feet between 1945 and 2018, and there has been at a minimum of several feet of erosion during the same period along the unarmored extent of the project site. The geotechnical report also notes that 10 to 15 feet of bluff recession has been observed in a single winter, and that this degree of recession could happen any winter at any part of the unprotected bluff.[35] Notably, less than 10 feet of blufftop remains between the seaward edge of the roadway shoulder and the seaward blufftop edge along much of this section of 17-Mile Drive, where the blufftop is composed of fairly erodible materials (including deeply weathered decomposing granite bedrock, coastal terrace deposits,[36] and fill that was historically placed as a subgrade for 17-Mile Drive). The Commission's Coastal Engineer, Jeremy Smith, and Senior Engineering Geologist, Dr. Joe Street, evaluated the Applicant's geotechnical report and related project materials and agreed with the conclusion that much of the road is in immediate danger from erosion.

[34] See, for example, CDP A-3-SCO-07-095/3-07-019 (Pleasure Point seawall); CDP 3-09-025 (Pebble Beach Company Beach Club seawall); CDP 3-09-042 (O'Neill seawall); CDP 2-10-039 (Lands End seawall); CDP 3-14-0488 (Iceplant LLC seawall); and CDP 2-17-0702 (Sharp Park Golf Course revetment).

[35] All per Haro, Kasunich and Associates, Inc., *Geotechnical, Geologic, and Coastal Engineering Investigation, Coastal Protection Report, 17-Mile Drive, Fanshell Beach, Pebble Beach, CA*, November 2019.

[36] Coastal terrace deposits are a sedimentary deposit derived from erosion of nearby earth materials prior to tectonic uplift, they typically consist of sands, clayey sands, and silty sands.

At the same time, and to be clear, due to differing erosion rates and blufftop widths seaward of the road along the project area, the degree to which different sections of road are in danger varies. Most of the project area is in immediate danger, however, a few locations along the bluff proposed to be armored may not require armoring for several years. However, in this case, armoring only the sections in immediate danger of erosion could result in hazardous edge effects and a significant risk of increasing erosion issues on the isolated un-armored segments of bluff. The four sections of proposed seawall seek to minimize armoring while also minimizing these risks, help to ensure that the integrated coastal trail remains intact, avoid an even more piecemeal approach to armoring that could result in less visually consistent and more visually jarring armoring at the site, and avoid prolonged construction impacts from what would inevitably be more individual armoring events over the years.

In sum, the site is erodible and susceptible to bluff failure and collapse absent some type of intervention to abate this threat. Thus, and for all of the above reasons, the road is considered in danger from erosion for purposes of Section 30235 and the LCP, and coastal-dependent uses would be served at the site.

Alternatives to a Shoreline Structure

The third Section 30235 (and LCP) test that must be met is that the proposed armoring must be "required" to protect the existing endangered structure or to serve the coastal-dependent use. In other words, Section 30235 is structured that the third test is met if shoreline armoring is the only feasible[37] alternative capable of protecting the existing endangered structure or serving the coastal-dependent use. When read in tandem with other applicable Coastal Act provisions cited in these findings, the Commission has in the past conceptualized this Coastal Act Section 30235 evaluation as a search for the least environmentally damaging feasible alternative that can serve to protect existing endangered structures or to serve the coastal-dependent uses. Other alternatives typically considered include: the "no project" alternative; abandonment of endangered structures; relocation of endangered structures; sand replenishment programs; drainage and vegetation measures on the blufftop; and combinations of each.

The Applicant's geotechnical report includes an alternatives analysis for the proposed project, and the possible alternatives are discussed briefly below.

<u>No Project Alternative</u>

The no-project alternative would result in continued erosion of the toe of the bluff, leading to the undermining and loss of 17-Mile Drive at this location, including the pedestrian access from the Fanshell Beach parking lot to the beach itself along the road shoulder. 17-Mile Drive is a heavily traveled roadway for vehicles, bicycles, and pedestrians, and it provides the only through and up-/downcoast access to not only Fanshell Beach, but all of the many publicly accessible coastal access points on the Del Monte Forest shoreline. In fact, if the road were to be closed at this location, it would

[37] Coastal Act Section 30108 defines feasibility as follows: "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

require a circuitous over 3-mile detour with significant grade changes.[38] As such, closure of this section of the road would significantly impair or prevent the public's ability to reach these very popular shoreline access destinations. The closure would also cause traffic circulation issues in the surrounding area, to the detriment of both residents and visitors. Furthermore, not completing the proposed project and continuing with the status quo would mean ongoing emergency as-needed fixes to respond to erosion events. Such an approach could continue the patchwork nature of armoring at this location, resulting in a continually deteriorating visual environment as well as the continued presence of errant rock and concrete debris on the beach. And finally, the no-project alternative would mean that the new coastal trail segment and new safe, separated pedestrian access from the parking lot to the beach would not be constructed. The no project alternative is infeasible for those reasons.

Beach Nourishment

Successful beach nourishment programs generally require vast amounts of sand materials over a large area and are subject to very specific program parameters intended to maximize their efficacy and utility. Fanshell Beach experiences seasonal scour, with significant natural inshore-offshore movement on a yearly basis. This cycle means that replenishment would have to occur extremely frequently, and the sand used for replenishment would end up smothering existing rocky bottom habitat. In addition, the sand at Fanshell Beach (and all of the Asilomar Dunes) is quartzite and white, and has a 'sugar sand' texture, which is extremely challenging if not impossible to match. In fact, it is not even clear that the type of volumes necessary of this type of sand even exist for purchase for a nourishment program. In addition, and particularly if other sand types were used, any nourishment would likely degrade visual resources and change the unique nature of the existing beach. Furthermore, the geotechnical report notes that while beach nourishment might retard erosion at the base of the bluff, it would not reduce the instability of the upper half of the coastal bluff. Beach nourishment is infeasible.

Improved Drainage

The geotechnical report indicates that neither surface nor subsurface drainage patterns play any significant role in the bluff erosion at this site. Improved drainage would have minimal, if any impact on bluff erosion rates, making this alternative functionally the same as the no project alternative, and thus also infeasible.

Other Armoring Devices

Other forms of armoring, including temporary shotcrete, rip rap revetments, or upper bluff retaining devices, would provide varying amounts of protection for the endangered roadway, but each come with their own distinct issues. Temporary erosion control in the form of shotcrete coating over existing remnant armoring or the bluff itself can be effective for short periods but is not designed to withstand major ocean storms or seismic forces and would only be adequate as an interim measure. It also degrades easily over time creating concrete debris on the beach and intertidal zone. Rip rap revetments provide effective wave run-up protection, but require extensive footprints on

[38] To give a sense of relative distance, the entire shoreline of the Del Monte Forest is approximately 7 miles total.

the beach, with significant impacts to beach use and lateral access. And upper bluff retaining walls are not feasible at this location given the combination of the steep bluff face and weak bedrock at the base of the bluff, with no way to found the wall without it being undermined in a short time period. As such, these alternative forms of armoring were deemed infeasible.

Relocation of 17-Mile Drive/Managed Retreat

Another alternative is to relocate 17-Mile Drive out of harm's way and restore the beach and bluff to its natural state. While relocation of or shifting 17-Mile Drive inland would avoid the expected coastal resource impacts associated with hard armoring of the shoreline, no space exists within the Applicant's property in which the road is located to undertake such an effort. At this location, 17-Mile Drive is bound on the inland side by Cypress Point Golf Course, single-family residences, and an area of protected dune and wetland habitat, none of which is owned by the Applicant.

In order for the road to be shifted inland, the Applicant would need to purchase portions of these parcels or easements over them, provided that the multiple property owners would be willing to sell part of their land or grant easements over their land. Because the Applicant is a private entity and not a public agency, no possibility exists for them to exert powers of eminent domain to obtain the necessary portions of these private properties, as would potentially be possible for them if the road were publicly owned and maintained. Furthermore, even if shifting the road inland were possible, such a managed retreat project could have significant coastal resource and archaeological and tribal cultural resources impacts of its own because much of the area inland of the road is wetland and dune ESHA, and in an area of sensitive archaeological and tribal cultural resources. For those reasons relocation is not a feasible option.

As to making 17-Mile Drive one way, such a project could be accomplished, but it is best seen as extending the useful life of existing setbacks (by providing another 10 feet or so of such setback by eliminating the seaward vehicular lane) than it is seen as protecting the existing road. In other words, it would be expected to simply forestall in the relatively short term (e.g., 10 years or less) the need for more significant protection, such as the armoring proposed here. And a one way 17-Mile Drive at this location would lead to the same sorts of detour/circulation problems, albeit in one direction, as would be associated with the no project alternative discussed above. This option too is not feasible.

Proposed Project

Ultimately, non-armoring solutions are incapable of protecting the existing threatened roadway and serving the coastal trail segment. And while it is true that a variety of armoring types and designs could be used, and were evaluated by the Applicant, the proposed project has a limited footprint (including being placed landward of the existing deteriorating and migrated armoring in places), camouflages all concrete surfaces by mimicking bluff landforms, and significantly serves the coastal-dependent use by formalizing and enhancing lateral and vertical access, creating significant public benefit through project design. It also realizes the vision of a continuous coastal trail through this area. As such, the Commission concurs with the Applicant that the proposed project represents the least environmentally damaging feasible alternative, including when

coastal resource impacts and mitigations are factored in (see below sand supply discussion, and see subsequent findings related to public recreational access, public views, and marine resources, all incorporated here by reference).

Thus, the proposed project meets the third analytic test of Section 30235 and the LCP.

Sand Supply Impacts

The fourth test of Section 30235 (and the LCP) that must be met is that the armoring must be designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Specifically, some of the effects of engineered armoring structures on the beach (such as scour, end effects and modification to the beach profile) are temporary or are difficult to distinguish from all the other actions that modify the shoreline. Others are more qualitative (e.g., impacts to the character of the shoreline and visual quality). Some of the effects that a shoreline structure may have on natural shoreline processes can be quantified, including: (1) the loss of the beach and shoreline recreational area on which the structure is located; (2) the long-term loss of beach and shoreline recreational area that will result when the back-beach location is fixed on an eroding shoreline; and (3) the amount of material that would have been supplied to the beach and shoreline recreational area if the back-beach or bluff were to erode naturally. The first two calculations affect beach and shoreline use areas, and the third calculation is related to shoreline sand supply impacts, but all three calculations relate to public recreational access to the beach and shoreline recreational area.

