

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



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Staff: Katie Butler - SC
Staff Report: 1/27/2023
Hearing Date: 2/10/2023

STAFF REPORT CDP APPLICATION

- Application Number:** 3-23-0014
- Applicant:** Gary H. Grossman TRE
- Project Location:** On the beach and bluffs fronting 121 Indio Drive in the Sunset Palisades area of the City of Pismo Beach
- Project Description:** The proposed project is proposed coastal armoring that can be understood in three parts:
1. A request for permanent authorization of development already completed pursuant to the temporary authorization provided by emergency CDPs G-3-20-0025, G-3-21-0023, and G-3-21-0035 consisting of: (a) the addition of 73 cubic yards of shotcrete at the base of an existing armoring structure and extending inland, occupying a physical space that is approximately 70 feet along the coast, up to 27 feet deep into the bluff, and up to 6 feet high at its base; and (b) the addition of a new concrete footing/foundation overlapping the base of the existing armoring structure, the existing upper bluff shotcrete, and the above-described 73 cubic yard addition that extends approximately 83 feet along the coast, 1.5 to 2 feet wide, and 5 to 9 feet high.
 2. A request to authorize additional development not yet undertaken consisting of: (a) the addition of three new six-inch diameter concrete and PVC-encased steel tieback structures extending/embedded some 38 to 83 feet into the bluff through and affixed to the existing armoring; (b) the removal of up to 20 cubic yards of the upper bluff (extending into the bluff some 1.5 feet over an area of about 400 square-feet) and the addition of new shotcrete into/over that same area; (c) the addition of new drainage infrastructure (both in the armoring and associated with it, and in the upper

bluff and blufftop area) and landscaping; (d) additional fill with shotcrete beneath the bluff and an additional 13-foot long and 5 to 9-foot high new concrete foundation/footing at the downcoast end of the property; and (e) as-needed maintenance and repair of the upper bluff shotcrete portion of the armoring structure.

3. A request for after-the-fact authorization of nine one-inch diameter steel tieback structures in eight-inch diameter holes with three-inch grouted covers extending/embedded some 30 feet into the bluff that were installed without benefit of a CDP in 2005.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to redevelop the portion of a shoreline armoring structure initially approved by the Commission in 2003 that fronts most of the Applicant's residence at 121 Indio Drive in the Sunset Palisades area of the City of Pismo Beach, just upcoast of South Palisades Park. The project would replace the previously approved armoring along the downcoast roughly two-thirds of the property with a larger and more massive armoring structure, including a new concrete footing/foundation fronting a new large (73 cubic yards) concrete sea cave fill and integrated with upper bluff shotcrete, embedded tiebacks, and related measures. All told, the proposed project would completely cover the roughly 40-foot-tall bluffs along over more than 80 linear feet of shoreline. Portions of the project have already been completed through three emergency CDPs (ECDPs), other portions are prospective and have not yet occurred, and portions were already completed without benefit of a CDP and thus are requested for after-the-fact (ATF) authorization.

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 variance, exception, and non-conformity. In fact, as applicable here, only 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) in danger from erosion can be permitted under Section 30235. And if it meets that test, then such armoring must also avoid coastal resource impacts as much as feasible and provide mitigation for its unavoidable impacts. In short, the proposed armoring must be the least environmentally damaging feasible alternative for protecting an existing endangered structure, and it must eliminate/mitigate all its adverse impacts on coastal resources, including prominently in terms of impacts to beach/shoreline area resources.

Although there are a variety of complicating factors, not the least of which is the fact that the originally pre-1977 residence was significantly modified in 2005 without benefit of a CDP, there is insufficient evidence to demonstrate that it was redeveloped in a manner that would lose its Section 30235 "existing" status, even when the unpermitted work is considered. And there is plenty of evidence to suggest that the residence is in danger,

including because it is almost on top of the blufftop edge on a rapidly eroding bluff that is significantly undercut (up to 27 feet at its base), and that hard armoring of this type is the only true feasible option to protect that existing endangered structure. Having reached those conclusions, the next step is impact minimization and mitigation, and staff 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, etc.), and to provide offsetting and commensurate mitigation for impacts that cannot be avoided. In terms of the latter, the primary mitigation is to offset adverse beach/shoreline impacts through the next twenty years with a roughly \$1,300,000 mitigation fee, which is the estimated proxy value of the beach/shoreline that will be lost over this timeframe due to the project (calculated using the Commission's typical methodologies). Other conditions require the removal of a patio within the armoring, require the armoring to be removed when the house is redeveloped, and require the Applicant to accept, internalize, and disclose all coastal hazard risks, among others.

In conclusion, the Coastal Act strictly limits shoreline armoring to very specific cases and under exacting criteria. This project, as conditioned, can be found consistent with these criteria. As such, staff recommends the Commission approve a CDP for the proposed project. The motion is found on page 5 below.

Violation note: Coastal Act and LCP violations exist on the subject property including, but not necessarily limited to, significant modifications to the residence and the installation of nine armoring tiebacks without a CDP, all as further described in the Violation section of this report. If the CDP is approved per the staff recommendation, then the tie backs would be authorized, and that would provide resolution of that violation. However, the Applicant did not include resolution of the violations associated with the residence in this application, and thus, even if the CDP is approved per the staff recommendation, the residential violations will remain on the subject property. The Commission's enforcement division is considering options for future action to address such violations.

Action deadline note: Although staff and the Applicant have been involved in an exchange of information requests (from staff) and material submittals (from the Applicant) from 2020 through the end of 2022, including in the context of six different applications submitted by the Applicant over that time frame (four ECDP applications and two CDP applications), and a project description that was constantly changing, this application filed itself on May 20, 2021 and is subject to a Permit Streamlining Act (PSA) deadline of February 14, 2022. In addition, the Applicant has provided a notice under the PSA intended to compel the Commission to act on the application no later than the Commission's February meeting, or, were the Commission not to act, to cause the project to be approved by operation of law. Although it is not clear that such an outcome would be the result of the Commission not taking an action on the application by the February meeting, staff recommends that the Commission act no later than the February 2023 meeting in order to avoid any repercussions that may apply due to the PSA if there was no Commission action by that time. In any case, the Commission retains its discretion to approve, approve with conditions, or deny the CDP application

based on the Commission’s evaluation of it and its determination as to its consistency with the Coastal Act, and the PSA context does not change that in any way.

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EXHIBITS

- Exhibit 1 – Location Maps
- Exhibit 2 – View looking downcoast from Florin Street Overlook
- Exhibit 3 – California Coastal Records Project photos of the site from 1972 to 2019
- Exhibit 4 – April 2020 plans (showing undercut bluff and then-proposed emergency fill)
- Exhibit 5 – March 2022 as-built plans (showing new fill and seawall constructed under G-3-20-0025, G-3-21-0023, and G-3-21-0035)
- Exhibit 6 – August 2021 plans (showing proposed Phase IIB work)
- Exhibit 7 – February 2022 plans (showing additional proposed downcoast seawall work)
- Exhibit 8 – May 2005 plans showing nine unpermitted tiebacks
- Exhibit 9 – February 2022 Applicant photos of armoring completed under G-3-21-0035
- Exhibit 10 – 2005 Staff photos of unpermitted house construction work
- Exhibit 11 – Applicant’s 2005 calculations for house construction work
- Exhibit 12 – January 2023 Staff Sand Supply Impacts Memorandum

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 3-23-0014 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number 3-23-0014 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. **Approved Development and Final Plans.** This CDP (i.e., CDP 3-23-0014) applies to the property at 121 Indio Drive, and authorizes the following, all subject to the terms and conditions of this CDP:
 - a. **ECDP Development.** New base of seawall components constructed pursuant to Emergency CDPs G-3-20-0025, G-3-21-0023, and G-3-21-0035 consisting of: (1) the addition of 73 cubic yards of shotcrete at the base of an existing armoring structure and extending inland, occupying a physical space that is approximately 70 feet along the coast, up to 27 feet deep into the bluff, and up to 6 feet high at its base; and (2) the addition of a new concrete footing/foundation overlapping the base of the existing armoring structure and the above-described 73 cubic yard addition that extends approximately 83 linear feet along the coast, 1.5 to 2 feet wide, and 5 to 9 feet high, all as shown on the plans titled “As-Built Emergency Replacement Cutoff Wall and Upcoast, Downcoast Return Walls – Figure 1,” “As-Built Cross Sections 1-1, 3-3, 5-5, and 6-6 – Figure 2,” and “As-Built Cutoff and Return Walls Elevation A-A – Figure 3” prepared by Cotton, Shires & Associates, dated March 2022, and dated received in the Central Coast District Office on March 25, 2022 (see **Exhibit 5**).
 - b. **Proposed Development.** New seawall components consisting of: (1) the addition of three new six-inch diameter concrete and PVC-encased steel tieback structures extending/embedded some 38 to 83 feet into the bluff through and affixed to the existing armoring; (2) the removal of up to 20 cubic yards of the upper bluff (extending into the bluff some 1.5 feet over an area of about 400 square-feet) and the addition of new shotcrete into/over that same area; (3) the addition of new drainage infrastructure (both in the armoring and associated with it, and in the upper bluff and blufftop area) and landscaping; (4) additional fill with shotcrete beneath the bluff and an additional 13-foot long and 5 to 9-foot high new concrete foundation/footing at the downcoast end of the property; and (5) as-needed maintenance and repair of the upper bluff shotcrete portion of the armoring structure, all as shown on the plans titled “Phase II Bluff Protection Restoration Project,” sheets C-1 through C-9, prepared by Cotton, Shires & Associates, dated October 13, 2020, and dated received in the Central Coast District Office on October 30, 2020 and “Revised Drawing No. C-4 – Maintenance/Repair/Restoration - Phase II Geotechnical Investigation,” and associated Sheets C-5 and C-6, prepared by Cotton, Shires & Associates, dated February 2022, and dated received in the Central Coast District Office on February 2, 2022. All such development shall be completed no later than February 10, 2025. (see **Exhibits 6 and 7**)

- c. ATF Development.** Nine one-inch diameter steel tieback structures in eight-inch diameter holes with three-inch grouted covers extending/embedded some 30 feet into the bluff that were installed without benefit of a CDP in 2005 as shown in **Exhibit 8**.
- d. Required Development.** Blufftop landscaping, armoring surfacing, and in-bluff patio and stair removal, as follows:
- 1. Blufftop Landscaping.** Native coastal bluff plant species capable of trailing vegetation shall be planted along the top of the armoring 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, and to cover at least the top 5 vertical feet of the approved armoring. All invasive and non-native species in this planting area, including iceplant, shall be removed.
 - 2. Armoring Surfacing.** All seaward facing elements of the armoring shall be faced with 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 possible. Any protruding elements (e.g., corners, edges, etc.) shall be contoured in a non-linear manner designed to evoke natural bluff undulations. The color, texture, and undulations of the seawall surface shall be maintained throughout the life of the structure. 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 armoring that becomes visible due to rock shelf erosion. **PRIOR TO COMMENCEMENT OF FINISH CONCRETE SURFACING**, the Permittee shall submit to the Executive Director for review and approval the qualifications of the contractor who will perform the finish concrete work, including photos and identification of (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.
 - 3. In-Bluff Patio and Stair Removal.** All patio elements in the bluff face (including all decking, railings, stairs, furniture, etc.) shall be removed, and the area shall be treated consistent with the Armoring Surfacing requirements above.

PRIOR TO ISSUANCE OF THIS CDP, the Permittee shall submit two full-size sets of Final Plans to the Executive Director for review and written approval that clearly show all of the approved development described above in relation to existing site conditions otherwise, where such approved development is clearly distinguished from any other development at the site. The Final Plans shall identify all easement areas and other similarly restricted areas on the site and shall be accompanied by copies of the recorded legal document applicable to such areas. The Final Plans shall be prepared by a licensed professional or professionals (e.g., surveyors, geotechnical engineers, architects, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a

graphic scale. 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 Executive-Director-approved Final Plans.

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, 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.
 - c. **Construction Timing.** No work shall occur during weekends and/or during the summer peak 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 to help prevent leaks and spills of hazardous materials at the project site.
 3. **Good Housekeeping.** The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site; etc.).
 4. **Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.
 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. **Property Owner/Easement Holder Consent.** Any construction activities that would occur on neighboring properties not owned the Permittee, and/or on easements and similarly restricted portions of property, whether on the Permittee's property or other properties, shall be accompanied by conclusive written evidence that such property/easement/other owners consent to such activities, including the manner in which they are governed by the terms and conditions of this CDP.
- f. **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. Any native materials impacted shall be filtered as necessary to remove all construction debris.

- 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.** The construction specifications and materials 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 development in conformance with this condition and the Executive-Director-approved Construction Plan.

- 3. As-Built Plans.** WITHIN THREE MONTHS OF COMPLETION OF CONSTRUCTION, the Permittee shall submit two copies of one complete set of As-Built Plans to the Executive Director for review and written approval showing all development authorized by this CDP; all property lines; and all shoreline armoring

elements. 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 upcoast, seaward, and downcoast viewpoints on the beach and/or bedrock platform, and from a sufficient number of viewpoints as to provide complete photographic coverage of the permitted shoreline armoring and related 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**.

4. **Mitigation.** BY FEBRUARY 10, 2024, the Permittee shall pay \$1,287,905 to the City of Pismo Beach or other appropriate entity approved by the Executive Director to be held in an interest-bearing account. The sole purpose of these funds shall be for public access and recreational projects in the City of Pismo Beach (i.e., projects that provide access to and along the shoreline, including but not limited to new public beach access stairways, or stairway repairs/improvements to ensure vertical beach access; new coastal pathways or pathway repairs/improvements; new blufftop or beach park or park repair/improvement projects; beach creation through nourishment and/or property acquisition; etc.). All funds and any accrued interest shall be used for the above-stated purposes, in consultation with the Executive Director, within ten years of the date of this approval (i.e., by February 10, 2033), which time may be extended for good cause by the Executive Director.

PRIOR TO THE EXPENDITURE OF ANY FUNDS, the Executive Director shall review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, prior to the Executive Director's approval of expenditure, the entity accepting the funds required by this condition shall enter into a memorandum of understanding (MOU) with the Executive Director, which shall include, but not be limited to, the following: 1) a description of how the funds will be used to provide public access and recreational projects in the Pismo Beach coastal zone; and 2) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for development required by this condition.

5. **Monitoring and Reporting.** The Permittee shall ensure that the condition and performance of the approved as-built 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. 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.
 - c. 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 March 1st of each fifth year (with the first report due March 1, 2028 and subsequent reports due March 1, 2033, March 1, 2038, and so on) for as long as the approved as-built project exists at this location. The reports shall identify the existing configuration and condition of the armoring and 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). In addition to meeting all **Special Condition 6** requirements below, actions necessary to maintain the approved as-built project in a structurally sound manner and its approved state shall be implemented within 30 days of Executive Director approval, unless a different time frame for implementation is identified by the Executive Director.
- 6. Future Maintenance.** This CDP authorizes future maintenance as described in this special condition. The Permittee acknowledges and agrees on behalf of themself 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. Any such 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 overall permitted structures and make improvements in their approved configuration, including retrieval of any project components that may be displaced from the approved design.
- 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 and/or repair 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 are in violation of the Coastal Act 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 6**) subject to Executive Director review and written approval every 5 years (with the first approval due March 1, 2028, and subsequent approvals March 1, 2033, March 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 March 1, 2028). Maintenance can be carried out beyond March 1, 2028 (and beyond subsequent five-year periods) pursuant to these maintenance provisions only if the Permittee requests an extension prior to the end of each 5-year maintenance period and only if the Executive Director extends the maintenance term in writing. 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. The Permittee shall maintain the approved armoring in its approved state.

- 7. Additional Armoring Provisions.** The approved armoring (see also **Special Condition 1**) shall be subject to all of the following:
- a. Redevelopment.** This CDP authorizes the armoring described in **Special Condition 1** until the time when the residence at 121 Indio Drive is either: (1) no longer present; (2) no longer requires armoring; or (3) is redeveloped as identified below. If any of these occur, then the Permittee shall immediately submit a complete CDP amendment application to the Coastal Commission to remove the armoring and restore the area to natural conditions. The specific changes to the residence that would constitute redevelopment in this case include: (1) replacement of 1.3 percent or more of the structural exterior walls as they exist on February 10, 2023 (see **Exhibit 11**); (2) replacement of 39.7 percent or more of the foundation structure as it exists on February 10, 2023 (see **Exhibit 11**); (3) replacement of 10 percent or more of the structural roof as it exists on February 10, 2023; (4) replacement of 50 percent or more of other (non-foundation or non-exterior-wall) major structural components including structural interior walls and floor, or a 50 percent or more increase in floor area (alterations are not additive between individual major structural components); (5) replacement of less than 50 percent of other (non-foundation or non-exterior-wall) major structural components where those alterations result in cumulative alterations exceeding 50 percent or more of that major structural component (taking into account previous replacement work undertaken since January 1, 1977); and/or (6) an increase in floor area of less than 50 percent where that increase results in cumulative additions exceeding 50 percent or more of the floor area (taking into account previous additions to the structure since January 1, 1977).
 - b. Armoring Modifications.** If the Permittee applies for a separate CDP or an amendment to this CDP to modify the armoring in a manner that differs from that approved by this CDP, or to perform repair work affecting 50 percent or more of the armoring, the Permittee shall be required to provide additional commensurate mitigation for the impacts of the modified armoring on public views, public

recreational access, shoreline processes, and all other affected coastal resources, where impact assessment and mitigation shall occur based on considering the modified armoring as a new replacement structure, and where mitigation already applied to date, including attributable to this CDP, shall not be countenanced.

c. Additional Mitigation Requirements. Impact assessment and mitigation under this CDP are for the time period extending to February 10, 2043. If the Permittee intends to keep the approved armoring in place after February 10, 2043, then the Permittee shall submit a complete CDP amendment application prior to that date that evaluates the coastal resource impacts associated with retention of the armoring past that date (including in relation to any potential modifications to the armoring approved by this CDP that may be part of such CDP amendment application or any prior CDP amendment) and that provides commensurate mitigation for the impacts of the armoring past that date on public views, public recreational access, shoreline processes, and all other affected coastal resources.

d. Seaward Encroachment Prohibited. Future modifications to the approved armoring that extend the armoring seaward in any way shall be prohibited.

8. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of themselves 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, tsunamis, 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 project shall be fully the responsibility of the Permittee.

9. 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.

- 10. CDP A-3-PSB-02-016.** All terms and conditions associated with CDP A-3-PSB-02-016 shall continue to apply, unless they conflict with and/or are superseded by the terms and conditions of this CDP, in which this CDP terms and conditions shall apply.
- 11. Public Rights.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of themselves and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights that may exist on the 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.
- 12. Future Permitting.** 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.
- 13. Real Estate Disclosure.** Disclosure documents related to any future marketing and/or sale of the subject property (i.e., 121 Indio Drive, APN 010-205-002), including but not limited to specific marketing materials, sales contracts and similar documents, shall notify clearly potential buyers of the terms and conditions of this CDP. A copy of this CDP shall be provided in all real estate disclosures.
- 14. Other Agency Approvals.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Executive Director copies of all permits, permissions, or other authorizations from the U.S. Army Corps of Engineers, Central Coast Regional Water Quality Control Board, and the California State Lands Commission, 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 such 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.
- 15. Deed Restriction.** WITHIN ONE YEAR OF ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and written approval documentation demonstrating that they have executed and recorded against the parcel governed by this CDP a deed restriction (Deed Restriction), in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to CDP 3-23-0014, the California Coastal Commission has authorized development on the subject property subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the conditions of CDP 3-23-0014 as covenants, conditions and restrictions on the use and enjoyment of the property. The Deed Restriction shall include a legal description of the entire parcel governed by CDP 3-23-0014. The Deed Restriction shall also indicate that, in the event of an extinguishment or termination of the Deed

Restriction for any reason, the terms and conditions of CDP 3-23-0014 shall continue to restrict the use and enjoyment of the subject property so long as either CDP 3-23-0014 or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

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 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 bluff, at the toe of the bluff, and on the beach seaward of 121 Indio Drive in the Sunset Palisades area of the City of Pismo Beach, which is in the upcoast part of the City's shoreline north of the central downtown area and Pismo Pier. The blufftop portion of the site contains one of eight residences located on the southernmost block of Indio Drive between the road and the ocean. The blufftop is at an elevation of approximately 40 feet above mean sea level (MSL) and the existing residence on the site is set back about 10 feet from the blufftop edge. The bluff along this block, from the Florin Road cul-de-sac overlook south to South Palisades Park, is mostly reinforced with a mix of shoreline armoring of varying ages and types. The project site fronts on a narrow beach area that is mostly accessible at low tides, where sandy beach access is provided to the public from a stairway owned by the City of Pismo Beach about 1,000 feet downcoast at South Palisades Park.

The parcel is zoned in the LCP as Single-Family Residential (R-1) with a Hazards Overlay Zone. The objective of the Hazards Overlay Zone is, among other things, to prevent unsafe development in hazardous areas, as further described subsequently. See **Exhibit 1** for location maps, **Exhibit 2** for a view of the site from the Florin Street overlook, and **Exhibit 3** for California Coastal Records Project photos of the site from 1972 to 2019.

2. Project Background

In 2003, the Commission, on appeal, approved CDP A-3-PSB-02-016 for Gary Grossman (the applicant of this CDP) and Walter Cavanaugh (his upcoast neighbor) that authorized a 186-foot long, 18-inch wide, and 20 to 30-foot high¹ recurved, contoured, bluff-colored vertical seawall that extended over the bluff face from the midway point of the Florin Street end on the upcoast side to approximately the upcoast

¹ Approximately seven feet of the seawall is below ground and keyed into the bedrock.

one-third of 121 Indio Drive (encompassing the entire bluff face of 125 Indio Drive in between). In addition, there is an approximately 70-foot long, 18-inch wide, and approximately 6-foot high textured wall at the base of the bluff. Lastly there is shotcrete over the remainder of the 121 Indio Drive bluff (i.e., the site of this current application), over an existing upper bluff shotcrete wall.² To summarize, at the Applicant's site, under the original CDP, about 30 feet of the northern part of the bluff was covered with a new 30-foot tall seawall, and a remaining 70 feet (downcoast) was covered with a new 6-foot tall seawall with shotcrete above to an elevation of approximately 40 to 45 feet above mean sea level (MSL) (including that the CDP allowed for a new layer of shotcrete over the already covered upper bluff area at that time). Construction of the armoring was completed in 2005.

This original seawall also included 20 six-inch diameter concrete and PVC-encased steel tieback structures through and affixed to the armoring and spaced approximately nine feet apart. Also authorized by the CDP was a new and reinforced bluff area behind the top portion of the seawall that consisted of approximately 500 cubic yards of compacted geogrid reinforced earthen fill that essentially extended the bluff area seaward approximately 2,000 square feet at a gentle slope. The as-built plans submitted for the project also included an unknown amount of sea cave fill with shotcrete facing over a 15-foot long section of the bluff at the downcoast extent of the project area on the 121 Indio Drive bluff, even though the CDP did not appear to cover this work. In addition, the CDP authorized removal and replacement of a 42-inch diameter City-owned stormwater outfall drain that extended through the new seawall at the end of the Florin Street cul-de-sac as well as a six-inch diameter back drain pipe along the entire landward length of the seawall at the top of the bluff to collect and carry drainage from 121 and 125 Indio Drive to the new stormwater outfall drain.³

CDP A-3-PSB-02-016 included 15 special conditions, including (among other things): a requirement to pay a \$10,000 mitigation fee to be used for public access improvements at the Florin Street cul-de-sac overlook; a requirement to create a public access easement over the beach area seaward of the armoring below 121 Indio Drive;⁴ landscaping requirements, including that the top 3 feet of the armoring be covered by landscaping; a monitoring and reporting requirement for the life of the armoring due

² As indicated in CDP A-3-PSB-02-016, the provenance of that upper bluff shotcrete was and is still unclear, the Commission found "at a date unknown, a large portion, 40' linear feet, of the bluff was armored." Staff review of California Coastal Records Project photos indicate that the bluff was armored sometime between 1979 and 1989, but no CDP or other approvals (building permit, etc.) for that work appear to exist. Ultimately, A-3-PSB-02-016 allowed for new armoring that covered over the unpermitted shotcrete on the Applicant's property.

³ Conjointly, the Commission approved a CDP waiver (3-03-041-W) at the August 2003 hearing for removal and disposal of three concrete blocks with a total volume of 170 cubic feet that covered an area of 49 square feet from the beach seaward of the project site.

⁴ As described in the staff report for A-3-PSB-02-016, the new armoring covered two then existing public access easements on both 121 and 125 Indio Drive, and the Commission required that a new easement be provided on 121 Indio Drive that was not occupied by armoring and prohibited any extension of the armoring into that easement.

every five years; a no further seaward encroachment stipulation for any future response to coastal hazards; and a five-year maintenance allowance for the approved armoring.

In October 2003, following the Commission's approval, the Surfrider Foundation filed a writ petition challenging the Commission's decision to approve the CDP for the project, specifically related to 125 Indio Drive, on the basis that Section 30235 of the Coastal Act only allows armoring only for structures that were existing as of the effective date of the Coastal Act (January 1, 1977), and that the residence at 125 Indio Drive was built in 1998, and is thus not entitled to armoring. The court denied the petition, and in 2006 the court of appeal affirmed the trial court's judgment.

In 2004, the Applicant submitted an amendment request (A-3-PSB-02-016-A1) during the construction of the approved armoring for additional bluff work at the downcoast end of 121 Indio Drive for the installation of nine one-inch diameter steel tieback structures, wire mesh, and shotcrete and planting over an approximately 400 square foot area of the upper bluff face. Commission staff determined that no immediate bluff instability existed that would warrant the requested work and communicated this to the Applicant. The Applicant subsequently withdrew the amendment request, but still installed tiebacks and grouted without CDP authorization (as shown in **Exhibit 8**). Due to concerns that removal of the tiebacks could destabilize the bluff, Commission staff directed the Applicant to cut back the visible portion of the tiebacks but continued (and continues) to track this as unpermitted development in violation of the Coastal Act.

In 2005, also during construction of the approved armoring (and prior to resolution of the lawsuit on appeal), Commission staff observed significant remodeling of the Applicant's house at 121 Indio Drive (see **Exhibit 10**), leading to a dispute between Commission and City staff as to the necessity of CDPs for the work. City staff granted building permits for the work on the residence but asserted that no CDPs were required because the City considered the work exempt repair and maintenance under the Coastal Act and the LCP. Commission staff did not agree then, and does not agree now, that an exemption applies especially because Commission staff did not believe the work could be legitimately characterized as repair and maintenance work, and even if it could, any such work within 50 feet of the edge of a coastal bluff is simply not exempt.⁵ Thus, the 2005 house work has also been tracked by the Commission staff as an unresolved violation. The dispute was never resolved.

During the course of reviewing this current application, Commission staff reached out to the City again to ask the City to process an after-the-fact (ATF) CDP application for the 2005 work, including to allow for the Commission appeal process to run its course should the City approve such an ATF CDP. The City declined. Without that action and without running an appeal, that development was not vetted through the CDP process to determine, among other things, whether the scope of the work was extensive enough to require that the whole residence be evaluated as a replacement structure (often referred to by the Commission as "redevelopment"), where it would be required to meet all applicable LCP and Coastal Act standards, including that it would be required to be

⁵ See California Code of Regulations (CCR) Section 13252, which requires a CDP for repair and maintenance activities if such activities are located within 50 feet of the edge of a coastal bluff.

found safe without reliance on a seawall. Such an application process allows the Commission to apply restrictions against future armoring—restrictions that would be important for a case like this where significant armoring is being proposed. Unfortunately, however, that violation has not been resolved, and the Commission must still take action at its February 2023 meeting, including as explained subsequently, and cannot ‘wait’ for such violation resolution to occur.

Pursuant to Special Condition 11 of A-3-PSB-02-016, which requires regular monitoring of the condition and performance of the armoring for the life of the project, the Applicant submitted the required monitoring reports once every five years (in 2009, 2013, and 2018).⁶ Those reports indicated that the armoring was performing as expected and was in reasonably good to very good overall condition. However, the 2018 report noted substantial erosion on the property just downcoast (119 Indio Drive) and the creation of a cavity behind the approved armoring fronting the Applicant’s property. Pursuant to Special Condition 13, which authorized certain maintenance and debris removal activities subject to certain criteria, the Applicant performed various maintenance activities between 2009 and 2018, including patching/repairing sections of degraded upper bluff shotcrete, clearing drain holes, recoloring the seawall to the approved color palette, and in 2014 fill of a small void behind the armoring on the downcoast end of 121 Indio Drive, all of which staff was aware and signed off on.

However, between 2018 and 2020, the Applicant reported that the bluff at 121 Indio Drive experienced wave action undercutting and erosion, resulting in essentially the loss of the lower elevation seawall that the Commission permitted in 2003, and leaving in its place a 70-foot long, 27-foot deep, and 6-foot high cave under the Applicant’s property where the toe of the bluff had eroded away (as shown in **Exhibit 4**). The Applicant further noted that cracks had started to form in the residence, and expressed concerns that there could be a catastrophic bluff failure that could take the house with it. Presented with these circumstances, the Commission approved an emergency CDP (ECDP) in April 2020 to fill the void at the base of the bluff with concrete (about 73 cubic yards as estimated by the Applicant’s consultants).⁷ Subsequently, the Applicant identified the need for additional concrete fill behind and below the armoring on the bluff, and the addition of a new concrete footing/foundation overlapping the base of the existing armoring structure and the above-described 73 cubic yard addition that would extend approximately 83 feet along the coast, 1.5 to 2 feet wide, and 5 to 9 feet high. The Applicant indicated that without such interventions, the house was again imminently threatened. Based on these new circumstances, the Commission approved a second ECDP in May 2021 for the additional concrete fill,⁸ and approved a third ECDP in September 2021 for the new concrete footing/foundation.⁹ Subsequently, the Applicant requested a fourth ECDP in February 2022 to fill a newly formed 10-foot deep sea cave at the downcoast end of the property, install the previously-requested three tieback

⁶ Those reports were actually required starting in 2008, and thus the Applicant has been behind by a year in meeting that requirement ever since.

⁷ ECDP G-3-20-0025 issued on April 10, 2020.

⁸ ECDP G-3-21-0023 issued on May 25, 2021.

⁹ ECDP G-3-21-0035 issued on September 3, 2021.

structures, and add an additional new 13 linear feet of steel-reinforced return wall that would extend 5 to 9 feet high (as shown in **Exhibit 7**), but the Executive Director declined to issue such an ECDP because it did not appear that ECDP thresholds were met, including as a result of the previous ECDP work that had been completed.

3. Project Description

The proposed project has multiple components, and it can be understood in three parts:

- **ECDP Development.** A request to authorize temporary development already completed pursuant to emergency CDPs G-3-20-0025, G-3-21-0023, and G-3-21-0035 consisting of: (a) the addition of 73 cubic yards of shotcrete at the base of an existing armoring structure and extending inland, occupying a physical space that is approximately 70 feet along the coast, up to 27 feet deep into the bluff, and up to 6 feet high at its base; and (b) the addition of a new concrete footing/foundation overlapping the base of the existing armoring structure and the above-described 73 cubic yard addition that extends approximately 83 feet along the coast, 1.5 to 2 feet wide, and 5 to 9 feet high (see **Exhibits 5 and 9**).
- **Proposed Development.** A request to authorize additional development not yet undertaken consisting of: (a) the addition of three new six-inch diameter concrete and PVC-encased steel tieback structures extending/embedded some 38 to 83 feet into the bluff through and affixed to the existing armoring; (b) the removal of up to 20 cubic yards of the upper bluff (extending into the bluff some 1.5 feet over an area of about 400 square-feet) and the addition of new shotcrete into/over that same area; (c) the addition of new drainage infrastructure (both in the armoring and associated with it, and in the upper bluff and blufftop area) and landscaping; (d) additional fill with shotcrete beneath the bluff and an additional 13-foot long and 5 to 9-foot high new concrete foundation/footing at the downcoast end of the bluff; and (e) as-needed maintenance and repair of the upper bluff shotcrete portion of the armoring structure (see **Exhibits 6 and 7**).
- **ATF Development.** After-the-fact authorization of nine six-inch diameter steel tieback structures extending/embedded some 30 feet into the bluff that were installed without benefit of a CDP in 2005 (see **Exhibit 8**).