Encroachment on the Beach/Shoreline Recreational Area

With respect to loss of beach and other shoreline recreational area, shoreline protective devices such as the armoring system proposed in this case are physical structures that occupy space. Typically, when a shoreline protective device is placed on a beach or other recreational area, the underlying area cannot be used for beach and other recreation. This generally results in a loss of public access as well as a loss of sand and/or areas from which sand-generating materials can be derived. The area where the structure is placed will be altered from the time the protective device is constructed, and the extent or area occupied by the device will remain the same over time, until the structure is removed or moved from its initial location, or in the case of a revetment, as it spreads seaward over time. The beach/recreational area located beneath a shoreline protective device, referred to as the encroachment area, is the area of the structure's footprint.

In this case, the footprint of the proposed armoring would occupy some 6,162 square feet of beach space. In addition, ECDP-authorized and unpermitted armoring has occupied 1,030 square feet for 13 years and 640 square feet for 37 years respectively. Thus, to account for the footprint impacts of all armoring that has not yet been permitted, the footprint is estimated at 7,832 square feet.

Fixing the Shoreline Position (the "Coastal Squeeze")

On an eroding shoreline, beach and shoreline recreational areas will exist between the shoreline/waterline and the bluff as long as sand and space is available to form a beach. As bluff erosion proceeds in a natural setting, the profile of the beach also retreats, and the beach area migrates inland along with the bluff. This process

essentially stops, however, when the backshore is fronted by a hard protective structure, such as a revetment or a seawall. Experts generally agree that where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the sea and the upland.[39] While the shoreline on either side of the armor continues to retreat, shoreline in front of the armor eventually stops at the armoring. This effect is also known as passive erosion or "coastal squeeze." The beach/recreational area will narrow, being squeezed between the moving shoreline and the fixed backshore, and this represents the loss of a beach and recreational shoreline as a direct result of the armor. The coastal squeeze phenomenon caused by armoring will only be exacerbated by climate change and sea-level rise. As climate change causes the seas to rise ever faster, beach and recreational shoreline areas will retreat inland at an increasingly rapid pace.[40,41] If the inland area cannot also retreat, eventually, there will be no available dry beach area and the shoreline will be fixed at the base of the armoring structure. In the case of an eroding shoreline, this represents the loss of a beach and shoreline recreational area as a direct result of the armoring. Specifically, beach and shoreline recreational areas are diminished as the beach is compressed between the ocean migrating landward and the fixed backshore.

Such passive erosion impacts can be calculated over the time the proposed armoring is expected to be in place. Consistent with the Commission's experience that shoreline armoring often needs to be reinforced, augmented, replaced, or substantially changed within twenty years of its original installation, and to provide for re-review on a regular

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

[40] Sea level rise (SLR) will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. In the past century, the average global temperature has increased by about 0.8°C (1.4°F), and global sea levels have increased by 7 to 8 inches (17 to 21 cm). In addition, SLR has been accelerating in recent decades, with the global rate of SLR tripling since 1971 (IPCC, 2021). There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research. Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018) and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018). These documents also describe how, with SLR, shoreline development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, rising groundwater, and shoreline and bluff erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach width if the beach is squeezed between the landward migrating ocean and a fixed backshore. For example, for a shoreline with a slope of 40:1, a simple geometric model indicates that every foot of SLR will result in a 40 foot landward movement of the ocean/beach interface, resulting in significant loss of beach habitat and recreational space. This change could also expose previously protected backshore development to increased tidal/wave action and flooding, and those areas that are already exposed to such conditions will be exposed more frequently and with greater severity.

[41] See, for example: Sea Level Rise, Adopted Policy Guidance, https://www.coastal.ca.gov/climate/slrguidance.html. The most current data provided by the Ocean Protection Council, http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf, estimates between 3.3 and 10.1 feet of sea level rise by 2100.

basis to allow for consideration of possible changes in policy, law, and physical conditions associated with armoring, the Commission evaluates this impact for an initial twenty-year period from the date of approval. After this 20-year initial mitigation period, additional impact analysis will be needed (see **Special Condition 10**) to assess the appropriate additional mitigation necessary at that time, if any.

The Commission has in the past used a methodology for calculating the passive erosion impacts of armoring, or the long-term loss of beach/shoreline area due to fixing the back beach. Specifically, the lost area is equivalent to the footprint of the beach/shoreline area that would have been created by natural erosion processes absent the armoring and is equal to the long-term average annual erosion rate multiplied by the width of property that has been fixed by a shoreline protective device. In this case, the proposed armoring spans 1,164 linear feet as measured parallel to the primary shoreline (as opposed to the entire undulating length of the armoring, which is how the Commission does this calculation), and according to the Applicant's geotechnical report the average long-term annualized erosion rate for both the bedrock and the terrace deposits along this length ranges from approximately 0.625 feet per year to approximately 0.875 feet per year depending on exact location. When these erosion rate values are applied to the armoring proposed in those areas, the impacts due to the proposed project from fixing the back beach will be the loss of 826 square feet of beach and shoreline recreational area per year. Over the initial 20-year mitigation period, approximately 16,526 square feet of beach/shoreline area will be lost in this way (i.e., beach that would have been created naturally if the back beach had not been fixed by the seawall).

In addition to the new armoring, impacts over time from existing unpermitted and ECDP-authorized armoring must also be accounted for.[42] The rip rap installed without the benefit of a CDP between 1979 and 1987 (as a conservative estimate, 1987 is assumed for the purpose of these calculations) has existed for 36 years along 39 linear feet of bluff. Thus, applying 0.625 feet per year of erosion[43] over 36 years equates to an impact of 878 square feet. As to the rip rap installed pursuant to ECDP 3-10-012-G, this armoring has existed along 70 linear feet of bluff for 13 years with no-follow-up CDP authorization, leading to 731 square feet of impact. Consequently, the impacts associated with fixing the back beach at these two locations is approximately 1,609 square feet, and the total coastal squeeze impact through the first 20 years of mitigation is 18,135 square feet (i.e., 16,526 + 1,609 = 18,135).

Thus, the proposed armoring results in a loss of approximately 25,967 square feet of beach and shoreline recreational area (7,832 square feet associated with footprint impacts, and 18,135 square feet associated with coastal squeeze impacts through the initial 20-year time frame). Given the proposed project also includes removal of previously permitted armoring that occupies approximately 17,240 square feet of beach, the Applicant receives a 'credit' for such removal, meaning that the total impact calculation through the next 20 years would be 8,727 square feet (i.e., 25,967 – 17,240

[42] All of the unpermitted and ECDP-authorized armoring will be removed and replaced through implementation of the proposed project, and thus its impacts need only be accounted for retrospectively.

[43] The erosion rate at the site of the unpermitted armoring has been calculated by the Applicant's consultants to be 0.625 feet per year.

= 8,727).

There is no doubt that such impacts represent significant public recreational access impacts, including the loss of the socio-economic value of beach and shoreline recreational access area, for which the Coastal Act requires mitigation. The most obvious in-kind mitigation for these impacts would be to create a new additional 8,727 square-foot area of beach/shoreline recreational area to replace that which will be lost through the first 20 years with an identical area of beach/shoreline recreational area in close proximity to the eliminated beach/shoreline recreational area. While in concept this would be the most direct mitigation approach, in reality, finding an area that can be allowed to erode and turned into a beach and ensuring it does so appropriately over time is very difficult in actual practice. At the same time, the calculations of affected area do provide an appropriate relative scale for evaluating alternative mitigations. For example, in the past, the Commission has looked at several ways to value such beach and shoreline areas in order to determine appropriate in-lieu mitigation fees, including evaluating the recreational value of the beach/shoreline recreational area in terms of the larger economy, as well as the real estate value of property acquisition necessary to accommodate an area that could be so created through natural erosion.

In terms of the recreational beach/shoreline value, the Commission has recognized that in addition to the more qualitative social benefits of beaches and shoreline areas (recreational, aesthetic, habitat values, etc.), beaches and shoreline recreational areas provide significant direct and indirect revenues to local economies, the state, and the nation. Most people recognize that the ocean and the coastline of California contribute greatly to the California economy through activities such as tourism, fishing, recreation, and other commercial activities.[44] There is also value in just spending a day at the beach and having wildlife and clean water at that beach and being able to walk along a stretch of beach and shoreline. There are also societal benefits of beaches and shoreline areas, including the ways in which they contribute to local community, state social fabric, and cultural identity. However, it can be difficult to put a monetary value on these types of benefits, including 'existence' values, where people are asked how much it is worth to them for a beach to exist, even if they do not visit the beach or seldom visit the beach. Depending on the person, even one beach can be priceless.

Thus, these recreational impacts are in many cases difficult to quantify, including at sites such as Fanshell Beach where visitation data needed for certain economic impact models are lacking. In many cases, particularly where data inputs for various models is lacking, the Commission has found that using a real estate valuation method as a basis for identifying mitigation values allows for objective quantification of the value of beach and shoreline area, and that this valuation is appropriate both in terms of the scope of impacts and the rational basis for applying such methodology.[45] This method requires

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

[45] See, for example, CDPs 2-10-039 (Land's End Seawall), 2-11-009 (City of Pacifica Shoreline Protection), A-3-PSB-12-042 and A-3-PSB-12-043 (Pismo Seawalls), 3-16-0345 (Honjo Seawall), 3-19-0446 (Rockview Seawall), and 3-23-0014 (Grossman Armoring).

an evaluation of the cost of land that could be purchased and allowed to erode and turn into beach naturally to offset the area that would be lost due to the construction and continued placement of the armoring over time.

Toward this end, the Commission identified the market values of shorefront properties downcoast of Fanshell Beach along 17-Mile Drive and the first row of properties inland of 17-Mile Drive upcoast of Fanshell Beach as a means to identify what it might cost to purchase such property and allow it to erode to create beach/shoreline recreational space. Taken together these properties represent both the shoreline nature of Fanshell Beach, and the aesthetic qualities of the natural environment of Fanshell Beach. Specifically, this review was conducted by looking at the sales of properties meeting these criteria in close proximity to the project site (specifically on 17-Mile Drive, Cypress Drive, and Spyglass Hill Road) between 2020 and the end of 2022. This value is then divided by the property square footage to derive a price per square foot. The square-foot calculated value provides an estimated value of what it would cost to purchase/acquire an equivalent property area that could be allowed to naturally erode and provide a beach area roughly equivalent to what will be lost due to the seawall through the initial 20-year authorization.