See also **Exhibit 3** for photos of the project area, including before and after time series comparison photos.

While the Applicant initially proposed the above development as amendments to CDP A-3-PSB-02-016, premised on the Applicant's assertion that such development is repair and maintenance to the existing permitted armoring, the development proposed is not and cannot be evaluated in this manner. Rather, the project is better characterized as a significant redevelopment/replacement of a failed armoring structure, and for numerous reasons that will be explained below must be evaluated and analyzed as if it were entirely new. This project simply is not repair and maintenance because by definition repair and maintenance is an action to put something back to its approved configuration while the proposed project would, and already has, resulted in a different and much more significant armoring structure altogether, including a new foundation embedded

further into/beneath the bluff and shoreline and occupying significantly more space – about twenty times more space – than the 1.5-foot maximum footprint allowed under the original CDP.

In fact, similar to the analysis the Commission undertakes to evaluate whether a home or similar structure has been ‘redeveloped’ whereby the extent/scope of proposed work is so extensive the structure is to be considered an entirely new one and evaluated accordingly, the Commission here evaluates the armoring structure in a similar manner. When performing that evaluation it is plainly evident that the new structure has been redeveloped beyond that threshold because significant new work is being proposed (or has been completed) that significantly changes the configuration of the approved armoring for the following reasons:(a) the addition of 73 cubic yards of shotcrete at the base of the existing armoring and extending inland, occupying a physical space that is approximately 70 feet along the coast, up to 27 feet deep into the bluff, and up to 6 feet high at its base; (b) the addition of a new concrete footing/foundation overlapping the base of the existing armoring structure and the above-described 73 cubic yard addition; (c) the addition of three new six-inch diameter concrete and PVC-encased steel tieback structures extending/embedded some 38 to 83 feet into the bluff through and affixed to the existing armoring; (d) the removal of up to 20 cubic yards of the upper bluff (extending into the bluff some 1.5 feet over an area of about 400 square-feet) and the addition of new shotcrete into/over that same area; (e) the addition of new drainage infrastructure (both in the armoring and associated with it, and in the upper bluff and blufftop area); (f) additional fill with shotcrete beneath the bluff and an additional 13-foot long and 5 to 9-foot high new concrete foundation/footing at the downcoast end of the bluff; and (g) nine six-inch diameter steel tieback structures extending/embedded some 30 feet into the bluff that were installed without benefit of a CDP in 2005. In short, the project is not so much even best characterized as repair and maintenance of what was approved before, so much as a new, larger, and different armoring structure altogether. In fact, the proposed project would be longer than what was previously permitted by some 26 feet (96 feet (83 already built + 13 feet requested) vs. 70 feet) and wider at its base by over 25 feet (i.e., now including a concrete base that extends some 27 feet into the lower bluff.

In addition, and even if the nature of the project were consistent with a “repair and maintenance” characterization as those words are normally used, which it is not, under the Commission’s regulations the replacement of 50 percent or more of a structure, including shoreline armoring, is no longer considered repair and maintenance but instead a replacement structure.¹⁰ In this case, the armoring was not destroyed by a natural disaster,¹¹ and the proposed work goes well beyond this threshold. In fact, the

¹⁰ CCR Section 13252(b) states that “unless destroyed by natural disaster, the replacement of 50 percent or more of a single-family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Coastal Act Section 30610(d) but instead constitutes a replacement structure requiring a Coastal Development Permit.”

¹¹ While it is true that the armoring was worn away by natural forces, it is quite a different thing for it to have been “destroyed by a natural disaster.” The former is an accumulation of impacts over time, here over almost 20 years at this site since the original armoring was approved and constructed, and the latter

old footing/foundation no longer exists, and is proposed to be completely replaced. In other words, there is nothing remaining to repair and maintain,¹² and well more than 50% of the materials fronting the Applicant's home are proposed for replacement.

Finally, and in addition, the proposed work must also be understood as full replacement of the *function* of the previously approved armoring. That armoring structure had essentially reached the end of its lifetime, including as it no longer provided the protection intended when it was constructed nearly two decades ago. Such a conclusion is evidenced not only by the degree to which it had been worn away over time under the elements, but also the Applicant's continued requests for ECDPs to protect against the loss of the home inland of the armoring. And it should be noted that this is not uncommon. The Commission has typically estimated a 20-year life for armoring structures, including for mitigation purposes, because given existing technology, that is generally how long they can function without significant repair/replacement given their constant subjection to ongoing ocean and coastal hazard forces. That this armoring lasted just less than 20 years is commensurate with the Commission's understanding of armoring's typical utility and lifespan. And with seas rising and exacerbating all of these kinds of challenges, it is likely that armoring installed in the past with expectations for many decades of utility, like this armoring (which was estimated by the Applicant at the time to be able to provide 50 years of protection), will actually fail much sooner. While still a small sample size, several recent CDP applications for major restructuring and replacements of armoring appear to suggest that such a trend is already in progress.¹³

For all of these reasons the proposed development constitutes a replacement armoring structure, not repair and maintenance, and it must be analyzed and evaluated against the Coastal Act as a new proposed armoring structure. Importantly, the whole of the armoring structure the Applicant proposes to modify must be included as part of that replacement structure which includes all the upper bluff shotcrete areas connected to and dependent upon the proposed footing/foundation elements. In other words, the shotcreted bluff segments cannot be separated from the lower portions of the armoring, and all of the development constitutes a replacement armoring structure. Such conclusion is consistent with similar projects, including in the Commission's approval of a seawall along Pleasure Point Drive in Santa Cruz County,¹⁴ where the previously approved seawall was modified by the addition of a new footing/foundation and related elements, much as is proposed in this case. In that case, the Commission found:

The cutoff footing/foundation wall was not repair and maintenance of the previously permitted seawall, including because it modified the shape and form of

is meant for an individual and large-scale natural event that might destroy a structure due specifically to it, and not due to other factors that may have already contributed to its demise.

¹² As-built plans submitted by the Applicant pursuant to Special Condition 10 of ECDP G-3-21-0035 show no remaining portions of the originally approved footing/foundation component of the seawall in the sections where these new seawall components were constructed under the ECDP.

¹³ See, for example, CDPs 3-16-0446, 3-18-0720, 3-20-0166, 3-22-1027, 3-22-0440, and 3-22-0485, all of which propose significant augmentation or replacement of existing armoring structures.

¹⁴ CDP 3-16-0446, Rockview Drive Seawall, approved by the Commission in February 2019.

the previously permitted seawall, increasing its scale and scope (see, for example, Coastal Act Section 30610(d)). Rather, the project results in an augmented seawall structure overall, one that is different (including larger and expected to last longer) than the prior seawall, and thus it represents a new seawall project and is considered here accordingly.

In a similar fashion, and here in a significantly more modified form than what was originally approved, the proposed development also ‘represents a new armoring project and is considered here accordingly’. As a result, the proposed development is being considered as a new CDP application for that new armoring, and not an amendment to the prior CDP.

4. Project Action Deadline

The Applicant submitted a CDP amendment application¹⁵ in August 2020 as a follow-up to ECDP G-3-20-0025 (applied for in April 2020 and issued April 10, 2020) to authorize concrete fill of a void underlying the bluff at the site and submitted more materials in support of that application over the course of 2020 and 2021. The Applicant submitted a second CDP amendment application in October 2020 for more void fill as well as a new seawall footing/foundation and upper bluff shotcrete, and submitted a second ECDP application in May 2021 for the project that was the subject of the second CDP amendment application, as well as related emergency work, where that ECDP was issued for just the void fill and not the proposed new seawall footing/foundation or shotcrete work. The Applicant subsequently applied for a third ECDP to install the new seawall footing/foundation that had not been covered by the second ECDP (and had not been authorized by the second CDP application), and that ECDP was issued in September 2021. And finally, the Applicant applied for a fourth ECDP in February 2022 for additional fill with shotcrete beneath the bluff and an additional 13-foot long and 5 to 9-foot high new concrete foundation/footing at the downcoast end of the bluff, but the Executive Director declined to issue such an ECDP because it did not appear that ECDP thresholds were met, including as a result of the previous ECDP work that had been completed.

In other words, Commission staff and the Applicant have been involved in an exchange of information requests (from Commission staff) and material submittals (from the Applicant) from 2020 through the end of 2022. In fact, as discussed above, there have been four ECDP applications over that time frame as well, all with follow-up CDP requirements,¹⁶ and two regular CDP amendment applications, and the project description has morphed over that time frame to what it is today. That said, Commission

¹⁵ As discussed above, the application was submitted as two CDP amendment applications, but the Commission is under no requirement to process such applications as CDP amendments just because an applicant styled its application in that manner. On the contrary, the Commission considers applications for development under the Coastal Act, and it processes them in the manner that is most appropriate given the nature of the case. The applications here are most appropriately treated as a CDP application, for the reasons discussed above.

¹⁶ ECDPs, as a general rule, only authorize temporary development designed to temporarily abate an emergency, and such development is required to be recognized by a follow-up regular CDP or removed. Each ECDP issued in this case included such a requirement, and required CDPs or removal by August 8, 2020, August 23, 2021, and December 2, 2021, respectively.

staff also notified the Applicant in May 2021 that the applications had been filed as complete on May 20, 2021,¹⁷ and, conservatively treating the Permit Streamlining Act (PSA) as applying to amendment applications, without conceding as much, that filing date would establish a PSA deadline of November 16, 2021 (which was subsequently extended to February 14, 2022, as allowed by the PSA and by staff/Applicant agreement). The PSA includes no provisions to allow for a ‘reopening’ of the application filing determination, including no provisions for what happens when a project description changes after an initial filing date and action deadline are set, as occurred in this case. In fact, the project has significantly morphed over the time the Commission has had the application, including as a result of the ECDP work, and new information and other context has come to light over that time that suggest that the application not only should not have been filed in the first place, but that it should not be considered until active violations, as discussed above, have been resolved, including importantly in terms of the residential redevelopment from 2005 that was not recognized by a CDP.¹⁸ Thus, although Commission staff did not actively file the application as complete, and there are at least questions about the application of the PSA to amendment applications, this application is subject to a Commission action deadline of February 14, 2022, which has passed.

However, under the PSA, applications are not simply ‘deemed approved’ if the decision-making agency fails to act by the established action deadline. Rather, for applications to be approved by operation of law under the PSA, applicants are required to provide a certain kind of PSA notice subject to specific criteria that establishes a PSA ‘deemed approved’ timetable. Here, despite Commission staff requests to the Applicant not to file such a notice, including given the context above and ongoing investigation into underlying information affecting the application as alluded to above, the Applicant served a PSA pre-notice on the Commission on December 1, 2022, indicating that it intended to file a PSA notice of this type on December 7, 2022, which would have established a PSA ‘deemed approved’ action deadline of February 5, 2023. Because the Commission did not have a January hearing scheduled, this would have meant that the Commission would have either been forced to hear the item at its December hearing (the production deadline for which had almost ended and staff would have had to produce a report in two days to meet hearing notice requirements) or schedule a special CCC meeting just for this item before February 5, 2023. Upon staff request, including a direct appeal by the Commission’s Executive Director, the Applicant did not file the notice that would have precipitated a special meeting. That said, the Applicant shortly

¹⁷ It was only filed as complete based on a conservative interpretation of the PSA that Commission staff had not responded to one of the Applicant’s submittals in the PSA time allotted (i.e., within 30 days of its receipt by the Commission), which, under the PSA, means it was deemed complete. To be clear, however, that is a different thing than a determination by Commission staff that staff had all necessary materials to evaluate the CDP application and bring it to a hearing, which is the manner in which most filing decisions are made for applications to the Commission.

¹⁸ In other words, it would be particularly beneficial in this case to have resolved those violations prior to the processing of this application because that resolution would provide additional clarity as to the legal status of the structure that the applicant is seeking authorization to protect, and the legal status of that structure would help inform the application of Section 30235.

thereafter did file such a PSA notice, and, to the extent it met PSA requirements,¹⁹ it establishes a PSA ‘deemed approved’ action deadline for the Commission of February 18, 2023.

In short, the process here has not been a standard follow-up CDP application process associated with an ECDP. In fact, the context here suggests the opposite, with four ECDP applications, three ECDPs issued, a constantly morphing project description, a PSA deemed filed determination, and a series of violations. In other words, this is not and has never been a simple application, and, in Commission staff’s view, was and is not even eligible for filing under Section 13056 of the Commission’s regulations.²⁰ That said, and in abundance of caution, the Commission here should act no later than the February 2023 meeting in order to avoid any repercussions that may apply due to the PSA if there was not Commission action by that time. In any case, the Commission retains its discretion to approve, approve with conditions, or deny the CDP application based on the Commission’s evaluation of it and its determination as to its consistency with the Coastal Act, and the PSA context does not change that in any way.

B. STANDARD OF REVIEW

As applicable here, the Commission retains CDP jurisdiction over tidelands (i.e., lands located between the mean high tide and mean low tide lines), submerged lands, and lands subject to the public trust. In this case, the proposed project is located seaward of the mean high tide line and thus in the Commission’s jurisdiction. Specifically, the mean high tide line is identified as the location where the mean high water elevation intersects the land. At this location, the estimated mean high water elevation is +4.54 feet NAVD88,²¹ or approximately 2 feet above mean sea level. The footing/foundation elements of the proposed development are located at an elevation between 0 and 1.0 feet NAVD88, nearly 6 feet below the mean high water elevation (and technically seaward of the mean low water elevation (at +0.96 NAVD88), and thus technically submerged lands), and thus within the Commission’s jurisdiction.²² The Commission

¹⁹ It is not clear that the notice sufficiently met PSA requirements, including as it purports to notice hearings on multiple CDP amendment applications, and not the CDP application that is before the Commission.

²⁰ Section 13056 establishes the criteria for filing a CDP application as complete, including that all information needs specified under Section 13053.5 are met such as “an adequate description including maps, plans, surveys, photographs, etc., of the proposed development, project site, and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act...”

²¹ As measured by NOAA based on the 1983 - 2001 tidal epoch and based on the Port San Luis tide gauge (i.e., the nearest of the NOAA-applied tide gauges to the project site). See <https://tidesandcurrents.noaa.gov/datums.html?id=9412110> (accessed most recently on January 24, 2023). “NAVD88” stands for the North American Vertical Datum of 1988 (NAVD88), which was confirmed by NOAA as the official vertical datum for the United States in 1993.

²² On this point it is noted that the CDP for the previous version of armoring at this site and the adjacent properties came to the Commission on appeal from a City of Pismo Beach CDP action, and it is not clear whether that City action actually should have been considered by the Commission due to it being in the Commission’s jurisdiction at that time. That issue was considered effectively remedied at the time because the Commission ultimately took jurisdiction over the CDP application and considered that CDP application de novo, eventually approving it in 2003. In any case, and since that time, the shoreline has

has also issued three ECDPs authorizing temporary development at this location, and the Commission retains authority to consider the required follow-up CDP for such temporary development. Thus, the standard of review for this CDP application is the Coastal Act, with the City of Pismo Beach LCP providing non-binding guidance.

C. COASTAL HAZARDS

1. 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 that from the law that the coastal zone is to be recognized as a special place, where coastal resources are of “paramount concern,” and require not only

eroded, and the proposed project is at an even lower elevation than when the Commission last considered that armoring CDP in 2003.

protection against degradation, but enhancement 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.²³ 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.²⁴ 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 as ‘anti-armoring,’ where the Act’s resource protection policies essentially prohibit armoring as a general rule, 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,²⁵ which is essentially always the case with armoring.²⁶

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 allows 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.*

...

On its face, Section 30235 only requires the Commission to 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

²³ See, for example, the over 40 sections nested in Chapter 3, including sections related to public access, recreation, the marine environment, and land resources.

²⁴ 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).

²⁵ 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).