This evaluation focused on a total of eleven properties sold in the vicinity between 2020 and the end of 2022. Over this time frame, sales show a range of per-square-foot values from $113.28 per square-foot at the low end,[46] up to $555.31 per square-foot at the high end,[47] with an average of $294.93 per square-foot.[48] This value represents a reasonable estimate of the market value per square-foot of property nearest to the subject site based on the most recent actual sales data and is a valid estimate of the cost of purchasing such property.

Applying this land acquisition value to the 8,727 square-foot impact identified above would result in a mitigation fee of $2,573,854 for the loss of beach and shoreline use areas based on footprint and coastal squeeze through the initial 20-year mitigation period (i.e., 8,727 square feet x $294.93 per square foot equals $2,573,854)**.**[49] This mitigation fee amount is most closely tied to specific land values in the vicinity of the project and is thus both reasonably related and roughly proportional to the historic and

[46] The property at 3141 17-Mile Drive sold for $7 million in 2020 and included 61,794 square feet of property, or $113.28 per square-foot.

[47] The property at 3184 17-Mile Drive sold for $36.284 million in 2022 and included 65,340 square feet of property, or $555.31 per square-foot.

[48] The other properties used to derive the average price per square foot for land in the immediate vicinity include 3188 17-Mile Drive where the average price per square-foot was $455.31, 1470 Cypress Drive with an average price per square-foot of $414.5, 3208 17-Mile Drive with an average price per square-foot of $221.25, 3290 17-Mile Drive with an average price per square-foot of $318.53, 3105 17-Mile Drive with an average price per square-foot of $303.33, 3137 17-Mile Drive with an average price per square-foot of $176.86, 3125 17-Mile Drive with an average price per square-foot of $159.50, 1145 Spyglass Hill Road with an average price per square-foot of $385.27, and 1152 Spyglass Hill Road with an average price per square-foot of $141.05.

[49] It is noted that this means that the above-described credit to the Applicant that was applied for the removal of 17,240 square feet of armoring equates to a credit of over $5 million by itself (i.e., $5,084,593). In other words, absent the credit, this fee amount on this point would be over $7.6 million.

anticipated impacts of the armoring on the beach and shoreline recreational use areas through the first 20 years of the proposed project (including accounting for past unpermitted impacts).

Retention of Potential Beach Material

The final Section 30235 impact calculation pertains to the loss of sand and sand-generating materials due to the project, and the way that affects the larger sand supply system. Beach sand material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves and tidal currents; and from coastal dunes and bluffs feeding sandy beaches and shoreline recreational areas. Bluff retreat is one of several ways that sand and sand generating materials are added to the shoreline. Bluff retreat and erosion are natural processes resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse; saturation of the bluff soil from groundwater causing the bluff to slough off; and natural bluff deterioration. For coastal dunes, the contribution to the system is typically more direct, with sand becoming part of the shoreline system during and as a result of climatic events, including wind, rain, and storms. When the bluff/shoreline area is armored with an armoring device, the natural exchange of material from the armored area to the beach/shoreline area and offshore sand supply system will be interrupted and, if the armored bluff/shoreline area would have otherwise eroded, there will be a measurable loss of material to the beach/shoreline/offshore sand supply system area as a result.

In these cases, sand and sand generating materials would be added to the beach/shoreline at these locations, as well as to the larger littoral cell sand supply system fronting the bluff/shoreline, if natural erosion were allowed to continue (i.e., if the armoring was not there). The volume of total material that would have gone into the sand supply system over the lifetime of the shoreline protective device would be the volume of material between (a) the likely future bluff/shoreline configuration with shoreline protection; and (b) the likely future bluff/shoreline configuration without shoreline protection. A necessary component of the Commission's established methodology for calculating this amount is the percentage of sand in the bluff materials at the site. Based on the application materials provided by the Applicant, and the concurrence of Dr. Street and Mr. Smith, the estimated amount of beach-quality sand retained by the proposed armoring would be 383.6 cubic yards of sand per year, or 7,672 cubic yards over 20 years. In addition to the new armoring, impacts over time from existing unpermitted armoring must also be accounted for.[50] The 1987 and 2010 rip rap episodes have retained approximately 462 cubic yards of sand. Thus, all told, retention impacts are roughly 8,134 cubic yards through the initial 20-year mitigation period.

To mitigate for this loss of sand, the Commission has in the past required payment of an in-lieu fee to contribute to ongoing sand replenishment or other appropriate mitigation programs, where such fee is based on the cost of buying and delivering an equivalent volume of beach quality sand to the affected area. For purposes of this analysis, the

[50] Again, all of the unpermitted and ECDP-authorized armoring will be removed and replaced through implementation of the proposed project, and thus its impacts need only be accounted for retrospectively.

cost of purchasing and delivering 8,134 cubic yards of beach quality sand consistent with the unique qualities of Fanshell Beach sand is assumed to be roughly $300 per cubic yard.[51] While this rough estimate can be considered reasonable for the purpose of these calculations, it should be noted that it is possible that obtaining 8,134 cubic yards of sand that adequately matches the extremely unique sand composition at this location is impossible at any price, and that the sand at Fanshell Beach is irreplaceable. That said, using the $300 per cubic yard estimate, an in-lieu fee to address this sand supply impact would be approximately $2,440,200 (i.e., $300 per cubic yard multiplied by 8,134 cubic yards equals $2,440,200. In addition, given the unique qualities of sand at this location, **Special Condition 2** requires that all sand and sand generating materials excavated during the construction process be replaced on the beach, and not be exported off site or used as backfill for the armoring.

Construction Impacts

The project will also have temporary armoring impacts during construction. In fact, because of the complex nature of construction at this site, including with intermittent stoppages for harbor seal pupping (see habitat discussion below), the Applicant believes that construction may take up to three years. In addition to direct impacts associated with construction (including noise, equipment, public access restrictions on the beach and trails, etc.), that can be addressed as much as possible through construction BMPs and provisions (see **Special Condition 2**), such a complicated construction schedule equates to another three years of impacts associated with some combination of whatever existing armoring remains in place as new armoring is installed. Given the long time frame, and the unknowns of future construction implementation (including in terms of potential phasing, difficulties encountered, etc.), it is not known exactly how such impacts will manifest, but these impacts are expected nonetheless.

In some cases, the Commission has required compensatory mitigation for this impact as well, and it is appropriate here as well given the expected construction duration.[52] There are a variety of ways that such impacts might be quantified, but one would be to calculate this impact by using the yearly amount from the impact fees (above) applied over three years. Such a calculation for construction armoring impacts would, potentially, overstate the impact, as it could be understood as a 'worst case' scenario, but it would be difficult to foresee how construction overlaps between existing and proposed armoring impacts might play out, making it near impossible at this point to more clearly pinpoint such impacts. And, taking a conservative and precautionary approach to such impacts is typically how the Commission has proceeded in past cases where there may be a range of potential impacts, and believes that doing so here,

[51] The Commission's recent CDP approvals for armoring (including 3-23-0014 (Grossman Armoring) and 3-18-0720, 3-20-0166, and 3-22-0440 (Pleasure Point Armoring/Access) found that $60.54 was an appropriate estimate for the cost of sand. However, the defining white sand of the Asilomar Dunes is both finite and difficult to obtain, where the market, such as it is, is extremely limited. Such sand, were it to be able to even be obtained, could easily cost five times the typical amount, or approximately $300 per cubic yard, or even more (e.g., white aquarium sand can cost $50 per cubic foot, or $1,350 per cubic yard).

[52] See, for example, CDP 3-02-107 (Podesto) where a seawall project was required to fund $20,000 worth of public access repairs to offset three months of similar such construction impacts.

especially in the context of such a sensitive public access and habitat site, makes perfect sense. In addition, such a calculation can account for the types of intangible public access impacts from construction that are unavoidable and that cannot be mitigated by construction BMPs and provisions alone (see also public access findings that follow). Thus, such impacts can be calculated to amount to $752,108.[53]

Approvable Mitigation Package

Therefore, through the first 20 years of the proposed project (and including the previously installed emergency/unpermitted armoring, sand supply and related beach/shoreline loss impacts, and construction impacts associated with the armoring) would result in a required mitigation fee of $5,766,162 (i.e. $2,573,854 for footprint/passive erosion, $2,440,200 for sand retention, and $752,108 for construction).[54] While requiring such a mitigation fee could commensurately mitigate for these impacts, the Commission has historically attempted instead to require the provision of in-lieu public recreational access improvements to offset such impacts. Such mitigation strategies can allow for bona fide improvements to public recreational access infrastructure and utility so that mitigation benefits can be realized in the near term, and in the area of the impacts.

Here, the Applicant has proposed in-lieu mitigation via a new 0.8-mile coastal trail segment integrated into the top of the armoring and extending northward, beyond Fanshell Beach to Seal Rock Beach. The trail will enable pedestrians to walk laterally along this stretch of shoreline without relying on the exposed and narrow road shoulder, improving ease of access and public safety. The portion of the trail atop the armoring will also function to provide new pedestrian access from the downcoast Fanshell Beach parking lot to the beach itself, where users currently must walk along the narrow roadway shoulder strip and eroding blufftop between the busy road and a steep drop to the beach below between these two points.

The Applicant also proposes to replace the existing undermined midpoint beach access stairway down to Fanshell Beach, that is currently being undermined, with a new concrete stairway, also integrated into the armoring, and designed to withstand ocean forces and wave action. In addition, the Applicant will also remove all errant rock from the beach, which, in addition to the 17,240 square feet of previously permitted rock being removed for which the Applicant received mitigation credit (see above) means that an additional nearly 2,000 square feet of beach will be opened up.[55] And finally, the Applicant proposes various other public access improvements in the vicinity, including new amenities such as benches and picnic tables at the parking lot/overlook, signage, parking lot striping, and improved ADA accessibility.

[53] That is, the total of the above impacts (i.e., $5,014,054) divided by twenty and multiplied by three.

[54] It is again noted that if the Applicant were not given the credit identified above for armoring removal, then the fee amount would be higher, and in this case would be nearly $11 million (i.e., $10,850,755).

[55] Note that the Applicant does not receive mitigation credit for this additional area of removal as such rock on the beach has never been permitted, and is required to be removed for that reason. The point here is to simply acknowledge that there will be beach opened up because of the project.

In other words, the project by design builds in mitigating components, including (importantly) completing a missing segment of the CCT along the Del Monte Forest blufftop and shoreline, which will connect to the larger CCT system in this area, including to Pacific Grove, Monterey, and beyond.[56] All of these enhancements together represent significant public access improvements in the immediate area of the impact, and, in addition, there is significant added value to in the fact that these public access improvements will be constructed in the near term (including as the road is imminently threatened, and so there is a heightened sense of urgency to construct the armoring and integral public access features). In contrast, if a mitigation fee were to be employed here, the public would not benefit from immediate on-the-ground improvements and would instead only bear the public costs of the armoring up until such mitigation funds were put to use (which, in the Commission's experience, can sometimes be decades after the impact needing mitigation is incurred).

Furthermore, these types of on-the-ground public access improvements, including those that create or improve public coastal access, are preferred here to collecting funds for an undetermined mitigation project, or a project with an uncertain timeframe for execution. In some cases, individual applicants for shoreline protection do not have the ability and/or willingness to develop projects to enhance public recreation, including as they are not public agencies in the public access business, and in-lieu fees can be more appropriate in such a context. In this case however, the Applicant has a long history of providing extensive and high-quality public access amenities on their property, and currently operates, maintains, and improves a variety of public access areas throughout the Del Monte Forest, including the myriad public attractions along 17-Mile Drive. This mitigation project resembles other compensatory projects required by the Commission in the past,[57] and will allow the project to realize, in the very short term, fairly immediate and tangible public benefits.

Accordingly, in this case, the Commission finds that the best way to mitigate for the above-identified armoring impacts, as well as to enhance and maximize public access and recreational opportunities in the project area as required by the Coastal Act, is via the proposed in-lieu mitigation package, codified by and subject to refinements as identified in **Special Condition 1**. In other words, the proposed and refined mitigation package constitutes appropriate and adequate compensatory mitigation to offset the

[56] A continuous braided California Coastal Trail (or CCT) along California's shoreline has long been a collective objective for California's coastal zone, including as articulated in 1972's Proposition 20 ("The Coastal Initiative") and 1976's Coastal Act. Further details on CCT alignment principles, including continuity and proximity to the sea, may be found in the document "Completing the California Coastal Trail" prepared by the State Coastal Conservancy in 2001 and on the Commission's Coastal Access Program webpage at https://www.coastal.ca.gov/access/ca-coastal-trail/coastal-trail.pdf. The LCP designates the trails in the Del Monte Forest as components of the CCT.

[57] See, for example, the following CDPs: 3-02-107 (Podesto), 3-07-019 and A-3-SCO-07-015 (Pleasure Point Seawall and Parkway), 3-09-042 (O'Neill), 2-11-009 (Pacifica Drainage Armoring), A-3-PSB-12-042 and A-3-PSB-12-043 (Pismo Beach Oceanview Boulevard Seawalls), 2-16-0684 (Aimco), 3-16-0345 (Honjo), 2-17-0702 (Sharp Park), 3-16-0446 (Rockview Seawall), and 3-18-0720, 3-20-0166, and 3-22-0166 (Pleasure Point Armoring & Access)

impacts identified above, including for the Commission to be able to find the project consistent with Coastal Act Section 30235 (see **Special Condition 1**).

Thus, the Commission finds that the proposed project meets the fourth and final test of Section 30235, because the proposed project, as would be conditioned, appropriately avoids, where feasible, and mitigates where unavoidable, its sand supply and related impacts. As a result, the proposed project, as conditioned, can be found consistent with Section 30235 in this regard.

Duration of Armoring Authorization

The Commission typically imposes conditions that restrict the use of armoring to the time frame when the existing structure being protected has not been redeveloped (and requiring armoring removal upon redevelopment), and could impose such a requirement here too in relation to 17-Mile Drive. However, this project is somewhat unique as it also includes integral and coastal-dependent public access features seaward of the road, and tying the authorization to redevelopment of 17 Mile Drive does not adequately account for the independent utility of the armoring for such features. Provided the coastal trail and related public access improvements continue to exist and are maintained in their approved states, the CDP is otherwise in good standing, and no other violations on the site exist, the subject CDP needs not be conditioned to require armoring removal upon road redevelopment. Instead, the subject CDP is conditioned to require armoring removal if the access features are no longer useable and/or the CDP is out of compliance (e.g., the Applicant does not properly apply for and implement additional mitigation for the time period past 2043, and the Commission allows such armoring to remain after 2043, etc.). Accordingly, see **Special Condition 9**, which ties the duration of armoring approval to the coastal trail and beach access stairway's useability and CDP/Coastal Act compliance, and **Special Condition 10**, which requires the Applicant to reevaluate the impacts associated with the retention of armoring beyond the initial mitigation period through 2043, and to provide additional mitigation if approved by the Commission and deemed necessary to mitigate for additional impacts to coastal resources past the initial authorization period in the event that said impacts are not mitigated sufficiently under this approval.

Long-Term Stability, Maintenance, and Risk

Coastal Act Section 30253 and the equivalent LCP provisions require the project to assure long-term stability and structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. This is particularly critical given the dynamic shoreline environment in this area. Also critical to the task of ensuring long-term stability, as required by Section 30253 and the LCP, is a formal long-term monitoring and maintenance program. 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 and the LCP, the project must be maintained in its approved and required state. 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 approved project, 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 completed project in its approved state before such repairs or actions are undertaken. To assist in such an effort, monitoring plans should provide vertical and horizontal reference distances from the completed project to surveyed benchmarks for use in future monitoring efforts.

To ensure that the project is properly maintained to ensure its long-term structural stability, **Special Condition 7** requires regular submission of monitoring and maintenance reports. Such reports shall provide for evaluation of the condition and performance of the approved project and overall bluff stability, and shall provide for necessary maintenance, repair, changes, or modifications to the completed project. **Special Condition 8** authorizes the Applicant to maintain project components in their approved and/or required state through this CDP, subject to the terms and conditions identified by the special conditions. Such future monitoring and maintenance activities will be understood in relation to clear as-built plans that will be submitted by the Applicant (**Special Condition 6**).

In terms of recognizing and assuming the hazard risks for shoreline development, the Commission's experience in evaluating proposed development in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences, as well as more steady erosion and other coastal hazards, all as may be exacerbated by sea level rise. Separate from its impact on coastal resources directly, development in such dynamic environments is also 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 many, many 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, the Commission has in the past required applicants to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 11**).

Finally, the Commission has long analyzed consistency with Section 30253 in terms of analyzing a project's risks and structural integrity over time, taking sea level rise into account. However, Section 30270 now explicitly requires the Commission to consider sea level rise when analyzing risks under Section 30253 and also requires the Commission to assess and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise. The findings above identify and assess the project's hazards-related impacts in a manner that accounts for sea level rise. As described above, the Commission has also imposed conditions to avoid and mitigate the adverse, hazard-related impacts of sea level rise, as they relate to these projects. For example, **Special Condition 7** requires submission of monitoring and maintenance reports to ensure that the projects remain stable over time, and **Special Condition 8** authorizes maintenance of the projects to ensure they do not erode or cause destruction of the site or

surrounding area over time as sea levels rise and potentially cause the project to deteriorate. The above findings also describe how it is not feasible to completely avoid all project-related impacts because there is no less damaging alternative to the armoring in this instance. With these findings and conditions, the projects are consistent with Section 30270.

Coastal Hazards Conclusion

The proposed project, as conditioned, can be found consistent with the Coastal Act's coastal hazards provisions cited above.

D. PUBLIC ACCESS AND RECREATION

1. Applicable Coastal Act and LCP Provisions

Coastal Act Sections 30210 through 30224 specifically protect public access and recreation, and Section 30240 protects parks and recreational areas. 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 except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. …*
>
> ***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 30222.*** *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or*

general commercial development, but not over agriculture or coastal-dependent industry.

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

Section 30240(b). *Development in areas adjacent to … 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 … areas.*

These overlapping Coastal Act policies protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access. Specifically, Section 30210 of the Coastal Act requires that the general public be provided 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, including as it relates to the use of dry sand and rocky coastal beaches. In approving new development, Section 30212(a) requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access. Section 30213 protects lower cost forms of access, such as the access available to the shoreline at the project site. Section 30220 protects coastal areas suited for ocean-oriented activities, such as the beach and tidepooling areas here, for such purposes. Sections 30221 and 30223 protect oceanfront and upland areas for public recreational uses, and Section 30222 prioritizes visitor-serving amenities providing for public recreational use. Section 30240(b) protects parks and recreation area, like the shoreline at the site, from degradation, and requires any allowed development to be compatible with the continuation of those areas.

Finally, Coastal Act Section 30210's direction to maximize public access and recreation opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide public recreational access to and along the coast, and not enough to simply protect such access, but rather that such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction to maximize public recreational access opportunities with respect to projects along the California coast that raise public access issues, like this one.

Furthermore, with sea levels rising and coastal erosion, the mean high tide line will move landward over time depending on the beach profile, seasonal tidal activity, and continued sea level rise. Given that that line often defines the demarcation point between public and private property (with the public's property lying on the seaward side, and generally held in public trust by the California State Lands Commission),[58] it is

[58] The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds and manages

also important to consider the effect of shoreline projects like this one on what is best understood as an ambulatory public trust area, including where structures can halt the inland migration of the mean high tide line, and thus potentially halt the inland migration of public trust areas, at least physically.[59] Therefore, it is also critically important that the Commission assess whether the project would impact pubic trust resources, and, if so, to provide measures to avoid or appropriately mitigate unavoidable such impacts.

In addition, the Del Monte Forest area segment of the Monterey County LCP includes public access and recreation provisions that reflect Coastal Act requirements and tailor them to this area's unique shoreline, including:

> ***LUP Chapter 5 Public Access Key Policy.*** *Visual and physical public access to and along the shoreline and the enjoyment of public recreational values throughout the Del Monte Forest, consistent with the basic purpose of the California Coastal Act, shall be maximized. This LUP shall also seek to ensure that the beauty of the Del Monte Forest Area coast, its tranquility, and the health of its environment will not be marred by public overuse or neglect.*
>
> ***LUP Chapter 5 Introduction, Roadway Access.*** *The Del Monte Forest is served by a private internal road system, including world-famous 17-Mile Drive … The shoreline access areas described above are generally accessible from 17-Mile Drive. The more interior trails generally crisscross 17-Mile Drive and other roads, sometimes using the roadway shoulder as connecting segments […] Nearly all of these access areas are maintained and provided for the public by the Pebble Beach Company, which is committed to providing and maintaining these improvements in perpetuity.*
>
> ***LUP Policy 121.*** *Existing public access areas, including shoreline access areas, interior trails, and road access, shall be permanently protected for long-term and continued public use, and development on sites that provide such access shall be required to ensure such access areas are so protected, including through dedication of access easements and/or property.*

In short, the LCP places a very high value on the coastal shoreline resources affected by the proposed project, as well as 17-Mile Drive, which the project intends to protect.