²⁶ Ibid.

other words, when there are qualifying uses, beaches, or structures,²⁷ 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 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. When framed in this way, the Section 30235 limited requirement to approve shoreline armoring is probably best understood as an exception, variance, and nonconformity with respect to the Coastal Act's coastal resource protection provisions.²⁸

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,²⁹ but Section 30007.5 also directs the Commission to resolve conflicts in a manner that is "most protective of significant coastal resources."³⁰ And Courts have relied on Section 30009 to find that exceptions to the Act's requirements must be read narrowly,³¹ 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

²⁷ 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.), and in this case it is only the existing structure criterion that may be applicable.

²⁸ Where exceptions, variances, and nonconformities are typical land use planning and permitting concepts that account for odd/specific circumstances to allow something that would normally not be allowed.

²⁹ Section 30009 requires that: "This division [i.e., the Coastal Act] shall be liberally construed to accomplish its purposes and objectives."

³⁰ 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."

³¹ 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).

on the interpretation of the LCP.”^{32,33} 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.³⁴

It is thus perhaps unsurprising that the City of Pismo Beach LCP (which provides guidance, albeit non-binding, for this application) echoes the Coastal Act construct in this regard. Similar to the Act, the LCP includes a series of provisions focused on natural resource protection, with a special emphasis on protection of natural landforms and the shoreline and beach area,³⁵ including as this area helps to define the City, is a large part of its economic engine focused on tourism, and is an ingrained part of the City’s social and cultural identity. To that point, the LCP too provides only a very limited exception for armoring, one that is in some ways even more limiting than the Coastal Act. Specifically, the LCP includes a Safety Element that speaks to issues of minimizing risks due to hazards, including shoreline hazards, and the need to ensure that private development not impose risks on the public at large. The LCP’s Safety Element states:

The intent of the Safety Element is to establish policies that will minimize the potential of human injury and property damage by reducing the exposure of persons and property to natural hazards. ... Exposure to the hazards addressed in this element may or may not be voluntarily undertaken by individuals. Voluntarily taken risks, however, are not necessarily acceptable from a public point view (sic). This is because property owners and residents frequently have expectations that public actions, such as building and zoning regulations ... will provide a significant risk-reduction. For the various hazards, thresholds of unacceptable exposure to risks have been determined. These determinations are expressed in policies, which limit the intensity of development in high risk areas, impose development standards, which will provide a measure of protection, or prohibit construction in areas with unacceptable risks. In imposing any restrictions ... 1) individuals should not be permitted to develop land in a manner that would impose risks on their neighbors or the community at large ... and 3) a financial burden should not be imposed on the general taxpayer by allowing

³² See, for example, *Charles A. Pratt Const. v. California Coastal Commission* (2008) 162 Cal.App.4th 1068, 1076, 1078.

³³ 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).

³⁴ See, for example, *McAllister v. Coastal Commission* (2008) 169 Cal.App.4th 912.

³⁵ See, for example, LUP Policy CO-15: “The ocean shore is, and shall continue to be, the principle open space feature of Pismo Beach. Ocean front land shall be used for open space, recreation and related uses where feasible and where such uses do not deteriorate the natural resource.”

And LUP Policy CO-17: “Shoreline structures, including piers, breakwaters, channel dredges, pipelines, outfalls and similar structures shall be sited to avoid significant rocky points and intertidal and sub tidal areas. The design and construction of revetment devices and other shoreline structures shall be prepared by qualified engineers in accordance with city standards which will avoid or minimize disturbance of sensitive coastal ecological resources.”

developments in hazard-prone areas which are likely to have unusually high costs for public services. ...

These concepts are then embodied in a series of LCP principles and policies, including LCP Land Use Plan (LUP) Principle P-23 (which essentially reflects Coastal Act Section 30253 requirements), stating:

LUP Principle P-23 Protection of Life & Safety. *Pismo Beach shall develop policies to minimize injury and loss of life, to minimize damage to public and private property ... and to minimize social and economic dislocations resulting from injuries, loss of life, and property damage.*

The LCP also requires identification of high-risk hazard areas, including explicitly in terms of blufftop/shoreline hazards, and utilizes a Hazards Overlay Zone concept for this purpose, with an LUP Hazards Overlay Zone and an Implementation Plan (IP) Hazards and Protection Overlay (H) Zone. Importantly, the H overlay also explicitly identifies that a primary objective of the zone is “to also protect and enhance the shoreline bluffs and beaches of the city from visual as well as physical deterioration or erosion.” The subject property is mapped with an LUP Hazards Overlay and is designated with the “H” hazards and protection zone in the IP. The LCP states:

LUP Policy S-7 Hazards Overlay Zone. *Areas where bluff-top hazards exist shall be included within and subject to the requirements of the Hazards Overlay Zone.*

IP Section 17.078.010 Hazards and Protection (H) Overlay Zone – Purpose of zone. *The hazards and protection (H) overlay zone is intended to prevent unsafe development of hazardous areas; to minimize damages to public and private property; and to minimize social and economic dislocations resulting from injuries, loss of life, and property damage. This overlay zone includes those areas unsafe for development which are ... (3) located in areas of high liquefaction potential, unstable slopes, retreating ocean bluffs or easily erodible areas. ... This overlay zone is intended to also protect and enhance the shoreline bluffs and beaches of the city from visual as well as physical deterioration or erosion. ...*

In terms of blufftop development provisions specifically, the LCP requires that development be sited and designed for at least 100 years of stability and safety without a reliance on shoreline armoring. The LCP states:

LUP Policy S-3 Bluff Set-Backs. *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The City shall determine the required setback based on the following criteria: (a) For development on single-family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be 25 feet from the top of the bluff (blufftop*

is defined as the point in which the slope begins to change from near horizontal to more vertical). ...

IP Section 17.078.050 Bluff hazard, erosion and bluff retreat criteria and standards. *(A) New structures shall be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of one hundred years. The city shall determine the required setback based on the following criteria: 1. For development on single family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be twenty-five feet from the top of the bluff (blufftop is defined as the point at which the slope begins to change from near horizontal to more vertical). ...*

With respect to shoreline armoring, the LCP includes provisions that mirror Coastal Act Section 30235 (and indeed the policies directly reference Section 30235 requirements) and that limit the construction of shoreline protective devices to those required to protect existing principal structures, coastal-dependent uses, or public beaches in danger from erosion; require that such devices shall only be permitted if there are no other less environmentally damaging feasible alternatives for protection of existing development, and require that such devices eliminate or mitigate adverse impacts on sand supply, and enhance public recreational access and opportunities. All of these provisions are directly applicable to the proposed armoring in this case. The LCP states as follows:

LUP Policy S-6 Shoreline Protective Devices. *Shoreline protective devices, such as seawalls, revetments, groins, breakwaters, and riprap shall be permitted only when necessary to protect existing principal structures, coastal dependent uses, and public beaches in danger of erosion. If no feasible alternative is available, shoreline protection structures shall be designed and constructed in conformance with Section 30235 of the Coastal Act and all other policies and standards of the City's Local Coastal Program. Devices must be designed to eliminate or mitigate adverse impacts on local shoreline sand supply, and to maintain public access to and along the shoreline. Design and construction of protective devices shall minimize alteration of natural landforms, and shall be constructed to minimize visual impacts. The city shall develop detailed standards for the construction of new and repair of existing shoreline protective structures and devices. As funding is available, the city will inventory all existing shoreline protective structures within its boundaries. (emphasis added)*

IP Section 17.078.060(D). Seawalls shall not be permitted, unless *the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses. If permitted, seawall design must (a) respect natural landforms; (b) provide for lateral beach access; and (c) use visually compatible colors and materials and will eliminate or mitigate any adverse impacts on local shoreline sand supply. (emphasis added)*

IP Section 17.078.060(F). *Shoreline structures, including groins, piers, breakwaters, pipelines, outfalls or similar structures which serve to protect existing structures, or serve coastal dependent uses and that may alter natural*

*shoreline processes **shall not be permitted unless** the city has determined that when designed and sited, the project will: **1. Eliminate or mitigate impacts on local shoreline sand supply; 2. Provide lateral beach access; 3. Avoid significant rocky points and intertidal or subtidal areas; and 4. Enhance public recreational opportunities.** (emphasis added)*

Again, as with the Coastal Act, armoring is best understood through an LCP lens too as an exception that is to be allowed only under very limited circumstances. In fact, the LCP only allows armoring when required to protect existing principal structures, and only if it not only eliminates or mitigates impacts to sand supply, but also provides lateral beach access, avoids significant rocky points and intertidal/subtidal areas, and enhances public recreational activities. High bars indeed, and in some respects even more limiting criteria than Coastal Act criteria.³⁶ And the LCP recognizes that such projects can adversely impact community and natural resource values at the shoreline. Tellingly, the LCP's Hazards and Protection Overlay (or "H") zone is intended to advise property owners that they are located in hazardous area, and to avoid putting the risk of their development upon the public and the community, including as it relates to the shoreline and beach. Again, stating:

This overlay zone is intended to also protect and enhance the shoreline bluffs and beaches of the city from visual as well as physical deterioration or erosion.

In other words, the LCP prioritizes the protection – and in fact enhancement – of bluffs and beaches when development is located in hazardous areas, as is the case with the subject property in this application. And although these LCP policies are non-binding as it relates 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 by all but one Coastal Act policy, and that policy only requires approval of such armoring under exacting criteria. 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."

2. Consistency Analysis

As indicated, Coastal Act Section 30235, as applicable here, only allows for armoring if required to protect an existing structure in danger from erosion (subject to the

³⁶ This higher standard is evident in the requirements that armoring only be allowed if required to protect existing principal structures, if lateral beach access is provided, if significant rocky points are avoided, if intertidal areas (i.e., the area between high and low tides) are avoided, if subtidal areas (i.e., the area below low tide) are avoided, and if public recreational opportunities are enhanced. Many of these requirements will serve to disqualify armoring projects, including when the armoring is proposed in an intertidal and/or submerged area, where lateral beach access is not provided, and where public recreational opportunities area not enhanced, all of which are attributes of the proposed project in this application, thus disqualifying it from approval under the LCP.

requirement that adverse impacts to local shoreline sand supply are mitigated or eliminated). The LCP goes further in that it limits allowable armoring to existing “principal” structures and not just existing structures, and it states that such armoring shall “only” be permitted where it is to protect such structures in danger from erosion. The Coastal Act and LCP provide these limitations because shoreline structures can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beaches.³⁷

Thus, the applicable questions here under Coastal Act Section 30235 are whether: (1) there is an existing structure; (2) that existing structure is in danger from erosion; (3) shoreline-altering construction is required to protect that existing endangered structure; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply.^{38,39} 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 to be Protected

The first Section 30235 test is whether or not the structure that a shoreline protective device is proposed to protect is considered “existing.” 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 at least 2000. 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, the Commission has become

³⁷ Ibid.

³⁸ 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.

³⁹ The LCP guidance further clarifies that armoring can only be approved if it meets certain criteria, including that it is required to be the least environmentally damaging feasible alternative for protecting qualifying structures, and it is also required to “1. Eliminate or mitigate impacts on local shoreline sand supply; 2. Provide lateral beach access; 3. Avoid significant rocky points and intertidal or subtidal areas; and 4. Enhance public recreational opportunities.”

progressively more focused on it and increasingly consistent in adopting the second interpretation – that “existing structures” as the phrase is used in Section 30235 refers to structures that were legally in existence as of the start of 1977.

The interpretation that ‘existing’ means ‘extant’ fails for other reasons as well. Section 30253, the only other Coastal Act policy that explicitly refers to armoring, actually prohibits new development that would require armoring. Thus, development approved since the Act’s effective date (January 1, 1977) is not allowed armoring pursuant to Section 30253. If Section 30235’s ‘existing’ meant ‘extant’ at the time of an application, then that would be the opposite of what Section 30253 requires, and the two cannot readily be harmonized. More appropriately, Section 30253 application 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 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.⁴⁰ In addition, 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).⁴¹

⁴⁰ 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 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.

⁴¹ 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%

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 under extremely narrow criteria. In addition, as with the Coastal Act and LCP discussion above, the purpose and structure of the Coastal Act support such an interpretation as well, as reflected in numerous policies of the Act. As discussed above, and as applicable to this "existing structure" conclusion, not only does Section 30009 require a liberal interpretation to protect shoreline and beach resources, but Section 30007.5 also directs the Commission to resolve conflicts in a manner that is "most protective of significant coastal resources;" where courts have relied on Section 30009 to find that exceptions to the Act's requirements must be read narrowly.⁴² 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.⁴³

In this case, a property history search for the subject parcel indicates the house that the proposed armoring is to protect was built in 1959, and the residence is clearly visible in aerial photos dating back to 1972, thus pre-dating the first CDP requirements applied, starting in 1973 and associated with Proposition 20, as well as those associated with the Coastal Act starting in 1977.^{44,45} Thus, the residence was at least initially constructed prior to CDP requirements by 1972 (see time series photos of the site in **Exhibit 3**). The next question is whether the residence has been redeveloped in such a

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)).

⁴² Ibid.

⁴³ And, under LCP guidance, said existing structure must also be an existing "principal" structure, which is typically understood to mean the major structure that accommodates the primary use (such as a residence) and not its related accessory uses/development (such as garages, sheds, pools, etc.). Further, such LCP guidance leaves no ambiguity as to allowing armoring, and it is only allowed to be considered for existing endangered principal structures (as applicable to this case), and there is no other sort of scenario that might suggest that an armoring project could be considered and approved for some other purpose, as has been alleged by some as it relates to the Coastal Act. On that latter point, and as discussed above, it is difficult to identify a scenario related to a non-existing structure where the Coastal Act would allow approval in any case, given the types of coastal resource degradation associated with armoring (see previously cited cases on this point).

⁴⁴ Proposition 20 ("The Coastal Initiative") approved by California voters in 1972 introduced coastal permitting requirements beginning on February 1, 1973. And the 1976 Coastal Act's coastal permitting requirements began on January 1, 1977.

⁴⁵ The Commission found the residence at 121 Indio Drive to be an existing structure in its 2003 CDP approval for the original seawall at the site, similarly noting that it was visible in early 1970s aerial photos.

way as to have lost its “existing structure” status under Section 30235, as described above. And that question hinges, in part, on whether and to what extent that residential structure has been modified. If the cumulative effect of modifications since 1977 exceed the 50% trigger identified in CCR Section 13252, as discussed above, then it must be considered a new structure.

In this case, as discussed previously, during construction of the previously approved armoring in 2005, Commission staff observed significant remodeling of the residence at 121 Indio Drive. Specifically, Commission staff in 2005 observed that it appeared that about half of the house had been removed in preparation for it being replaced (see photos in **Exhibit 10**), and that ultimately that portion of the house was replaced, along with what appears to have been other roof articulation and related development (see time series photos for the years 2004 and 2010 in **Exhibit 3**). None of this development received a CDP, leading to a dispute between Commission and City staff as to the necessity of a CDP for such development. The City and Applicant have asserted that the work undertaken on the residence, including a roof replacement, structural upgrade, partial foundation replacement, and addition, was CDP-exempt repair and maintenance and that the City had issued the appropriate building permits but no CDPs were required. The Applicant at that time also provided a series of structural calculations of the work indicating that 48.7 percent of the exterior walls (calculated in lineal feet) and 10.3 percent of the foundation (calculated in cubic yards) had been removed and replaced (see **Exhibit 11**).⁴⁶ From the later photo evidence, it also appears that the roof tiles had been entirely replaced, and that roughly 40 percent of the roof’s structural elements too had been removed and replaced. Commission staff did not agree that the development described was or is exempt from CDP requirements, including because, even if the work could accurately be characterized as repair and/or maintenance work, any such work within 50 feet of the edge of a coastal bluff is not exempt,⁴⁷ and almost all of the residence is within 50 feet of the blufftop edge. Thus, the 2005 residential development has been tracked by the Commission staff as an unresolved violation. The Commission concurs that the development at issue required a CDP for the reasons stated.

During the course of reviewing this current application, Commission staff reached out to the City again to ask the City to process an ATF CDP application for the 2005 work, including to allow for the Commission appeal process to run its course should the City approve such an ATF CDP. The City declined. Without that action and potential opportunities for appeal (if the CDP were approved by the City), that development was not vetted through the LCP/Coastal Act review process to determine, among other things, whether the scope of the work was significant enough to require that the whole residence be evaluated as a replacement structure (often referred to by the Commission as “redevelopment”), where it would be required to meet all applicable LCP and Coastal

⁴⁶ As detailed in Exhibit 4 (“Structural Calculations and Elevations, Repair and Maintenance of Single-Family Residence, 121 Indio Drive, Pismo Beach (Grossman)” February 2005) of a May 20, 2005 letter from the Applicant (via representative Dall & Associates) to the Commission (directed to then Coastal Commission Permit Supervisor Steve Monowitz). See also Exhibit 11.