2. Consistency Analysis

As identified earlier, shoreline armoring has significant adverse impacts to public access and recreation.[60] Significant public access amenities exist within the Forest, including a

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these lands for the benefit of all people of the State for statewide purposes consistent with the common law Public Trust Doctrine ("public trust"). In coastal areas, the landward location and extent of the State's sovereign fee ownership of these public trust lands are generally defined by reference to the ordinary high-water mark (Civil Code Section 670), as measured by the mean high tide line (*Borax Consol. v. City of Los Angeles* (1935) 296 U.S. 10), and these boundaries generally remain ambulatory as natural processes dictate.

[59] The artificial fixing of a shoreline does not permanently fix the legal property boundary (see *United States v. Milner*, 583 F.3d 1174 (9th Cir. 2009)).

[60] Ibid.

series of public shoreline access points connected by miles of shoreline and interior pedestrian and equestrian trails supported by public parking areas. Many of these public access improvements were developed as part of the terms and conditions of the Commission's approval of the Spanish Bay Resort and Golf Course development in 1985[61] and are operated and maintained by the Pebble Beach Company for the general public's use and enjoyment.

Most of the shoreline of the Del Monte Forest is rocky, interspersed with shorter sections of sandy beach. In particular, the sandy beaches of the Asilomar Dunes area, such as at Fanshell Beach, are renowned for their bright white color and sugar-like texture, and they offer visitors a unique beach experience compared to elsewhere on the California coast. Fanshell Beach is also used by SCUBA divers in the right conditions, and is one of the few locations on the Monterey Peninsula where recreational spearfishing and the collection of invertebrates is allowed. Access to the beach from the bluff is provided by a stairway at the midpoint of the beach at an unpaved turnout with small amount of informal parking. Fanshell Beach overlook, located on a small peninsula at the downcoast end of Fanshell Beach, offers scenic views, paved parking, and another stair providing access to the small pocket beach to the south not connected to the much larger Fanshell Beach. As described above, visitors seeking access to the main Fanshell Beach from this parking area must walk along the shoulder of 17-Mile Drive to the stairway's location at the midpoint of the beach. This can be a treacherous walk due to the narrow road shoulder and traffic along the road. 17-Mile Drive itself is an important public accessway for vehicles and bicycles, and is heavily trafficked, particularly in the summer months. While it does provide this important public benefit, the road is a private asset of the Pebble Beach Company and all cars that visit the area must currently pay $11.75 to enter this private roadway.[62]

As identified at some length in the 'Coastal Hazards' discussion above, the proposed project would have both public recreational access impacts and benefits, where impacts are focused on beach/shoreline loss, especially over time, and the benefits are protection of 17-Mile Drive, the proposed new coastal trail segment, and other access improvements (all above 'Coastal Hazards' findings are incorporated herein by reference). More specifically, the identifiable impacts on public recreational access include the loss of beach/shoreline recreational use area where the armoring is sited and incremental loss of beach due to the "coastal squeeze." Put bluntly, even with its positive access attributes, the proposed project would lead to a loss of available beach and shoreline recreation area for public access and recreation because the armoring would occupy beach space, and the ocean interface will gradually move landward as the shoreline erodes and as sea levels rise 'squeezing' available beach space between the ocean and the proposed armoring. In fact, sea level is expected to rise between 0.5 feet to 1.8 feet by 2040,[63] which could drown out an additional 25 – 75 feet of beach

[61] CDP number 3-84-226

[62] Gate fees are not permanently fixed, rather, they are adjusted with inflation as per the Del Monte Forest Area LUP Policy 98 as codified by the County's CDP approving Pebble Beach Company's buildout 'concept plan' in 2012 (Monterey County CDP No. PLN100138).

[63] *State of California Sea-Level Rise Guidance (2018 Update); California Natural Resources Agency & Ocean* Protection Council; Sacramento, California; March 14, 2018; 1-84.

space at this location by itself. As sea level rise worsens, less of the beach/shoreline area seaward of the seawall will be available and such availability will be for a shorter period of time each day. In addition to the loss of recreational sandy area, the loss of beach/shoreline area associated with the project could also cause wave reflection which could make it unsafe for swimmers and SCUBA divers to enter the water at all. These impacts will only be exacerbated as the years go on.

The project will also have temporary impacts to public access, including restrictions on beach access to ensure public safety during construction, potential temporary reductions in available public parking at the turnout and Fanshell Beach overlook, and temporary impacts to traffic flow along 17-Mile Drive during the expected up to three years of phased construction. Given the complex nature of construction at this site, including with intermittent stoppages for harbor seal pupping, the Applicant believes that construction may take up to three years. In this three-year period, there will be direct impacts associated with construction, including noise, equipment, and public access restrictions on the beach and trails. In addition, this equates to another three years of impacts associated with some combination of whatever existing armoring remains in place as new armoring as it is installed. Given the long time frame, and the unknowns of future construction implementation (including in terms of potential phasing, difficulties encountered, etc.), it is not known exactly how such impacts will manifest, but these impacts are expected nonetheless.

In addition to these public recreational access impacts, there is also a more detrimental outcome for the public from armoring as it relates to the public trust. Along most of the open coast of California, the legal boundary between public tidelands and fee-title private land is identified by the mean high tide line. In other words, the public-private demarcation point in such cases is the point at which the mean high tide elevation hits land, which can vary considerably along coastal shorelines which are constantly changing, especially along sandy beaches. As a result, the boundary is often referred to as ‘ambulatory.’ Over time as the seas rise, the mean high tide elevation is ambulatory in another way inasmuch as a sea level elevation increase will generally mean that public trust tidelands will generally migrate landward. However, if there is hard armoring, the beach and shoreline will not be able to migrate, and the public’s property may stop migrating as well.[64] In other words, public trust resources are reduced, and their natural creation thwarted by projects like this, and such impacts accrue in this case as well.

In addition to the Coastal Act policies that support public access and equal opportunities for recreation, the Commission has the responsibility to protect public trust resources and public trust uses, including impacts to the public trust that are caused by development outside the trust boundary.[65] Coastal Act regulations define public trust lands as “all lands subject to the Common Law Public Trust for commerce, navigation,

[64] It is important to note, however, that this artificial fixing of the shoreline does not permanently fix the legal property boundary. See *United States v. Milner*, 583 F.3d 1174 (9th Cir. 2009).

[65] The California Court of Appeals describes this distinction as follows: “As a consequence, the dispositive issue is not the source of the activity, or whether the water that is diverted or extracted is itself subject to the public trust, but whether the challenged activity allegedly harms a navigable waterway.” (*Envtl. Law Found. et al. v. State Water Res. Control Bd.*, 26 Cal.App.5th 844 (2018).)

fisheries, recreation, and other public purposes", where public trust lands include "tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at any time."[66] In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation, but has been extended to protect the environment,[67] and associated resources that affect trust lands, such as non-navigable tributaries supplying water to a lake[68] and groundwater resources that impact navigable waters.[69] The State of California also recognizes public access as a component of public trust resources.

As noted earlier, the Coastal Commission is guided by the principle articulated in the *Milner*[70] case that an upland owner cannot unilaterally and permanently fix the tidelands boundary with shoreline armoring, such as the armoring that is proposed in this case. Here, as discussed above, the public's ability to recreate on the beach will be impacted as a direct result of the proposed armoring, which will interfere with public trust uses. These impacts on public trust uses are an additional impact basis for requiring mitigation (see also below). To monitor the location of the public trust boundary in relation to the proposed armoring and to evaluate the public trust impacts of the proposed armoring over time, **Special Condition 7** requires the Applicant to survey the mean high tide line every five years to monitor the movement of the mean high tide line.

As described above, the project's temporal construction impacts include the use of large equipment and significant construction that would generally intrude and negatively impact the aesthetics, ambiance, serenity (and use at all, as it relates to the pathway fronting the upcoast portion of the project) of the public recreational experience during the expected up to three years of construction. Any future maintenance episodes would lead to similar construction impacts, but to less expected degrees. Although these construction impacts can be minimized by appropriate construction controls, including as proposed by the Applicant and as modified to include typical construction parameters applied by the Commission (see **Special Condition 2**), they cannot be eliminated. In fact, while the Commission can make the Applicant restore all disturbed recreational areas following construction, cleaning up one's construction mess does not compensate for the negative public recreational access impacts over the duration of construction. In some cases, the Commission has required compensatory mitigation for this impact as well,[71] and it is appropriate here as well given the long-expected construction duration. In this case, and as described previously, a fee calculation can estimate a type of 'worst case' scenario in terms of lingering armoring impacts over three years, but it would be difficult to pinpoint a more precise impact calculation with certainty. Thus, it is appropriate for the other lingering public access impacts (i.e., those that cannot be

[66] CCR Section 13577(f).

[67] See *Marks v. Whitney*, 6 Cal.3d 251, 259-260 (1971).

[68] See *Nat'l Audubon Soc. v. Super. Ct.*, 33 Cal. 419, 436-437 (1983).

[69] See *Envtl. Law Found. v. State Water Res. Control Bd.*, 237 Cal. Rptr. 3d 393 (2018).

[70] *United States v. Milner*, 583 F.3d 1174 (9th Cir. 2009).

[71] Id.

avoided through construction BMPs and provisions) to be mitigated by such fee calculation as well. In other words, these lingering public access impacts also independently support a portion of the fee calculation, and can be covered by it as well. In such a way, any uncertainties about fee precision, including with respect to the use of the conservative and precautionary approach, is further and independently justified. In conclusion, although they have been minimized as much as feasible if armoring is to be allowed, there are demonstrable public access and recreation impacts that would normally require the project's denial. However, the Section 30235 override means that the Coastal Act allows for some impacts, such as this, that it would not otherwise. In that context, the analytic methodology turns to avoiding such impacts as much as possible and mitigating for those that are unavoidable. In this case, measures have been applied to avoid such impacts where possible, but they are simply not avoidable if the armoring is to be approved. Thus, these impacts require mitigation in order to be able to apply the Section 30235 override and still be able to find the project Coastal Act consistent with respect to public access and recreation. The mitigation package previously described (e.g., 0.8 mile of new coastal trail, including to provide missing safe pedestrian access from the Fanshell Beach parking lot to the beach itself; removal all existing armoring from Fanshell Beach; an improved beach access stairway; new public access amenities such as benches, picnic tables, bike racks, signage, parking lot striping, and improved ADA accessibility, etc.) can appropriately offset such impacts. And notably, the protection and continued availability of 17-Mile Drive for public use is an important public access benefit, which at least partially mitigates some of the project's public access impacts.

Therefore, although the proposed project's impacts on access and recreation would normally require denial, the Section 30235 override allows for some such impacts provided they are avoided as much as feasible and mitigated where unavoidable. Here, applying both avoidance and mitigation techniques, and as conditioned, the proposed project can be found consistent with the Coastal Act's access and recreation provisions cited above.

E. PUBLIC VIEWS

1. Applicable Coastal Act and LCP Provisions

The Coastal Act places a very strong emphasis on protecting public views, such as the stunning views available along 17-Mile Drive and the shoreline in the project area. Coastal Act Section 30251 states:

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

In addition, the LCP also includes protections for public views, including requirements specific to the visual aesthetics of the coastline, and areas visible from public viewpoints, including as follows:

> ***Del Monte Forest Area LUP Policy 53.*** *Design and siting of structures in public views of scenic areas should not detract from scenic values of the forest, stream courses, ridgelines, or shoreline. Structures, including fences, shall be subordinate to and blended into the environment, including by using appropriate materials that will achieve that effect. Where necessary, modifications shall be required for siting, structural design, shape, lighting, color, texture, building materials, access, and screening to protect such public views.*
>
> ***Del Monte Forest Area LUP Policy 123.*** *Public viewsheds are an important component of shoreline access and public recreational use. Development shall not block significant public views and shall not significantly adversely impact public views and scenic character, including with specific attention to the 17-Mile Drive corridor and designated public access areas/vista points.*
>
> ***Del Monte Forest Area LUP Policy 137.*** *Future development shall be compatible with the goal of retaining and enhancing public visual access. Development shall not block significant public views and shall not significantly adversely impact public views and scenic character, including with specific attention to the 17-Mile Drive corridor and designated public access areas/vista points, and shall be sited and designed to be compatible with the existing scenic character of the area.*
>
> ***Del Monte Forest Area LUP Policy 47.*** *Views from designated public access areas and vista points, from Highway 68 and 17-Mile Drive corridors, and of ridgelines as seen from the public viewing areas identified on Figure 3, shall be protected as resources of public importance, and development that could adversely impact such views shall only be allowed where it protects, preserves, and if feasible enhances, such scenic resources. Conservation and scenic easements shall be required as one means of protecting such views in perpetuity.*

And finally, the LCP emphasizes the importance of 17-Mile Drive itself for sightseeing and public access:

> ***Del Monte Forest Area LUP Chapter 2 Scenic and Visual Resources Key Policy.*** *The Del Monte Forest and 17-Mile Drive are significant and important visitor destinations. It is the objective of this LUP to protect the area's magnificent scenic and visual resources, to avoid incompatible development, and to encourage improvements and facilities that complement the Forest's natural scenic assets and enhance the public's enjoyment of them. To protect the scenic and visual resources of the Del Monte Forest area, only development that does not block significant public views and does not significantly adversely impact public views and scenic character, including with specific attention to the 17-Mile Drive corridor and designated public access areas/vista points, shall be allowed.*

In short, the Del Monte Forest section of the Monterey County LCP puts the visual protection of Coastal Act section 30251 into a local context by highlighting the particular visual importance of the project site. LUP Policies 53 and 123 specifically highlight the importance of protecting views of the shoreline, and designing shoreline development to be compatible with the protection of those views. The LUP Key Policy, as well as LUP Policies 137 and 47 further emphasize the particular importance of public views in the 17-Mile Drive corridor and from designated public access areas and vista points, and explicitly call out views along 17-Mile Drive as "resources of public importance" where "only development that does not block significant public views and does not significantly adversely impact public views and scenic character, including with specific attention to the 17-Mile Drive corridor and designated public access areas/vista points, shall be allowed."

2. Consistency Analysis

Fanshell Beach is a highly scenic visitor destination for not only beachgoers but also drivers and cyclists along the 17-Mile Drive scenic corridor. Fanshell Beach is a designated public access point, and the scenic overlook at the parking lot is an LCP designated vista point. The sand at Fanshell Beach, and within the larger Signal Hill dunes complex which extends from the back beach inland and upcoast, is uniquely fine and white due to the local geology and lack of sediment transport from rivers at this location. The Signal Hill dunes in this area form the southern portion of the Asilomar Dunes Complex, which is the only dune system on the California coast that is composed of this visually unique sand. This white sand is unmatched on the California coast and contributes to the unique and special visual setting of this area.

Another unique visual feature of the site and surrounding area is the rare dune and bluff habitat that dominates the onshore landscape. Over the last several decades, invasive non-native iceplant (*Carpobrotus edulis*) has grown to cover a significant amount of this habitat through this area. Iceplant has shallow roots and forms dense mats that can exacerbate blufftop erosion, devastate highly sensitive local ecology, and impact the visual qualities of dune and blufftop habitat. By choking out native plants, iceplant forms a visually monotonous monoculture over the areas that were historically highly visually and ecologically diverse. Iceplant mats also fully cover dune sand, covering up the bright white sand that is unique to this small stretch of coastline. In short, despite the invasive iceplant and other non-native vegetation that has pervaded the dune and bluff habitat, Fanshell Beach and its surroundings are exactly the type of resource for which the LCP and the Coastal Act affords the highest levels of priority for visual protection, and indeed, the LCP identifies the natural scenic assets and vista points along the 17-Mile Drive corridor for the utmost protection.

The proposed armoring will be primarily and prominently visible to beachgoers and visitors to Fanshell Beach and the Fanshell Beach Overlook. The armoring has been designed to be colored, contoured, and textured to mimic the surrounding bluffs and bedrock, which helps reduce impacts, but these design treatments cannot avoid the fundamental problem that the armoring represents a very prominent artificial structure on the back beach, bedrock platform, and bluff face. This is particularly true with respect to the recurve at the top of portions of the armoring that will appear inherently unnatural, no matter how effective the artificial rock surfacing is, and will shade some of the sandy

beach area at certain times of day. The project will therefore detract from public shoreline views in a significant and visually sensitive area, inconsistent with the LCP and Coastal Act Section 30251 requirements to protect the public viewshed, minimize landform alteration, be visually compatible with surrounding character, and enhance the visual quality where it is degraded. In addition, there will be temporal visual impacts during construction, which is expected to last up to three years, where the viewshed will be marred by construction equipment, activities, and in-process development. While these public view impacts would normally require the project's denial, the Section 30235 override means that the Coastal Act allows for some impacts, such as this, that it would not otherwise. In that context, the analytic methodology turns to avoiding such impacts as much as possible and mitigating for those that are unavoidable. In this case, measures have been applied to avoid such impacts where possible, but they are simply not avoidable if the armoring is to be approved. Thus, these impacts require mitigation in order to be able to apply the Section 30235 override and still be able to find the project Coastal Act consistent with respect to public views.

Options to help mitigate the adverse visual impacts associated with the proposed project beyond artificial rock surfacing include enhanced landscaping, removal of unsightly development at or near the site, removal and/or restacking of permitted riprap, restoration of landforms, etc. Even with these types of measures, however, it is generally difficult to completely eliminate the visual impacts with projects of this type and scale. In this case, in addition to the staining and contouring mentioned above (as codified by **Special Condition 1**), the Applicant has also proposed, and **Special Condition 1** codifies, the removal of all previous armoring that currently covers the sandy beach along much of the southern half of Fanshell Beach and elsewhere on the beach, which will benefit the scenic beauty of the site (as well as the useability of the beach, as described above under 'Public Access and Recreation'), particularly for beachgoers and visitors to the Fanshell Beach overlook. Modifications to the Fanshell Beach Overlook parking lot can also improve public views (see **Special Condition 1**), and to help the armoring camouflaging perform as intended, the unnatural recurves must be redesigned to truly mimic natural bluff landforms in the project area (see **Special Condition 1** as well). To further reduce the visual impacts of armoring at the site, **Special Condition 1** requires native trailing plants to be planted at the top of the armoring to help soften the visual appearance of at least the top five feet of it.

Furthermore, the Applicant proposes to restore the dune and blufftop habitats between the road and the shoreline within the project area, including the entire blufftop between the Fanshell Beach parking lot and overlook (on the downcoast end) and Seal Rock Beach parking lot (on the upcoast end) for a total of approximately 8.4 acres of restoration (as codified by **Special Condition 1** and with specific restoration plan requirements provided by **Special Condition 4**). This restoration aspect of the proposed project will not only provide for habitat enhancement (as described below under 'Coastal Habitats') but will also provide for improved visual qualities along this section of coastline, including public views from 17-Mile Drive, Fanshell Beach overlook, Fanshell Beach itself, and along the new segment of coastal trail because it will restore and enhance this degraded area to its natural state. And restoration of the native dune vegetation will allow visitors to see the sand that makes the dunes and blufftops at this site unique.

Therefore, although the proposed project's impacts on public views would normally require denial, the Section 30235 override allows for some such impacts provided they are avoided as much as feasible and mitigated where unavoidable. Here, applying both avoidance and mitigation techniques, and as conditioned, the proposed project can be found consistent with the Coastal Act's public view provisions cited above.

F. COASTAL HABITATS

1. Applicable Coastal Act and LCP Provisions

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

> ***Section 30230.*** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*
>
> ***Section 30231.*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition, Section 30233 only allows for fill of coastal waters in certain limited circumstances, and only when such projects are the least environmentally damaging feasible projects, and where all unavoidable impacts are mitigated. Section 30233 states in applicable part:

> ***Section 30233.*** *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities. (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps. (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities. (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and*

maintenance of existing intake and outfall lines. (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas. (6) Restoration purposes. (7) Nature study, aquaculture, or similar resource dependent activities. …

Furthermore, Section 30240 protects environmentally sensitive habitat areas (ESHA) and limits uses in those areas to those dependent on the resource. Section 30240 states:

Section 30240. *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

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

The Del Monte Forest area segment of the Monterey County LCP mirrors the Coastal Act language, specifically outlines the appropriate land uses in dune habitat, and protects pupping seals:

Del Monte Forest Area LUP Policy 8. *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values. Within environmentally sensitive habitat areas, new land uses shall be limited to those that are dependent on the resources therein. Land uses and development adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the habitat area, and such land use and development shall be sited and designed to prevent impacts that would significantly degrade the habitat areas.*

Del Monte Forest Area LUP Policy 18. *Uses of remnant native sand dune habitat shall be limited to low-intensity scientific, educational, and/or recreational activities dependent on the resource. Particular attention shall be given to protection of rare and endangered plants from trampling. Such uses must be consistent with restoration and enhancement of the habitat.*

Del Monte Forest Area LUP Policy 28. *Shoreline areas used by harbor seals shall be managed to protect seals during the pupping period from April 1 to June 1, including through limitations on public access to such areas.*

2. Consistency Analysis

Shoreline and Marine Habitats

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

project adversely impacts marine resource and habitats, and whether that can be allowed and under what circumstances.