⁴⁷ See California Code of Regulations (CCR) Section 13252, which requires a CDP even for repair and maintenance activities if such activities are located within 50 feet of the edge of a coastal bluff.

Act standards, including that it would be required to be found safe without reliance on a seawall. Such an application process allows the Commission to apply restrictions against allowable armoring; restrictions that would be important for a case like this where significant armoring is being proposed. And in any case, the Commission is not in a position to wait to consider this armoring application until after that violation is resolved because the Commission must take action at its February 2023 meeting.⁴⁸

Although the photo evidence available appears compelling (again, see **Exhibits 3 and 10**), at this time, the Commission does not have sufficient evidence to conclusively determine whether or not the 2005 unpermitted residential development—and any other work done to the house since 1977—involved the replacement of 50% of the structure as it existed in 1977, or otherwise resulted in a structure that should be considered to be a different structure from the one that existed at that time. Thus, the Commission is not presently in a position to find that the residence is not an existing structure as that term is understood under Section 30235. While the scope of the work appears quite extensive, including in photographs taken by Commission staff, the Applicant's data would suggest that just under 50% of the structure was modified at that time. Thus, based on the available data, the Commission finds that it must treat the residence at 121 Indio Drive as still qualifying, as it did in 2003 when the Commission approved the CDP for the original seawall, as an existing principal structure for the purposes of Coastal Act Section 30235 and the LCP. Thus, the Commission finds that the proposed project meets the first test of Section 30235 of the Coastal Act and the relevant LCP sections.

Danger from Erosion

The second Section 30235 and LCP test is whether the existing structure is in danger from erosion. The Coastal Act allows shoreline armoring to protect existing structures in danger from erosion, but it does not define the term “in danger.” There is a certain amount of 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. These risks can be exacerbated by such factors as sea level rise and localized geography that can focus storm energy at particular stretches of coastline. In a sense, all development along the immediate California coastline is in a certain amount of “danger.” It is a matter of the degree of threat that distinguishes between danger that represents an ordinary and acceptable risk, and danger that requires shoreline armoring per 30235. Lacking 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

⁴⁸ As described earlier, the CDP application is up against an action deadline, and the Applicant has distributed notice citing to the Permit Streamlining Act intended to compel the Commission to act at the February 2023 meeting.

(i.e., in the no project alternative).⁴⁹

As part of the first ECDP application in April 2020 (G-3-20-0025), the Applicant provided evidence that wave action during the 2018-2019 and 2019-2020 winter storm seasons had undermined the footing/foundation of the seawall installed under A-3-PSB-02-016 fronting the Applicant's residence, and had undercut the bluff to such an extent that a 70-foot long, up to 27-foot deep, and up to 6-foot high void had formed underneath, threatening the stability of the residence. Materials provided by the Applicant indicated that the 2003 approved and installed seawall at the Applicant's site had been eroded to such an extent so as to be mostly no longer present. The Applicant's geotechnical consultants also observed significant cracking in the existing upper bluff shotcrete at the undercut portion of the bluff that led them to conclude that failure of the bluff was likely to occur suddenly at any time and would likely compromise the stability of the entire bluff. They determined that fill of the void with unreinforced concrete was necessary at the earliest possible time to mitigate against the danger of near-term catastrophic bluff failure.⁵⁰ The Commission's then Senior Coastal Engineer, Dr. Lesley Ewing (now retired), and Senior Engineering Geologist, Dr. Joe Street, evaluated the Applicant's geotechnical report and related project materials and agreed with the conclusion that the residence was in immediate danger from erosion and that fill of the void as proposed was the appropriate temporary emergency response. Thus, the ECDP was issued on April 10, 2020 and that work commenced.

As part of the follow-up CDP application (submitted in August 2020), the as-built geotechnical report noted that the void filling was successful in temporarily preventing collapse of the bluff, but that a new deeper, stronger seawall footing/foundation was needed where the previous footing/foundation had existed "to provide longer-term protection from erosion and undermining of the shotcrete infill and adjacent strata."⁵¹ The Applicant subsequently submitted a second CDP application for that proposed seawall footing/foundation work, as well as for additional upper bluff work, in October 2020. The accompanying geotechnical report elaborated on the then conditions at the project site, describing that the "combination of south-southwest orientation, steep bedrock angle, presence of abundant abrasive sands, gravels, cobbles, and boulders and down worn intertidal beach plane results in a highly erosive marine environment..." and that "entrained sand, gravel, and cobbles collectively provide, during super-elevated water and some higher high tides, an effective episodic abrasive force that erodes the intertidal Pismo Formation bedrock and other exposed materials."⁵² The Applicant's report further noted that significant vertical erosion of the rocky platform in which the

⁴⁹ See, for example, CDP A-3-SCO-07-095/3-07-019 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).

⁵⁰ All per Cotton, Shires and Associates, *Maintenance/Repair/Restoration – Phase I Geotechnical Investigation Report Update*, April 6, 2020.

⁵¹ Cotton, Shires and Associates, *Maintenance/Repair/Restoration Memorandum Phase I As-Built Geotechnical Investigation*, August 5, 2020.

⁵² Cotton, Shires and Associates, *Maintenance/Repair/Restoration/Protection – Phase II Supplemental Geotechnical Investigation Report*, October 13, 2020.

seawall had been embedded had occurred at the site in recent years, indicating an average yearly downward rate of erosion of about 0.5 inch to 1.7 inches between 2003 and 2020, and that even higher downward erosion rates (1 inch to 2.6 inches per year) were anticipated for the rocky platform at the site in coming years. Additionally, that Applicant's report stated that the beach at the base of the seawall area had experienced a loss of sand profile of up to 4.5 feet since 2002-2003.

In May 2021, the Applicant submitted a second ECDP application (G-3-21-0023) that indicated that new flanking, undercutting, and back-cutting marine erosion of the previously installed emergency void fill had occurred, and that the bluff and residence were again immediately threatened with near-term failure. The geotechnical report identified a substantial block (5-foot deep, 12-foot high, and 12-foot wide) of fractured bedrock located above the void fill was ready to break off and fall to the shore below.⁵³ The ECDP application requested to fill the new voids with additional concrete, and to immediately construct the proposed new seawall footing/foundation that was the subject of the second CDP application that had been submitted (described above). Again, the Commission's then Senior Coastal Engineer and Senior Engineering Geologist reviewed the materials and concurred with the placement of additional shotcrete, but determined that the installation of the new seawall footing/foundation was not justified in the ECDP context.

By August 2021, the Applicant's geotechnical consultants informed the Applicant after an inspection that the lack of the new seawall footing/foundation at the site had caused "ongoing erosion of the bluff and created morphology that contributes significantly to wave impact vibrations that have been strong enough to have caused cracking of your residence walls, additional and extended cracking of the bluff shotcrete cover, additional and extended cracking of the remaining segments of the 2005 cutoff wall and fracturing of the bluff materials themselves. The emergency sea cave shotcrete infill placed last year and recently is also being compromised on a daily basis when tides and wave runup regularly launch and pound gravels and cobbles against it."⁵⁴ The Applicant's consultants stated that the emergency permitted concrete void infill was "being undermined from 8 to 16 inches vertically and over 12 inches horizontally in less than one month by marine erosion... and of even greater concern...is the new quasi-vertical fracture in the Pismo Formation (bedrock) and overlying terrace deposits..." They noted that the unreinforced concrete that had been pumped into the void previously now needed its own protection via a new seawall footing/foundation immediately to halt and mitigate the emergency. The Applicant subsequently submitted a third ECDP application (G-3-21-0035) to install the new seawall footing/foundation, and Commission staff granted it in September 2021 upon Senior Coastal Engineer and Senior Engineering Geologist review and concurrence that the new seawall footing/foundation was the appropriate temporary solution to abate the identified emergency.

In sum, the site is highly erodible and susceptible to bluff failure and collapse absent

⁵³ Cotton, Shires and Associates, *Phase II Supplemental Geotechnical Investigation Report Update: Recommendation to Immediately Mitigate Recent Emergency Conditions*, May 18, 2021.

⁵⁴ Cotton, Shires and Associates, *Supplemental Geotechnical Investigation Report Update: Recommendation to Immediately Mitigate New Emergency Conditions*, August 25, 2021.

some type of intervention to abate this threat. Thus, and for all of the above reasons, the residence has been determined to be in danger from erosion for purposes of Section 30235 and the LCP.

Feasible 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. In other words, Section 30235 is structured that the third test is met if shoreline armoring is the only feasible⁵⁵ alternative capable of protecting the existing endangered structure. 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. 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.

Commission staff considered various alternatives with the Applicant in the context of the four ECDP applications and the three issued ECDPs (as well as the two regular CDP applications) between 2020 and 2022, including the use of more temporary measures such as sandbags and a more erodible concrete to fill voids in the bluff that had formed. Commission staff ultimately allowed the temporary emergency work as described above as appropriate and necessary to abate the emergencies, including because of what appeared to be unusually erosive conditions and rapidly deteriorating bluff stability at the site. However, those were determinations made in an emergency context with the benefit of the information that was available at the time, and are not binding on the Commission here in this CDP application context, where the Applicant must demonstrate de novo that their currently proposed project is the least environmentally damaging feasible alternative under the third Section 30235 test. The Applicant has submitted an alternatives analysis as for this purpose,⁵⁶ and the possible alternatives evaluated are discussed briefly below.

Remove All Emergency Development

This alternative would remove the unreinforced concrete, the new seawall footing/foundation, and all related development temporarily authorized by ECDP. The analysis stated that this alternative would be extremely difficult to perform consistent with Cal OSHA standards for worker safety because of the instability of the overhanging bluff that would be exacerbated by the mechanized removal methods and that foreseeable likely failure of the unsupported fractured rock and terrace deposits would result in collapsed material, consisting of both the bluff and residence, as well as life

⁵⁵ 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.

⁵⁶ Cotton, Shires and Associates, *Maintenance/Repair/Restoration/Protection – Phase II Supplemental Geotechnical Investigation Report*, October 13, 2020.

safety concerns on the beach and in the marine environment. This alternative was therefore considered infeasible.

Remove Only New Seawall Footing/Foundation Portion of Emergency Development

This alternative would maintain the unreinforced concrete that filled the void at the base of the bluff, but would remove the seawall footing/foundation and all related development temporarily authorized by ECDP. The alternative was prepared prior to issuance of the third ECDP (that allowed for construction of seawall footing/foundation), so today this alternative would necessitate the removal of the completed seawall footing/foundation with the unreinforced concrete fill left in place.⁵⁷ Such an alternative would involve extensive construction work to remove the completed seawall footing/foundation, and according to the Applicant, would leave the sea cave fill and the bluff once again exposed and at risk of continued marine erosion and possible failure (in other words, essentially still in danger, as described above, and possibly worse off if seawall footing/foundation removal resulted in further destabilization). This alternative was therefore considered infeasible.

Residential Underpinning and Concrete Fill

Again, these alternatives for residential underpinning were prepared prior to completion of the seawall footing/foundation, and involve leaving the unreinforced concrete fill in place without a seawall footing/foundation (so its removal would be necessitated) and either (a) partial underpinning of the perimeter of the residence with minimum 15-foot deep caissons into bedrock tied to sister grade beams, or (b) underpinning the entire residence and garage with minimum 20-foot deep caissons into bedrock and connecting grade beams beneath the residence. According to the Applicant, these alternatives would not mitigate the continued direct, flanking, and undercutting erosion of the unreinforced concrete fill area, which would ultimately fail, and the caissons would then be threatened in the near- to mid-term (5 to 15 years). The partial underpinning (again, absent the constructed seawall footing/foundation) would also likely require the construction of a combined vertical seawall/retaining wall along the seaward perimeter caissons as exposed to address continued marine erosion. And the full underpinning would require extensive demolition and reconstruction of the residence, and reconstruction. For these reasons, residential underpinning alternatives were determined to be infeasible.

Sand Nourishment and Concrete Fill

This alternative would leave the completed unreinforced concrete fill in place (but would not include the constructed cutoff wall, so would necessitate its removal) and involve importing beach quality sand and depositing on the shoreline in the project area at a level that protects the unreinforced concrete fill against direct marine erosion and wave run-up. To restore the beach profile would require, at a minimum, annual imported sand placement in advance of each winter storm season with volumes on the order of several thousands of cubic yards (or more, depending on future seasonal beach sand erosion rates), and would likely also require episodic additional (seasonal or monthly) sand

⁵⁷ The fact that the alternatives analysis is based on a set of physical conditions in 2020 that changed over time is indicative of the way in which the CDP application here required (and requires) additional clarity of information for filing purposes.

nourishment. This alternative could also include reconstruction of the down-worn and channelized bedrock beach platform at various intervals. Beach nourishment was determined to be infeasible primarily because the natural beach sand cycles (including seasonally and diurnally) across the beach plane at this location have and will continue to abrade the bedrock, with continued creation of cracks that will over time destabilize and erode the unreinforced concrete fill. In other words, the analysis of this alternative asserts that beach sand nourishment would itself contribute to the failure of the unreinforced concrete fill, and ultimately the bluff and residence, over time given the nature of the systemic sand and cobble mobilization in relation to the bedrock at this location. As such, this alternative was deemed infeasible.

Modified Seawall Footing/Foundations and Concrete Fill

The alternatives analysis included three types of steel reinforced seawall footing/foundation projects ranging from shallow (1- to 2-foot deep and 7,500 psi shotcrete), intermediate (4-foot deep and 7,500 psi shotcrete), and deeper (8-foot deep and 8,000 psi shotcrete), all with retention of the unreinforced concrete fill. A shallow wall was estimated to have a limited lifespan (no more than five years) before needing to be repaired or replaced given the foreseeable future destabilization of the bluff, including because additional upper bluff work would also be needed and because this option does not include coordination with the downcoast property bluff stabilization needs. An intermediate depth wall, designed to be coordinated with the downcoast property, is what was constructed under ECDP G-3-21-0035 and is being requested for retention, but this alternative consists of just the wall and not the additional work (tiebacks, upper bluff restoration, etc.). By itself, the intermediate depth cutoff wall would be mostly feasible but would not meet the project objectives of fully stabilizing the bluff and protecting the residence. A deeper, higher-strength cutoff wall with upper bluff armoring and coordination with the downcoast property was projected to provide protection of the residence until year 2070 and would meet project objectives to protect and preserve the residence, but would require extensive heavy and disruptive construction over a longer time period than any other cutoff wall alternative, and for that reason was deemed infeasible.

Proposed Project

This Applicant's evaluation found the proposed project to be the and least environmentally damaging feasible alternative because it was deemed to provide for the necessary minimized amount of shoreline protection to adequately stabilize the bluff and protect the residence for the mid-term (the next 15-20 years) and minimizes adverse impacts to coastal resources as much as feasible given the circumstances. Due to the significant dangers from erosion at this site, the Applicant concluded that a hard armoring approach was required, and that the proposed project is appropriate in that context under the Coastal Act.

House Removal/Relocation and Site Restoration

Although not evaluated by the Applicant, another alternative is to relocate the house out of harm's way, and to restore the beach and bluff to its natural state. While this would of course be the most preferable from a coastal resource perspective (as well as a property owner perspective in terms of not having such an at-risk residence), the

Commission notes this is simply an infeasible solution at this time. One major obstacle to this approach is that there is simply no space on the property to relocate the residence (or even to establish a much smaller but still livable residence) out of harm's way. The lot is a narrow blufftop property hemmed in with the bluff/ocean on one side and Indio Drive immediately on the other. And having the house be relocated to another property is also not feasible since there is not a land use regulatory structure in place in the LCP to accommodate this (e.g., a transfer of development rights program, at-risk property buyouts, etc.). While these may be important tools in the future to address these and other similar situations in Pismo Beach (and on the California coast more broadly) and may need to become increasingly more common given sea level rise and stronger storms from climate change, the tools to effectuate these types of home removal/relocation are not available at this location at the present time.⁵⁸

Further, despite its precarious location and the daunting degree of coastal hazards affecting its even existence, the residential property at this location is estimated to be valued at some \$3 million,⁵⁹ which makes any type of program that might include buyout difficult to achieve. And this is not unusual in coastal California, where blufftop residences can attract prices from the low multiple millions to tens of millions of dollars. In other words, the real estate market for development at ocean's edge, and thus almost by definition in a front row seat in harm's way, has apparently not been affected or tempered by the potential effects of coastal hazards on such development. And a similar observation seems relevant in terms of property insurance for these developments in dangerous locations. And in most cases, such development ultimately or currently requires armoring to maintain safety and stability, and all of that armoring has an adverse impact on coastal resources, including natural shorelines and landforms, and ultimately leading to the loss of beaches and recreational areas; areas that are critical contributors to coastal economies, and part of many communities social identity, history, and fabric of life – including Pismo Beach.