As detailed above, the project would take place at the shoreline interface and in the intertidal area. This area has a recreational value that is adversely affected by armoring, as articulated in the previous findings, but what can often be lost in cases like this is that it also has a shoreline habitat value. Coastal armoring has been shown to have significant impact on the habitat, biodiversity and functioning of beach and shoreline ecosystems, as well as their long term health and resilience, even as these effects are oftentimes difficult to quantify, including because beaches and shorelines are so dynamic.[72] Sandy beach ecosystems support unique and often under-appreciated biodiversity and provide a suite of ecosystem services and functions.[73] These functions include rich invertebrate communities and food webs that are prey for birds and fish, buffering of wave energy by stored sand, filtration of large volumes of seawater, detrital and wrack processing and nutrient recycling, and the provision of critical habitat and resources for declining and endangered wildlife, such as shorebirds and pinnipeds.[74]

In terms of Sections 30230 and 30231, and LUP Policy 28, the proposed project would be expected to result in both temporary and longer-term negative impacts to these surrounding coastal waters and beach/shoreline habitat areas, both from temporary construction activities and over the long term. In terms of construction, the proposed project would lead to the reduction and/or elimination of resource values in the affected area. Construction noise, lights, vibration, and overall activities and human presence will also be expected to adversely affect birds and mammals (e.g., harbor seals, southern sea otter, and California brown pelican) and their habitats inside and adjacent to the construction zone established. Fanshell Beach is a known harbor seal pupping site, and as such is explicitly protected from disturbance by LUP Policy 28 during pupping season. Construction activities have a high likelihood of significantly disturbing pupping seals; as such, **Special Condition 2** prohibits construction when seal pups are present on the beach, and **Special Condition 3** requires a Marine Wildlife Monitoring and Contingency Plan that includes additional parameters and measures to protect harbor seals and other marine wildlife during construction activities.

Although the direct construction impacts themselves would be expected to end when the construction activities themselves ended, the effect of such construction in and adjacent to coastal waters on the short-term productivity of the affected areas could be felt for many years. In other words, the reduced construction area biological productivity during the construction period (expected to last three years) would not be expected to

[72] Defeo, O., McLachlan, A., Schoeman, D.S., Schlacher, T.A., Dugan, J., Jones, A., Lastra, M. and Scapini, F., 2009. Threats to sandy beach ecosystems: a review. Estuarine, coastal and shelf science, 81(1), pp.1-12. Dugan, J.E., Hubbard, D.M., Rodil, I., Revell, D.L., Schroeter, S., 2008. Ecological effects of coastal armoring on sandy beaches. Marine Ecology 29, 160–170.

[73] Nel, R., Campbell, E.E., Harris, L., Hauser, L., Schoeman, D.S., McLachlan, A., du Preez, D.R., Bezuidenhout, K. and Schlacher, T.A., 2014. The status of sandy beach science: Past trends, progress, and possible futures. Estuarine, Coastal and Shelf Science, 150, pp.1-10.

[74] McLachlan A, Brown AC (2006) The ecology of sandy shores. 2nd edn, Academic Press, Amsterdam, 392 pp. Hubbard D.M., J.E. Dugan (2003) Shorebird use of an exposed sandy beach in southern California. Estuarine, Coastal and Shelf Science 58S:169–182.

correct itself instantaneously when construction ended, and its effects may linger for some time, affecting coastal waters/intertidal values until previous productivity levels have been reestablished. In addition, the amount of time necessary for such a reestablishment of coastal waters/intertidal value also represents lost productivity in and of itself (because this time period when the areas might otherwise be thriving would not be available as a foundation for encouraging such values here). Thus, not only will there be the construction period direct and indirect affects, but a recovery period of reduced habitat productivity as the habitat recovers over time. These impacts can be minimized by appropriate construction methods during construction (including maintaining good construction site housekeeping controls and procedures; the use of appropriate erosion and sediment controls; a prohibition on equipment washing, refueling, or servicing on the beach; a requirement for construction documents to be kept at the site for inspection; and a construction coordinator to be available to respond to any inquiries that arise during construction - see **Special Condition 2**), but they cannot be eliminated entirely.

Longer term, two impacts on marine resources are expected. First is that the armoring itself is likely to degrade, both on a slower and more consistent basis over time as well as episodically in larger chunks. Although concrete is more inert than a number of other materials, it could still result in changes to the surrounding water's water quality and habitat values, perhaps most obviously if larger chunks are dispersed into the ocean. Second, and as described earlier, armoring creates a barrier to natural shoreline migration, which leads to the types of sand and shoreline impacts previously described, including a narrowing and disappearing beach/shoreline area overall. That same narrowing and disappearing beach/shoreline also changes shoreline habitat conditions, including as it relates to accumulating sand and supporting intertidal and near tidal biodiversity and wildlife.[75] And as climate change causes the seas to rise ever faster, such areas and their habitat values will be lost and 'drown out' at an increasingly faster pace when the shoreline is armored, as here in this case. All of these impacts accrue to this proposed project.

In terms of Section 30233, as described above, portions of the project appear to be located partially within coastal waters (namely, rock removal from the intertidal area), and the project does not provide for one of the seven enumerated and allowed types of uses/development in coastal waters. However, Section 30235 provides more specific Coastal Act direction when armoring is allowed, and that more specific manifestation takes precedence over the allowed types of fills under Section 30233. In other words, if armoring meets 30235 tests for approval, as it does here, then that can serve as an override to the types uses/development that can fill coastal waters, and that override applies to this case. This override does not, however, negate meeting other Section 30233 requirements as much as possible, including that the project be the least

[75] Dugan, J.E., Emery, K.A., Alber, M., Alexander, C.R., Byers, J.E., Gehman, A.M., McLenaghan, N. and Sojka, S.E., (2017). Generalizing ecological effects of shoreline armoring across soft sediment environments. Estuaries and Coasts, 1-17.

environmentally damaging feasible alternative, and that the project include feasible mitigation measures to minimize adverse environmental effects.[76]

Terrestrial Habitats

In addition to marine and shoreline habitat impacts, the project is expected to have substantial impacts to land-based, or terrestrial, habitats. The project area is a mix of coastal sand dunes and bluffs, vegetated with a mix of invasive species (primarily iceplant) and special status plant species such as seacliff buckwheat, the host plant for the federally endangered Smith's blue butterfly. Coastal sand dunes are a limited natural resource of statewide significance, and the Commission has historically placed a high priority on the protection and preservation of such dune systems for their role in providing habitat for unique assemblages of flora and fauna, which have adapted to the particularly harsh and dynamic conditions found in the environment. The LCP acknowledges the unique and sensitive nature of these habitats; LUP Policy 20 states that the use of remnant dunes is limited to low intensity scientific, educational, and recreational uses. All of the dune and bluff habitat at the project site is environmentally sensitive habitat area (ESHA).

Section 30240, the Coastal Act, and Policy 8 of the LUP, limit development within ESHA to that which is dependent on those resources and requires that development be compatible with the long-term maintenance of the resource. Both the armoring and the coastal trail are proposed within ESHA and as such will have temporary and permanent impacts to ESHA. Expected temporary impacts include vegetation clearance, grading, and the use of heavy machinery in areas beyond the permanent development footprint. Expected permanent impacts consist of the permanent loss of the dune and bluff habitat in the development footprint of the armoring and the pathway. In this case, the coastal trail is a resource-dependent use, and as a low-intensity recreational use, it conforms to the guidance for sand dune habitat provided by the LCP. However, the proposed armoring is not a resource dependent use, and is thus not allowed under Section 30240. But, like the project's Section 30233 inconsistency described above, because the armoring meets the Section 30235 tests for approval, that serves as an override to the types of uses/development allowed in ESHA by Section 30240.

Conclusion

The proposed armoring is inconsistent with Coastal Act Sections 30233 and 30240, as well as the nonbinding guidance provided by LUP Policies 8 and 18, which would normally require denial. However, Section 30235 provides more specific Coastal Act articulation as to when armoring is allowed (again, best articulated as a type of Coastal Act override), and that more specific manifestation takes precedence over other coastal resource protections. In that context, the analytic methodology turns to avoiding such

[76] Note that other non-marine resource/habitat resource issues associated with such fill are addressed in previous findings. Note too that the requirements of Section 30233(a) regarding mitigating impacts and identifying the least environmentally damaging feasible alternative would still apply. The intent of this finding is to explain the distinction between Sections 30233(a) and 30235 as it relates to armoring occupying coastal waters. Giving precedence to the more particular provisions of Section 30235 over the more general provisions of Sections 30233(a) is in accordance with generally applicable principles of California law (see, for example, Civil Code Section 3534 ("Particular expressions qualify those which are general").

impacts as much as possible and mitigating for those that are unavoidable. In this case, the Special Conditions of this permit will apply measures to avoid the impacts where possible, but they are simply not entirely avoidable if the project is to be approved. Thus, these impacts require mitigation in order to be able to apply the Section 30235 override and still be able to find the project Coastal Act consistent with respect to coastal habitats.

Unfortunately, although the Commission finds that there would be some coastal resource impacts of the type described above, and that it is appropriate to apply construction level BMPs to lessen them (see **Special Condition 2**), it is difficult to objectively quantify and apply mitigations to latent habitat impacts that are more subjective and difficult to ascertain with certainty. That is not to diminish the effect of such impacts, but rather to observe the difficulties pertaining to their measurement. In this case, to address the unavoidable impacts to coastal habitats, the Applicant proposes to restore the entirety of the beach, dune, and blufftop project area outside of the project footprint (as codified in **Special Condition 1**). Two categories of restoration are included: removal of all existing armoring currently located in the sandy beach area and submerged lands along the Fanshell Beach shoreline (see **Special Condition 1**), and restoration of all dune and bluff areas between the road and the sea along the length of the project area (see **Special Condition 4**). The removal of existing armoring will uncover approximately 19,000 square feet of sandy beach area (although, as discussed above, such removal is already required to resolve violations and help mitigate public access impacts), and the dune and bluff restoration will cover approximately 8.4 acres of dune and bluff ESHA that is currently heavily impacted by invasive plants. In combination, this restoration will help to improve sensitive coastal habitat values, and will provide adequate compensatory mitigation for the project's impacts to those same habitats in a Section 30235 context.

Therefore, although the proposed project's impacts on coastal habitats would normally require denial, the Section 30235 override allows for some such impacts provided they are avoided as much as feasible and mitigated where unavoidable. Here, applying both avoidance and mitigation techniques, and as conditioned, the proposed project can be found consistent with the Coastal Act's coastal habitat provisions cited above.

G. CULTURAL RESOURCES

1. Applicable Coastal Act and LCP Provisions

Coastal Act Section 30244 states:

> ***Section 30244.*** *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

In addition, the Del Monte Forest area of the Monterey County LCP includes a number of provisions for the protection of cultural and archaeological resources:

> ***Del Monte Forest Area LUP Cultural Resources Key Policy.*** *The Del Monte Forest's cultural resources shall be maintained, preserved, and protected for their scientific and cultural heritage values. New land uses and development shall be*

considered compatible with this objective only when they incorporate site planning and design features necessary to avoid impacts to cultural resources, and where impacts are unavoidable they shall be minimized and reasonably mitigated.

Del Monte Forest Area LUP Policy 57. *The timely identification and evaluation of archaeological, historical, and paleontological resources, and coordination with applicable Native American representatives, is encouraged, so that these resources are given full consideration during the conceptual design phase of land use planning for project development.*

Del Monte Forest Area LUP Policy 60. *When developments are permitted on parcels where archaeological or other cultural resource sites are located, project design shall be required which avoids or mitigates impacts to such sites. Where the site has religious significance, emphasis should be placed on preserving the entire site; likewise, where the site is of known regional significance, consideration shall be given to nominating the site to the National Register and preserving it.*

Del Monte Forest Area LUP Policy 61. *When sufficient planning flexibility does not permit avoiding construction on archaeological or other types of cultural sites, adequate preservation and mitigation measures shall be required. Preservation and mitigation measures shall be designed by a qualified archaeologist in accordance with current accepted guidelines.*

2. Consistency Analysis

Both the Coastal Act and the Del Monte Forest Area LUP require development to implement reasonable mitigation measures to protect identified cultural and archaeological resources. The LUP further encourages coordination with applicable Native American representatives, so that these resources are given full consideration. The Commission's Tribal Consultation Policy (adopted on August 3, 2018) also recognizes the importance of improving communication and coordination with Tribes, and it sets out a tribal consultation process that is fully consistent with, and complementary to the nature of, Coastal Act Section 30244.

This part of the Monterey Bay region includes representation by the Ohlone/Costanoan-Esselen Nation (OCEN), which is comprised of over 600 enrolled tribal members of Esselen, Carmeleno, Monterey Band, Rumsen, Chalon, Soledad Mission, San Carlos Mission (Carmel) and/or Costanoan Mission Indian descent. The Del Monte Forest shoreline was a major Native American occupation and utilization center and contains a rich history. The project is thus located within a culturally/archaeologically rich and sensitive area where potentially significant cultural/archaeological resources and artifacts have been discovered in the past, and the proposed project involves excavation, ground disturbance, and other construction activities that could impact such resources. As such, an archaeological survey and reports were prepared for the

proposed project.[77] The reports did indeed identify sensitive archaeological resources at the project site that might be impacted by project construction. The Applicant and Commission staff also consulted with local tribal representatives from the Native American Heritage Commission list for this area to make them aware of the project and provide an opportunity to comment and provide input.

The Applicant and Commission staff received responses from the Esselen Tribe of Monterey County (ETMC) who conveyed the importance of the project site to their Tribe and requested to be kept informed of the permitting process. To minimize the risk of damage to tribal cultural resources at this site, **Special Condition 5** defines monitoring and procedural requirements related to these resources. Archaeological and tribal monitoring is required for all construction related activities that may impact archaeological and/or tribal cultural resources. If culturally significant resources are discovered, nearby construction must halt until a supplementary mitigation plan is approved by the Executive Director or through an amendment to this CDP. If human remains are found, the coroner will be contacted, and if the remains are found to be Native American, the Native American Heritage Commission will be contacted and appropriate procedures followed in a timely manner, including contacting the Executive Director.

In conclusion, based on the tribal consultation conducted by Commission staff, as well as the avoidance and monitoring protections included in **Special Condition 5**, the Commission finds that the development, as conditioned is consistent with Coastal Act Section 30244.

H. VIOLATION

Violations of the Coastal Act and LCP exist at the site including, but not necessarily limited to, 39 linear feet of grouted rip rap installed without a CDP between 1979 and 1987, and the public access stairway at the midpoint of the beach installed without a CDP between 1993 and 2003. These violations were unknown to Commission staff prior to the application for the proposed armoring and were discovered by staff while evaluating the project application. In addition, 2010 ECDP work covering another 70 linear feet of bluff with rip rap remains unpermitted. The Applicant has agreed to add resolution of these violations to this project via the removal of all of the unpermitted development at the site, the removal and replacement of the public access stairway with an improved design, and additional mitigation and beneficial work that has been folded into their overall mitigation package in order to fully resolve the violations at issue. Specifically, **Special Condition 1** codifies that the Applicant will remove all previously installed armoring at the site. This not only includes the unpermitted armoring described above, but also a significant amount of armoring that predates the Coastal Act, and other armoring that was previously permitted under Commission and County CDPs. Removal of legally existing armoring has been credited in the mitigation fee discussed in the 'Coastal Hazards' section above. **Special Condition 1** also codifies that the Applicant will replace unpermitted stairway with an improved design, a new 0.8-mile

[77] EMC Planning Group Inc., *Archaeological Report for the Pebble Beach Golf Course-Fanshell Beach Seawall Project*, dated November 15, 2019 and updated January 11, 2023, both identified in the project file as confidential reports consistent with Public Resources Code Section 21082.3.

long blufftop public access trail, and additional amenities such as picnic tables, benches, and other public access enhancements. While the unpermitted armoring certainly has had impacts that require mitigation, the unpermitted stairway has been self-mitigating and has in fact provided an important public amenity since its construction. Therefore, and overall, the beneficial project components proposed by the Applicant and codified by the special conditions are sufficient to both mitigate for the impacts of the proposed project, and fully resolve these violations.

After the CDP is issued and the Applicant subsequently implements the project consistent with the CDP's terms and conditions, the violations described above will be considered resolved. However, Commission review and action on this CDP does not constitute a waiver of any legal action with regard to the above violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of development undertaken on the subject site without a CDP, or of any other development, other than the development approved herein. In fact, approval of this CDP is possible only because of the conditions included herein, and the Applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this CDP would also constitute a violation of this CDP and of the Coastal Act. Accordingly, the Applicant remains subject to enforcement action just as it was prior to this CDP approval for engaging in the unpermitted development/permit violations described herein and for any violations of this CDP, unless and until the terms and conditions of approval included in this CDP are satisfied.

I. OTHER

Public Rights
The area associated with this CDP application includes land that may be public (e.g., the area of the seawall footing/foundation may constitute State Lands). The Commission here does not intend its action waive any public rights that may exist on the affected property, and thus, this approval is conditioned to make that clear, and to require the Applicant to agree and acknowledge same, including that the Applicant 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 (see **Special Condition 13**).

Future Permitting
The Commission herein fully expects to review any future proposed development at and/or directly related to this project and/or project area, including to ensure continued compliance with the terms and conditions of this CDP through such future proposals, but also to ensure that any such future proposed development can be understood in terms of same. Thus, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required (see **Special Condition 14**).

Indemnification
Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus,

the Commission is authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP applications in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 12** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

Other Agency Approvals

The California State Lands Commission is responsible for determining the landward location and extent of the State's sovereign fee ownership of public trust lands and has jurisdiction and management authority over public trust lands, including all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The State Lands Commission also has review authority over public trust lands legislatively granted in trust to local governments. The public trust boundary is generally defined by reference to the ordinary high water mark, as measured by the mean high tide line.[78] This boundary remains ambulatory, except where there has been fill or artificial accretion, a boundary line agreement, or court judgment that fixes the boundary. A portion of the proposed project is located below the mean high tide line and appears to be on public trust lands.

In addition, the proposed project appears to affect the Monterey Bay National Marine Sanctuary, which may need to provide authorization, and may affect marine resources that are protected by NOAA Fisheries, as well as resources governed by the California Regional Water Quality Control Board. To ensure that the Applicant has a sufficient legal property interest in the site to carry out the project consistent with the terms and conditions of this permit and to ensure that the proposed project is authorized by all applicable regulatory agencies, **Special Condition 15** requires the Applicant to submit written evidence either of these other agencies approvals of the project (as conditioned and approved by this CDP) or evidence that such approvals are not required.

Minor Changes

This CDP authorizes the project proposed except as modified by the special conditions. As is typical of large and complicated construction projects like this, there can be the need for minor changes as circumstances dictate. Thus, this approval allows for such changes through either (a) a CDP amendment, or (b) if the Executive Director determines that no amendment is legally required, then such changes may be allowed by the Executive Director if the Executive Director determines that such changes: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources (**Special Condition 16**).

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of

[78] Ibid.

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.

Although Monterey County did not perform CEQA review as the lead agency, the Coastal Commission's review and analysis of land use proposals, such as the proposed project, has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (pursuant to Section 15251(c) of the CEQA regulations). The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address potential adverse impacts to such coastal resources. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this CDP 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).

5. APPENDICES

A. Appendix A – Substantive File Documents[79]

- Coastal Commission Files for ECDP 3-10-012-G and CDP 3-83-204
- Monterey County Files for CDP PLN000595

B. Appendix B – Staff Contact with Agencies and Groups

- Monterey County Planning Staff
- The Esselen Tribe of Monterey County
- The Amah Mutsun Tribal Band
- Monterey Bay National Marine Sanctuary Staff

[79] These documents are available for review in the Commission's Central Coast District office.