Sometimes lost in that discussion is the concept of costs and benefits, including to whom such costs and benefits accrue when it comes to armoring. As indicated previously, coastal armoring has a series of impacts on shorelines, perhaps the most critical being that armoring directly leads to a loss of sandy beaches, particularly as the shoreline erodes and sea levels rise. The most obvious impact is that armoring occupies physical beach and shoreline space, such as is evidence by the proposed project in this case, and the underlying area is not available for public use. But a sometimes less obvious and more insidious impact tends to be even worse, namely the fact that beaches that would normally migrate inland in response to erosion have no place to go, and ultimately get squeezed between a rising sea and shoreline armoring. This phenomenon is often referred to as passive erosion, or 'coastal squeeze' (see also below), and it is a reasonably foreseeable effect of continued shoreline armoring, such as is being proposed here.

⁵⁸ The Commission notes that the City is currently working on an update to its LCP, including to address sea level rise and coastal hazards risks, including with money from the Commission's LCP grant program, and it would be prudent for the City to evaluate these types of programs as part of this effort.

⁵⁹ As obtained on www.zillow.com, accessed January 25, 2023.

And to be clear, and despite claims by some to the contrary, armoring is not an innocuous private property right of some sort, rather it directly leads to a loss of the public's beach and shoreline resources, and it is important in this debate that it is understood in that way. And that requires weighing those public versus private costs and benefits. To be sure, these are difficult choices, including because allowing for continued armoring and reliance on that armoring to protect development is also choosing to allow beaches to ultimately disappear, whereas choosing to allow beaches to migrate inland is choosing to remove and relocate development to more inland locations out of harm's way. Again, these are not easy decisions, including as they are often framed in terms of coastal property owner's needs – and to be sure coastal property owners have a vested interest in the outcome – but often missing from the debate are the public's needs as it relates to ensuring continued access to sandy beaches and shoreline and park areas. While not completely mutually exclusive, it needs to be understood that armoring represents a choice that typically benefits those private interests at the expense of the public's interests. The LCP here seems to recognize that dilemma, and explicitly puts natural beach and shoreline protection at the fore in its Hazards and Protection (or "H") Overlay zone. The difficulty comes when both objectives, private property protection and public resource protection bump into one another, and difficult decisions must be made. Such as this case.

In short, and in this case and for this endangered existing structure, it appears that the Applicant's proposed project can meet the third Section 30235 test. While it seems possible that there may be some different combination of hard armoring that could protect the residence, any such alternative would not likely lead to a significantly lesser series of adverse coastal resource impacts, and it does not appear that there are any softer solutions that could offer the necessary protection allocated to it by Section 30235. As such, in this case, the proposed project is required to protect the residence, and 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.

Shoreline Processes

Some of the effects of engineered armoring structures on the beach (such as scour, end effects and modification to the beach profile) are 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. See **Exhibit 12** for the relevant formulas and calculations.

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 new seawall footing/foundation as measured directly on the as-built plans occupies some 210 square feet of beach space and the additional proposed length of new seawall footing/foundation would occupy 26 square feet, for a total of 236 square feet.⁶⁰

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.⁶¹ 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

⁶⁰ It should be noted that this square footage does not include the area of unreinforced concrete fill in the void at the base of the bluff to which the footing/foundation is attached, and which is technically on top of beach space but located underneath the bluff. Given that it's not currently usable beach space per se, the Commission's Geologist and Engineer recommended that its impact be calculated under the passive erosion calculation since it would have become usable space as the bluff above it would have eroded away. Either way, the sea cave fill results in loss of sandy beach space.

⁶¹ 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.

causes the seas to rise ever faster, beach and recreational shoreline areas will retreat inland at an increasingly rapid pace.^{62,63} 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 armor.

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 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 (which in this case will amount to 23 years from the date of installation of shotcrete fill under ECDP G-3-20-0025 in April 2020). After this 23-year initial mitigation period, additional impact analysis will be needed (see **Special Condition 7**) 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 a seawall, 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 seawall footing/foundation element, including the additional requested downcoast section, spans 70 linear feet as measured parallel to the primary shoreline,

⁶² Sea level has been rising for many years, and there is a growing body of evidence that there has been an increase in global temperature and that acceleration in the rate of sea level rise can be expected to accompany this increase in temperature (some shoreline experts have indicated that sea level could rise 4.5 to 6.0 feet by the year 2100). The Coastal Commission's Sea Level Rise Policy Guidance identifies the National Research Council's "Sea Level Rise for the Coasts of California, Oregon and Washington: Past, Present and Future" (NRC Report) as the current best available science for sea level rise. The NRC Report uses a year 2000 baseline and produced sea level rise projections for 2030, 2050 and 2100, taking into account geophysical differences north and south of Cape Mendocino attributed to vertical land movement. Based on the NRC Report projections, the estimated range of sea level rise for 2065 and 2090 can be interpolated between the projections for 2050 and 2100 to be from 7 inches to 35 inches (0.19 m to 0.88 m) for 2065 and from 14 inches to 56 inches (0.36 m to 1.4 m) for 2090. The observed trend for global sea level has been a long-term, persistent rise. Mean water level affects shoreline erosion several ways, and an increase in the average sea level will exacerbate all these conditions. On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. This, too, leads to loss of the beach as a direct result of the armor as the beach is squeezed between the landward migrating ocean and the fixed backshore (e.g., a 1-foot rise in sea level generally translates into a 40-foot inland migration of the land/ocean interface for a roughly 40:1 slope, typical of average sandy beach profiles).

⁶³ 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.

(as opposed to the entire undulating length of the armoring, which is how the Commission does this calculation), and the average long-term annualized erosion rate for both the bedrock platform and the terrace deposits at this location on unarmored bluffs is estimated to be one to two feet per year. This range has been verified by Dr. Street and the Commission's current Coastal Engineer, Mr. Jeremy Smith (see **Exhibit 12** for their memorandum addressing area erosion rates). As they detail, the data suggests that historical erosion rates have probably ranged from one to two feet per year (and the original seawall in 2003 was approved based on an erosion rate of two feet per year as a justification for its need). With potential increased erosion rates attributable to sea level rise, the erosion rate could be even higher in the future. As such, while the Commission could rely on two feet per year based on that evidence, including to take a conservative approach to ensure that estimated impacts at the higher end are accounted for in any case, the Commission also acknowledges some uncertainties in terms of both historical data and its extrapolation into the future. Thus, here, the Commission takes the mid-point between the two, including so as not to under or potentially over count impacts, and applies an erosion rate of 1.5 feet per year.⁶⁴ Therefore, the impacts due to the proposed project from fixing the back beach will be the loss of 105 square feet of beach and shoreline recreational area per year. Over the initial 23-year mitigation period, approximately 2,415 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 augmented seawall).

Thus, the seawall footing/foundation and void fill results in a loss of approximately 2,651 square feet of beach and shoreline recreational area (236 square feet associated with the seawall's footprint and 2,415 square feet associated with coastal squeeze due to such armoring over the initial 23-year time frame). 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 2,651 square-foot area of beach/shoreline recreational area to replace that which will be lost over the first 23 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

⁶⁴ The courts have acknowledged that there is some uncertainty inherent in projecting shoreline erosion rates, in part due to uncertainty in projections of future sea level rise. In that context, as in the myriad of other circumstances where the Commission is presented with conflicting evidence, the courts apply the normal substantial evidence standard of review, recognizing that it is the Commission's role to "evaluate... competing evidence" and come to a "reasoned decision," which the courts will not then reevaluate. See *Martin v. California Coastal Com.* (2021) 66 Cal.App.5th 622, 642-643.

larger economy, as well as the real estate value of the land that would be taken from public use.

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.⁶⁵ 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 is also the societal benefit to beaches and shoreline areas, including the ways in which they contribute to local community, state social fabric, and cultural identity, although it is difficult to put a price tag on either of these.

Thus, these recreational impacts are in many cases difficult to quantify, including at sites such as northern Shell Beach/Sunset Palisades in Pismo Beach where visitation data needed for certain economic impact models are lacking. In other cases where visitation data 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.⁶⁶ This method requires 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 augmented seawall over time.

Toward this end, the market values of representative blufftop properties in the Sunset Palisades area were identified as a means to identify what it might cost to purchase such property and allow it to erode to create beach/shoreline recreational space. Specifically, this review was conducted by looking at the sales of blufftop property in close proximity to the project site (specifically on Indio Drive) between the years 2020 and 2022 (i.e., approximately during the time of emergency construction under the three ECDPs). 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 blufftop property area that could be allowed to naturally erode and provide a beach area roughly equivalent to what will be lost due to the augmented seawall over the initial 23-year authorization.

This evaluation focused on a total of four blufftop properties sold in the immediate vicinity between 2020 and 2022. Over this time frame, sales show a range of per-

⁶⁵ 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).”

⁶⁶ 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), and 3-19-0446 (Rockview Seawall).

square-foot values from \$308.64 per square-foot at the low end,⁶⁷ up to \$795.30 per square-foot at the high end,⁶⁸ with an average of \$450.25 per square-foot.⁶⁹ This value represents a reasonable estimate of the market value per square-foot of blufftop lots nearest to the subject site based on actual sales data in the years at the time of installation of the emergency work and is a valid estimate of the cost of purchasing such property.

Applying this land acquisition value to the 2,651-square-foot impact associated with the proposed armoring would result in a mitigation fee of \$1,193,612.75 for the loss of beach and shoreline use areas based on the initial 23-year mitigation period (i.e., 2,651 square feet x \$450.25/square foot = \$1,193,612.75). The Commission finds that 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 anticipated impacts of the armoring on beach and shoreline recreational use areas for the first 23 years it is in place.

Shoreline Sand Supply Impacts/Retention of Potential Beach Material

The final impact calculation pertains to the loss of sand and sand-generating materials due to the project, and the way that affects the larger sand supply system. Beach sand material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves and 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 a shoreline protective 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

⁶⁷ The property at 99 Indio Drive sold for \$6.05 million in 2020 and included 19,602 square feet of property, or \$308.64 per square-foot.

⁶⁸ The property immediately upcoast of the Applicant's property at 125 Indio Drive sold for \$5.785 million in 2022 and included 7,274 square feet of property, or \$795.30 per square-foot.

⁶⁹ The other properties used to derive the average price per square foot for blufftop land in the immediate vicinity include 405 Indio Drive where the average price per square-foot was \$311.53 and 419 Indio Drive with an average price per square-foot of \$385.54.

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. The 2003 staff report for A-3-PSB-02-016 stated that the Applicant's consultants concluded that seven percent of the terrace deposits and eight percent of the bedrock would degrade to local beach sand-sized particles, but that larger percentages for sand particles was in fact identified (54 percent of the terrace materials and 40 percent of the bedrock). The staff report noted that the Commission's practice was to use the full range of sand size particles, known as the "complete sand fraction," including because the smaller sand size material often performs an important role in the offshore portion of the beach. In the current project materials, the Applicant's same geotechnical consultants identified these same smaller percentages, and staff once again asserts that the larger percentages are the appropriate amounts to include in this impact calculation.⁷⁰ Based on this information, staff, including with the review and concurrence of Dr. Street and Mr. Smith, determined that the estimated amount of beach-quality sand retained by the augmented seawall would be 74.9 cubic yards of sand per year, or 1,722.44 cubic yards over 23 years (again, see **Exhibit 12** for more details on these calculations).

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 cost of purchasing and delivering 1,722.44 cubic yards of beach quality sand is assumed to be roughly \$60.54 per cubic yard.⁷¹ Thus, an in-lieu fee to address this sand supply impact would be approximately \$104,292.26 (i.e., \$60.54/cubic yard x 74.9 cubic yards/year x 23 years = \$104,292.26 for the initial mitigation timeframe).

Approvable Mitigation

Accordingly, the proposed project's sand supply and related beach/shoreline loss impacts must be mitigated anew (i.e., separate from any past mitigation – see also discussion below), appropriately and commensurately. As described above, over the first 23-year mitigation timeframe, sand supply and beach loss impacts associated with the armoring would result in a required mitigation fee of \$1,297,905 (i.e., \$1,193,612.75

⁷⁰ In addition to the sand percentages and the erosion rate, other aspects of the Applicant's consultants' calculations differed from the Commission's standard practice in calculating the project's sand supply impacts. These differences include calculating the volume of sand retained by the various phases in multiple ways and attempts at factoring in previous impact mitigation, as detailed in the Cotton, Shires and Associates, Inc. report titled *Calculation of Projected Volumes of Beach Quality Sand Production During 20 Years at 121 Indio Drive Without Phase I and Phase II Development*, dated February 17, 2021.

⁷¹ The Commission's 2003 approval of armoring at the site used a replacement sand cost of \$26 per cubic yard which, adjusting for inflation, would be \$41 per cubic yard today. More recently, the Commission in 2017 applied a replacement sand cost of \$50 per cubic yard in approving two seawalls in Pismo Beach (CDPs A-3-PSB-12-042 (Capistrano Seawall) and A-3-PSB-12-043 (Vista del Mar Seawall)). In other cases, sand costs have been estimated to vary significantly, and can even exceed \$100 per cubic yard delivered. Here, the Commission applies \$60.54 per cubic yard based on its 2017 CDP action as adjusted for inflation to 2023.

+ \$104,292.26 = \$1,297,905.01). Thus, the resultant fee amount is \$1,297,905.⁷² While requiring such a mitigation fee could commensurately mitigate for these impacts, the Commission has also instead required the provision of in-lieu public recreational access improvements to offset such impacts, particularly when a public agency is an applicant for a shoreline armoring project. 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. In this case, such in-lieu mitigation has not been explored with the City and is not otherwise readily apparent and available at this time. And often, 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.

Thus, 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 to require the Applicants to pay this fee, within one-year of this approval (i.e., by February 10, 2024)⁷³ to the City of Pismo Beach to be used exclusively for public access and recreation purposes which will be identified in collaboration with the Executive Director.

As such, payment of an in-lieu fee constitutes appropriate and adequate compensatory mitigation package to offset the impacts identified above, and to be able to find the project consistent with Coastal Act Section 30235.

It should be noted that the Applicant believes the project to be repair and maintenance undertaken to an existing permitted armoring structure that has already been mitigated for. Thus, they argue that the mitigation requirements discussed above constitute duplicative mitigation. However, the Commission disagrees with this assessment and instead is requiring the calculated mitigation in its entirety as described above. As background context, the Commission's 2003 CDP approval included an analysis and quantification of expected sand supply impacts over the life of that armoring, which was identified as a maximum of 50 years. However, that analysis concluded that, given the difficulties and constraints at that time related to beach nourishment and an in-lieu sand replenishment fee, no meaningful way to mitigate for the loss of sand existed and therefore was not identified. The sand loss resulting from the project was, however, identified as a public access and recreation impact due to the eventual loss of beach area, and the Commission determined that the appropriate mitigation for that impact

⁷² Note that this fee is based on a 1.5 feet per year erosion rate. As discussed previously, evidence suggests using a 2 feet per year erosion rate, which would result in a roughly \$1.7 million mitigation fee due to the larger impacts associated with greater bluff loss (see these calculations in Exhibit 12). Thus, the fee established and required herein is the mid-point of what the best available science would dictate to be used, but could be even greater by using more conservative bluff erosion rates.

⁷³ The Commission recognizes that the future value of the fee will be less if paid in one year's time as opposed to immediately, and theoretically could perform a present versus future value analysis to adjust the fee depending on when it is paid. However, such analyses are speculative, and the Commission here determines that the difference is within the realm of the various uncertainties identified in the calculation and does not require the fee to be adjusted based on when it is paid.

was a one-time \$10,000 fee to be paid to the City for the purpose of improving the Florin Street cul-de-sac overlook along with an offer-to-dedicate a public access easement over the beach area of the 121 Indio Drive property.

First, as described previously, this is not a repair and maintenance project, but rather a new armoring device that fully replaces the previous one. At this fundamental level, it is a new structure with impacts calculated and mitigated accordingly. While the armoring approved in 2003 under A-3-PSB-02-016 was identified as having a 50-year design life, the reality is that, at least on the Applicant's property, the life of that armoring ended up being about 15-17 years. The upcoast segment of the approved armoring (i.e., at the Florin Street cul-de-sac and 125 Indio Drive) appears to be in good condition for now and is continuing to serve its approved function after 20 years. But it is clear given the absence of the former lower seawall at the Applicant's site, resultant formation of the sea cave void, and danger of bluff failure described above in the 'Danger from Erosion' section, that the armoring at 121 Indio Drive had reached the end of its life, and the mitigation required for its impacts over its life have been fulfilled. The proposed project now constitutes an entirely new armoring device and has its own design life of 15-20 years as explained in the various geotechnical reports prepared by the Applicant since 2020, and even that appears to be an approximation given the conditions at the site. In reality, "design life" in the sense of shoreline armoring and the ever-changing conditions related to sea level rise, climate change, and associated storm and swell intensification is increasingly difficult to estimate, and really only means the amount of time the armoring continues to function to protect the endangered existing structures to which such armoring is tied to.

And second, the Commission's previous CDP approval in 2003 significantly undercounted mitigation. The Commission calculated the need for a \$61,000 sand mitigation fee and for a \$112,000 public access and recreation impact fee. However, the Commission found that "at this time there is no meaningful way to adequately mitigate for the loss of sand retained by the proposed seawall" and instead required only a \$10,000 payment to the City. The Commission also identified construction and water quality impacts that it too allowed to be mitigated by the \$10,000 fee. And that 2003 approval allowed for the armoring to be partially located on top of two separate, then-existing, and previously required public access easements when they didn't allow for same, but no compensatory mitigation was offered nor applied for those resultant impacts. In other words, this is not a case where all impacts were thoroughly and directly mitigated for, nor a case where the Applicant has put forth considerable mitigation monies already. To the contrary, and based on a much more robust knowledge of how to identify and mitigate for armoring impacts, the Commission here is appropriately within its bounds to require mitigation over the next 20 year timeframe for this new armoring structure that has new and different impacts.

Third, at a basic permitting level, the Applicant's argument boils down to an assertion that previous mitigation for impacts attributable to a previous development to address its Coastal Act/LCP inconsistencies at that time should somehow be applied to the new impacts being identified in this new CDP application. In other words, that the Commission should be barred from mitigating impacts associated with this new application because a previous project at this site some 20 years ago was mitigated,

and that that mitigation should be enough for these new impacts too. The Applicant, however, misunderstands the nature of identifying impacts associated with an application for development, and then applying mitigation to those impacts to allow that development to be approved. The mitigation assigned in that 2003 case applies to that case. Here, the mitigation applied in 2003 was for mitigation for impacts assigned to the project being reviewed in 2003. Those mitigation requirements did not include a provision for the return of money spent to satisfy that requirement, or for the applicant to be credited any “excess” amount paid if, in the future, the armoring did not last as long as expected. Nor, conversely, did the Commission preserve the ability to require additional mitigation if the armoring were to last longer than expected. The estimate was generated, and the condition was not challenged. As such, the parties assumed the risks that the mitigation amount would be imperfect due to the inability to predict exactly how long the armoring would last. Now, some 20 years later, the original armoring is effectively gone, and the Commission here is reviewing a new CDP application for development. True, it is similar development in a similar area, but it is actually quite different, and the Applicant is now proposing a significantly larger and more massive new replacement armoring structure (as described previously). And that proposed armoring, based on the Coastal Act evaluation above, has significant coastal resource impacts attributable to this new proposed replacement armoring structure. In order for the Commission to approve that armoring, such impacts require mitigation for the Commission to be able to find the project Coastal Act consistent on the applicable points. In other words, these are new 2023-evaluated impacts requiring their own new 2023-required mitigation, and somehow relying on prior mitigation to cover these impacts is simply not appropriate or legally defensible in that context. Simply put, the prior 2003 mitigation was for the 2003 impacts and is not available for a ‘credit’ here as a result.

Finally, as described above, the 2003 mitigation on which the Applicant suggests the Commission should rely for this action was, as indicated above, seriously undervalued. And that is not an assertion based on a comparison between the way impact/mitigation was assessed in 2003 versus now in 2023.⁷⁴ Rather, that is an assessment of the actual impacts and mitigation applied thereto in that 2003 action as described above, where the Commission in 2003 actually identified the need for some \$173,000 in mitigation, but only required a \$10,000 mitigation fee. In other words, even on its face at the time, and based on the calculations then, over \$160,000 in impacts were not mitigated at all. Still, the Commission here recognizes that the Applicant provided \$10,000 toward prior project mitigations in 2003 and uses its discretion to allow that amount of mitigation to be applied towards the new impacts now identified in 2023, thus allowing for a \$10,000 reduction, and a final 2023 mitigation fee of \$1,287,905 (\$1,297,905 - \$10,000 = \$1,287,905). Although the Commission does not believe such a reduction is required, it provides a discount of this sort as a means of resolving this disagreement with the Applicant. See **Special Condition 4**.

Future Residence Redevelopment and Duration of Armoring Authorization

⁷⁴ And to be clear, a 2023 methodology applied to the 2003 case would undoubtedly lead to significantly higher mitigation requirements, likely degrees of magnitude different actually, even when applied only in terms of 2003 numbers/evidence.

As described above, the armoring meets the first test of Coastal Act Section 30235 and the LCP because the residence at 121 Indio Drive was originally built in the 1950s, prior to the Coastal Act, and there is not enough compelling evidence to conclusively show that it has been redeveloped in the time since CDPs have been required. As a result, and in the absence of new evidence indicating otherwise, it retains its 'existing structure' status under Section 30235 as long as it is not subjected to additional work that, along with the prior work, exceeds the threshold of redevelopment. In this case, as described above, the Applicant undertook various improvements to the residence around in 2005, and the Commission has concluded that, based on the available evidence, it must treat the work as falling just short of it rising to the level of being considered redevelopment, but not by much.⁷⁵ Specifically, based on the Applicant's estimates it appears that up to 48.7 percent of the exterior walls (calculated in lineal feet) and 10.3 percent of the foundation (calculated in cubic yards) had been removed and replaced.⁷⁶ It also appeared that the roof tiles had been entirely replaced, and that roughly 40 percent of the roof structure had been removed and replaced.

If the residence were to be redeveloped (e.g., replacement of an additional 1.3 percent of the exterior walls or 39.7 percent of the volume of foundation, or 10 percent of the structural roof; 50 percent or more of other structural components are replaced; 50 percent or more of floor area is increased; or less than 50 percent of structural components or less than 50 percent increase in floor area if those increases result in a 50 percent or more cumulative increase since January 1, 1977), then it would become clear that it would constitute a new replacement structure that needs to meet all LCP and Coastal Act requirements, including in terms of a blufftop coastal hazard setback without reliance on armoring. In such a case, the residence would need to be sited and designed to ensure stability and structural integrity over time without reliance on shoreline armoring, including the armoring authorized by this CDP. If such re-siting to a location consistent with the LCP's 100-year setback (with a minimum 25-foot bluff setback) is not possible, then the proposed additional structural work to the residence could not be permitted (or the house would need to be relocated, etc.). Thus **Special Condition 7** outlines the parameters of what would constitute "redevelopment" of the residence, at which time armoring would no longer be authorized and would be required to be removed.

Similarly, and furthermore, the Coastal Act only compels approval of shoreline armoring when necessary to serve a coastal-dependent use or to protect a public beach or an existing structure in danger of erosion, and therefore shoreline protective devices are no longer allowed after the existing structures or coastal-dependent uses they protect are no longer present or no longer require armoring. As described throughout this report,

⁷⁵ Again, as described above, although a CDP was required for the development undertaken on the residence at the time, review of information available for the work (including from City building permits and the Applicant's calculations) did not appear to suggest that 50 percent or more of the residence had been redeveloped, as the Commission understands and calculates redevelopment.

⁷⁶ As detailed in Exhibit 4 ("Structural Calculations and Elevations, Repair and Maintenance of Single-Family Residence, 121 Indio Drive, Pismo Beach (Grossman)" February 2005) of May 20, 2005 letter from the Applicant (via representative Dall & Associates) to the Commission (to then Coastal Commission Permit Supervisor Steve Monowitz). See also Exhibit 11.

shoreline armoring impedes public access to and along the shoreline, adversely impacts beaches and shoreline recreational areas, potentially increases erosion on adjacent properties, and visually impairs this coastal area, among other coastal resource impacts. Although in this case it is likely that the residence at 121 Indio Drive (i.e., the structure being protected by the proposed armoring) will be in place for some time, it is unclear how sea level rise and other coastal hazards may affect the shoreline in this area over time. So it is still necessary to ensure that the approved shoreline armoring does not outlast the structure/use it was designed and approved to protect given its adverse coastal resource impacts. Thus, **Special Condition 7** also limits the duration of this armoring approval to the time when the residence is no longer present or no longer requires armoring, whichever occurs first. If some portion of the residence is removed for any reason, while some portion is retained, all without triggering redevelopment thresholds, then the armoring is required to be reduced or modified so that it is the minimum necessary to protect the existing portions that are retained.

In terms of impact mitigation for the approved project, as discussed above, the mitigation for the Section 30235 impacts associated with the augmented seawall is based on an initial 23-year time period.⁷⁷ These impacts will continue to occur, though, for the full time that the approved armoring structure is in place, including beyond 23 years if it continues to be necessary to protect the residence. Using an initial time period of 23 years for the mitigation calculations ensures that the mitigation will cover the likely initial impacts from the armoring, but future impacts beyond the initial mitigation period are far more uncertain to predict at this point in time due to, among other factors, possible changes in sea level, storm frequency and intensity and direction of wave attack. The mitigation fee required under this approval may very well be sufficient to offset the continued impacts of retaining the armoring beyond the initial 23-year mitigation period, but an evaluation of ongoing project impacts to shoreline resources in the future may demonstrate that additional mitigation is necessary in order to adequately mitigate for ongoing project impacts to coastal resources. **Special Condition 7** therefore requires the Applicant to reevaluate the impacts associated with the retention of armoring beyond the initial 23-year mitigation period and provide additional mitigation if deemed necessary to mitigate for additional impacts to coastal resources past the initial 23 years in the event that said impacts are not mitigated sufficiently under this approval.

Thus, as conditioned, the project satisfies the Coastal Act Section 30235 requirements regarding mitigation for sand supply impacts, and thus also meets all Section 30235 tests for requiring such armoring. It is noted, however, that the project does not meet all corresponding LCP tests for allowing armoring because sand supply mitigation is one of many requirements (see, for example, IP Section 17.078.060(F)). In fact, and at the least, the project does not avoid intertidal or subtidal areas as required, it does not provide lateral beach access as required, and it does not enhance public recreational opportunities. In such a circumstance, the LCP explicitly requires that such armoring

⁷⁷ The timeframe was adjusted because the project was initially installed under emergency permits. The mitigation thus represents the impacts beginning the initial date of construction (i.e., April 2020) and includes up to 20 years from the date of Commission approval of this CDP, amounting to 23 years for the initial impact mitigation timeframe.

“shall not be permitted”, and thus LCP guidance would direct that the armoring be denied. At the same time, and as indicated earlier, the LCP provides non-binding guidance, and the standard of review remains the Coastal Act. Thus, while providing important context for Commission consideration, such LCP inconsistency does not require denial in this case.

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 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 subject armoring, particularly after major storm events. Such monitoring will ensure that the Applicant and the Commission are aware of any damage to or weathering of the armoring and other project components and can determine whether repairs or other actions are necessary to maintain the armoring and the offsetting access improvements in their approved state before such repairs or actions are undertaken. To assist in such an effort, monitoring plans should provide vertical and horizontal reference distances from armoring structures to surveyed benchmarks for use in future monitoring efforts.

To ensure that the project is properly maintained to ensure its long-term structural stability, **Special Condition 5** 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 approved armoring. **Special Condition 6** authorizes the Applicant to repair and maintain project components in their approved 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 3**).

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. 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 8**), and also for any future buyers upon sale of the property to similarly be aware of and acknowledge this risk (see **Special Condition 13**).

3. Coastal Hazards Conclusion

The existing residence at 121 Indio Drive is in danger from erosion and requires protection as identified through the proposed project, as identified in **Special Condition 1**. Conditions are included to ensure that the project will appropriately mitigate for its sand supply and beach/shoreline recreational use area impact (see also below), and to ensure long term stability. Therefore, as conditioned, the proposed project can be found consistent with Coastal Act Sections 30235 and 30253.

D. PUBLIC ACCESS AND RECREATION

1. Applicable Coastal Act and LCP Provisions

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the sea and the nearest public road “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road inland of the shore (which in this case is Indio Drive). 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 clearly protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access. In addition, the LCP includes public access and recreation provisions that reflect Coastal Act requirements and tailor them to Pismo Beach's unique shoreline, including:

LUP Principle P-14 Immediate Ocean Shoreline. *The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region. This unique narrow strip of land should receive careful recognition and planning. The purpose of the beach is to make available to the people, for their benefit and enjoyment forever, the scenic, natural, cultural, and recreational resources of the ocean, beach, and related uplands.*

LUP Principle P-22 Public Shoreline Access. *The continued development and maintenance of public access to the Pismo Beach coastline shall be considered an integral and critical part of the city's parks and recreation program.*

LUP Policy PR-2 Ocean and Beach are the Principal Resources. *The ocean beach and its environment is, and should continue to be, the principal recreation and visitor-serving feature in Pismo Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.*

LUP Policy PR-6 Retention of All Existing Parks and Dedicated Open Space. *Any proposed loss of parks or dedicated open space areas shall be replaced at a minimum with the equivalent quality of acreage or facilities lost.*

LUP Policy CO-15 Ocean Shore-Principal Open Space Resource. *The ocean shore is, and shall continue to be, the principle open space feature of Pismo Beach. Ocean front land shall be used for open space, recreation and related uses where feasible and where such uses do not deteriorate the natural resource.*

Of particular note are LUP Principle P-14, which clearly and unequivocally recognizes the affected shoreline resources in this case “as an irreplaceable national resource”, where the purpose is to make this area available “for [people’s] benefit and enjoyment forever”; LUP Principle P-22 that defines maintaining public access to the coastline to be “an integral and critical part of the city’s parks and recreation program”; LUP Policy PR-6 that requires any loss of such area to be replaced, acre for acre; and LUP Policy CO-5 that requires that use of ocean front land, such as is proposed here, not lead to any adverse impacts to natural resources. In short, the LCP places a very high value on the coastal shoreline resources affected by the proposed project, and in critical ways doesn’t allow for any impacts to them. Thus, the LCP sets a very high bar for allowing shoreline armoring along its shoreline at all.

2. Consistency Analysis

As identified earlier, shoreline protective devices have significant adverse impacts to public access and recreation.⁷⁸ Section 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public’s right of access to the sea, 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 free access available at 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. And the City’s LCP builds upon these Coastal Act directives by expounding on the important role that the natural beach and shoreline plays in providing free public access and recreational opportunities for Pismo Beach residents and visitors alike, and in many ways goes an explicit step further than the Coastal Act in protecting such natural resource, as indicated above.

Finally, the Coastal Act Section 30210 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

⁷⁸ Ibid.

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. In addition, the mean high tide line will move landward over time depending on the beach profile, seasonal tidal activity, and continued sea level rise. Therefore, it is also critically important that the Commission assess whether the project, which as conditioned will mitigate for coastal resource impacts through 2043 (i.e., the initial mitigation period; see also the preceding “Coastal Hazard” findings), would impact public access and recreation over this time period, including public trust resources, and, if so, to provide measures to avoid or appropriately mitigate unavoidable such impacts.

The northern extent of the City’s shoreline consists primarily of rocky bluffs with limited areas of sandy beach, such as the occasional small pocket of sand. A narrow sandy beach, accessible at low tides, begins just upcoast of the project site at Florin Street and extends downcoast through the Palisades area where it becomes wider and more heavily used by the public. The rocky intertidal zone in this area is also a popular tidepooling spot, and the area offshore is used by surfers in the right conditions. Access from the blufftop area down to the beach level (and the beach/shoreline area at the site) is provided via public staircases at South Palisades Park (about 1,200 feet downcoast) and, in general, the Palisades beach area provides significant coastal public access and recreation opportunities for residents and visitors alike. And the beach and shoreline area at the site is subject to an existing irrevocable offer-to-dedicate a public access easement required by A-3-PSB-02-016 that extends over the entirety of the beach on the Applicant’s parcel from the seaward edge of the base of the former edge of the seawall to the mean high tide line.⁷⁹ (See **Special Condition 10** which requires all previous applicable special conditions from A-3-PSB-02-016 to remain in full force and effect).

The proposed project would have identifiable impacts on public recreational access, including through loss of beach/shoreline recreational use area where it is sited, incremental loss of beach due to the “coastal squeeze,” and cumulative impacts to beach and shoreline recreation in the area (see discussion above in the “Coastal Hazards” section, incorporated here by reference). More specifically, the proposed project would eventually lead to a loss of available beach and shoreline recreation area for public access and recreation because the back of the beach/shoreline area will be fixed by the continued placement of the proposed armoring, and the ocean interface will gradually move landward as sea level rises due to climate change. In fact, sea level is

⁷⁹ Irrevocable Offer-to-Dedicate Public Lateral Access Easement, recorded January 30, 2004 in the San Luis Obispo County Recorder’s Office, Document No. 2004007572, required by Special Condition 10 of A-3-PSB-02-016. As described earlier, it appears that the mean high tide line has migrated inland in the time since that OTD was required in 2003, and it appears that the easement area is already public trust and thus State Lands.

expected to rise between 0.5 feet to 1.8 feet by 2040,⁸⁰ and thus it is likely that the proposed armoring will have discernible impacts on public access and recreation for as long as it is in place. In fact, with sea levels anticipated to rise between half-a-foot and nearly two feet within the next 20 years, less of the beach/shoreline area seaward of the seawall will be available and such availability will be for a shorter period of time each day. Further, these impacts will only be exacerbated as the years go on.

Further, the loss of beach/shoreline area associated with the project can also cause wave reflection off the seawall that can degrade the quality of the offshore surfing areas, especially over time, and will be expected to ultimately eliminate such surfing resource entirely as sea levels rise and tripping features cannot be established further inland at proper depths. In addition, that same phenomenon can make it unsafe for swimmers to enter the water at all, and eliminates safe refuge for kayakers along the coast, where such activity is particularly popular in Pismo Beach.

In addition to such public recreational access impacts, there is also a perhaps more insidious outcome 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 may be prevented from accessing land that would otherwise become public trust.⁸¹ 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.

To offset these impacts, **Special Condition 4** requires the payment of a fee to the City of Pismo Beach to be specifically used for public access and recreation projects in the City limits. Such projects can include those that provide access to and along the shoreline, including new public beach access stairways, or stairway repairs/improvements to ensure vertical beach access; new public coastal pathways or public pathway repairs/improvements; and/or new blufftop or beach park or park repair/improvement projects. Although this mitigation was required for coastal hazard policy consistency, it also offsets impacts from a public access and recreation perspective. Although a fair argument can probably be made that additional public recreational access mitigation is required, and that using the coastal hazard mitigation also for such access impacts is a form of 'double dipping' on such mitigation, the

⁸⁰ *State of California Sea-Level Rise Guidance (2018 Update)*; California Natural Resources Agency & Ocean Protection Council; Sacramento, California; March 14, 2018; 1-84.

⁸¹ 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).

Commission notes that the impacts are overlapping and difficult to separate from one another.⁸² To the extent that there are latent access impacts deserving of additional mitigation over and beyond that identified in the Coastal Hazard section above, the Commission finds that they are adequately mitigated in this case, including to the extent such a conclusion appropriately addresses the Applicant's claims that no new mitigation is needed and that the mitigation applied by the Commission via the original CDP in 2003 is sufficient.

Similarly, remaining public access and recreation impacts that accrue due to project activities on the beach, and from construction overall (both that has already occurred under the three ECDPs and that will occur with construction on the remaining project components), the Commission finds the same thing. With respect to construction impacts, this project has already and will: require the movement of large equipment, workers, materials, and supplies in and around the shoreline area and public access points; include large equipment operations in these areas; result in the loss of public access use areas to a construction zone; and generally intrude and negatively impact the aesthetics, ambiance, serenity, and safety of the recreational experience at this location. The three ECDPs included the Commission's standard construction best management practices (BMPs), and regular project updates provided by the Applicant during installation of the ECDP project components indicated compliance with those BMPs. For the project components still to be completed under this CDP, **Special Condition 2** provides construction parameters that limit the area of construction, limit the times when work can take place (e.g., to avoid both weekends and peak summer use months when recreational use is highest), clearly fence off the minimum construction area necessary, keep equipment out of coastal waters, require off-beach equipment and material storage during non-construction times, clearly delineate and avoid to the maximum extent possible public use areas, and restore all affected public access areas at the conclusion of construction. A construction plan is required to implement these measures. In addition, to provide maximum information to the beach-going public during all construction, the Applicant must maintain copies of the CDP and approved plans available for public review at the construction site, as well as provide a construction coordinator whose contact information is posted at the site to respond to any problems and/or inquiries that might arise.

In conclusion, the required mitigation fee and construction measures appropriately mitigate for the public recreational access impacts associated with the proposed project. Therefore, as conditioned, the proposed project can be found consistent with the

⁸² See, for example, *Ocean Harbor House Homeowners Assn. v. California Coastal Comm'n* (2008) 163 Cal.App.4th 215, 241 ("section 30235 does not limit the type of conditions that the Coastal Commission may impose in granting a permit to construct a seawall. Rather, the Coastal Commission has broad discretion to adopt measures designed to mitigate all significant impacts that the construction of a seawall may have.").

Coastal Act access and recreation policies cited above.⁸³

E. PUBLIC VIEWS

1. Applicable Coastal Act and LCP Provisions

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 includes the following protections for visual quality, including requirements specific to the visual impacts of shoreline armoring:

LUP Principle P-7 Visual Quality is Important. *The visual quality of the city's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well being of the community. Development of neighborhood, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. ...*

LUP Policy S-6 Shoreline Protective Devices. *... Design and construction of protective devices shall minimize alteration of natural landforms, and shall be constructed to minimize visual impacts. ...*

IP Section 17.078.060(D). *... If permitted, seawall design must (a) respect natural landforms;... and (c) use visually compatible colors and materials*

And finally, the LCP includes policies specifically protecting the visual aesthetic of coastal bluffs, including prohibiting development on bluff faces except for certain public accessways:

LUP Policy S-5: Development on Bluff Face. *No additional development shall be permitted on any bluff face, except engineered staircase or accessways to*

⁸³ At the same time, and as was the case with the Coastal Hazard findings above, the project is not LCP consistent on these points for similar reasons. In addition, it is not clear that the proposed project can be found consistent with LUP Principles P-14 and P-22 which clearly protect the affected shoreline area "as an irreplaceable national resource" required to be available "for [people's] benefit and enjoyment forever" where maintaining public access to this area is "an integral and critical part of the city's parks and recreation program;" or LUP Policy CO-5 that requires that use of ocean front land, such as is proposed here, not lead to any adverse impacts to natural resources. In terms of the latter specifically, the project cannot avoid deteriorating natural shoreline resources, as described. Again, however, the LCP provides only non-binding guidance in this case.

provide public beach access, and pipelines for scientific research or coastal dependent industry....

2. Consistency Analysis

The proposed armoring results in an artificial concrete wall at the back of the beach/shoreline area that does not appear natural, and adversely impacts the public viewshed (see photos in **Exhibit 9**). The artificially manipulated environment is further exacerbated by the previously-permitted seawall on the upcoast side of the Applicant's property that is also not evocative of natural bluff conditions so much as a vertical concrete seawall (see photos in **Exhibit 3**). Significantly, the existing previously-permitted upper bluff shotcrete at the project site also includes a stairway and a patio area within it (with patio chairs and related features), as well as what appears to be 'goat trail' type stairs built into the seawall below it, all of which serves the private residence and is therefore not allowable on the bluff face pursuant to LUP Policy S-5 above. All such upper bluff development seriously detracts from the fact that upper bluff shotcreting was required by the original CDP to appear natural and provide some visual camouflaging. To exacerbate these impacts, the proposed project would only expand the shotcreting (covering a new 400 square feet of the natural bluff with similar shotcrete) and would include 3 new steel tieback structures and recognition of 9 additional such tiebacks installed without a benefit of a CDP, all of which would be affixed to the existing armoring and only create a more unnatural appearance. Similarly, drainage infrastructure in the bluff area provides an unnatural element that also detracts from public views.

In short, the proposed project would significantly detract from and degrade protected public shoreline views in a visually sensitive area, inconsistent with the Coastal Act Section 30251 and LCP requirements to protect the public viewshed, minimize landform alteration, be visually compatible with surrounding character, enhance the visual quality where it is degraded, and design shoreline armoring to respect natural landforms and use visually compatible colors and materials. In addition, over time, it can be expected that the rock shelf elevation will continue to naturally erode down, and the seawall footing/foundation will gradually extend above the rock shelf, contributing to additional visual incongruity and impacts.

There are five measures that can be required to offset these public view impacts. First, the upper bluff 'patio,' stairs, and related development must be removed (including for LCP consistency reasons described above), and the area modified to appear as an appropriately treated and contoured concrete surface that better emulates natural bluff landforms (see **Special Condition 1(d)**). Second, the landscaping within 5 feet of the top of the armoring can be modified to ensure that it is native landscaping capable of covering at least the top 3 feet of the seawall (see **Special Condition 1(d)**). Third, the proposed armoring must be colored, contoured, and textured to mimic natural bluff and shoreline features as much as possible, which helps reduce these impacts (see **Special Condition 1(d)**). These design treatments and additional project elements help to offset potential visual impacts of the armoring. However, in the Commission's experience, over time such armoring and associated visual mitigations will degrade, reducing the project's attempts to camouflage a large non-natural concrete structure in a natural environment and contributing to new visual impacts. Thus, fourth, the approval requires

regular monitoring of the armoring elements to ensure that the coloring, texturing, and contouring are maintained in their as-built condition, and requires the same treatment for any portion of the armoring that becomes visible due to erosion over time⁸⁴ (see **Special Condition 5**). And fifth, temporary visual impacts during the remaining construction would occur, and would be required to be minimized through best management practices as required by **Special Condition 2**.

Therefore, as conditioned, the proposed project can be found consistent with Coastal Act Section 30251.

F. MARINE RESOURCES

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*

⁸⁴ Although one method of addressing this potential future new visibility is removal of exposed footing/foundation components over time down to the eroded rock shelf elevation as it becomes exposed, such removal would negatively impact the footing/foundation's structural effectiveness, and is not recommended. Rather, coloring and/or contouring should address such impacts appropriately.

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. ...

In addition, the LCP includes requirements that mirror the Coastal Act, including:

LUP Policy CO-17 Man-made Changes. *Shoreline structures, including piers, breakwaters, channel dredges, pipelines, outfalls and similar structures shall be sited to avoid significant rocky points and intertidal and sub tidal areas. The design and construction of revetment devices and other shoreline structures shall be prepared by qualified engineers in accordance with city standards which will avoid or minimize disturbance of sensitive coastal ecological resources.*

2. Consistency Analysis

Section 30230 and 30231 of the Coastal Act require that marine resources “be maintained, enhanced, and where feasible, restored.” Further, uses of the marine environment must be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. And 30233 only allows for fill of coastal waters for seven enumerated purposes, none of which is coastal armoring. In short, there are two primary marine resource issue areas to be addressed. One is whether the project includes fill of coastal waters, and whether that can be allowed and under what circumstances. And second, 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, in the intertidal area, and potentially in areas of submerged land. This area has a recreational value that is adversely affected by armoring, as articulated in the previous finding, but what can often be lost in cases like this is that it also has a shoreline habitat value. And coastal armoring has also 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.⁸⁵ Sandy beach ecosystems

⁸⁵ 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*,

support unique and often under-appreciated biodiversity and provide a suite of ecosystem services and functions.⁸⁶ 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.⁸⁷

In terms of Sections 30230 and 30231, the proposed project would be expected to result in both temporary and longer-term negative impacts to these surrounding coastal water and beach/shoreline habitat areas, both from construction activities and longer term. In terms of construction, the beach/intertidal area at the base of the bluffs has been occupied as a construction zone for some duration (roughly 3 to 5 months in total) as a result of ECDP activity to date and would require more of the same for the development not yet completed and part of the proposed project. During that construction time, the resource values of the affected area would be reduced and/or eliminated. Construction noise, lights, vibration, and overall activities and human presence will also be expected to adversely affect listed (e.g., southern sea otter and California brown pelican) and unlisted species and their habitat inside and adjacent to the construction zone established. Furthermore, 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 would not be expected to 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 “hangover” 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

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.

⁸⁶ 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.

⁸⁷ 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.

available to respond to any inquiries that arise during construction - see **Special Condition 2**), but they cannot be eliminated entirely.

Longer term, three 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. As the site history shows, much of the armoring is expected to erode eventually in this way and make its way into the marine environment. 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, the project intends to direct project area drainage seaward, where it will find its way into the intertidal and tidepool area, and ultimately more broadly into the ocean. Residential drainage and runoff is not typically innocuous, and can contain a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics such as herbicides, rodenticides, and pesticides.⁸⁸ Although some of the runoff, at least the drainage collected behind the armoring itself, will have had an opportunity to be filtered to some degree by passing through the bluff soils themselves before discharge, drainage from the blufftop above has no such filtration applied. And third, 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.⁸⁹ 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, it appears that the project is located at the least within the intertidal area, and in what appears to be considered submerged waters (or, per Section 30233, coastal waters). Armoring is not one of the seven enumerated and allowed types of uses/development in coastal waters. As result, fill of coastal waters for armoring, including in this case, is not allowed by Coastal Act Section 30233. At the same time, however, Section 30235 provides more specific Coastal Act articulation as to when armoring is allowed (again, best articulated as a type of Coastal Act exception, variance, and anomaly), and that more specific manifestation takes precedence over the allowed types of fills under Section 30233. In other words, if

⁸⁸ Pollutants of concern found in urban runoff include, but are not limited to: sediments; nutrients (nitrogen, phosphorous, etc.); pathogens (bacteria, viruses, etc.); oxygen demanding substances (plant debris, animal wastes, etc.); petroleum hydrocarbons (oil, grease, solvents, etc.); heavy metals (lead, zinc, cadmium, copper, etc.); toxic pollutants; floatables (litter, yard wastes, etc.); synthetic organics (pesticides, herbicides, PCBs, etc.); and physical changed parameters (freshwater, salinity, temperature, dissolved oxygen, etc.).

⁸⁹ 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.

armoring meets 30235 tests for approval, then that can serve as an override to the types uses/development that can fill coastal waters, and that override applies in this case for that reason. At the same time, such override does not negate meeting other Section 30233 requirements, including that the project be the least environmentally damaging feasible alternative, and that the project include feasible mitigation measures to minimize adverse environmental effects.⁹⁰

In short, the project takes place in and adjacent to important marine resources, and results in some amount of marine resource impacts that cannot be avoided with a project of this type. Unfortunately, although it is easy to see that there would appear to be some marine resource impacts of the type described above, and easy to apply construction level BMPs to lessen them, it is much more difficult to objectively quantify and apply mitigations to latent impacts that are likely 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 and in this context, the Commission here finds the identified condition requirements of this CDP together to be sufficient to address marine resource requirements, and that the proposed project can be found consistent with Coastal Act Sections 30230 and 30231 and the LCP.

G. VIOLATION

Violations of the Coastal Act and LCP exist on the subject property including, but not necessarily limited to, the substantial remodeling of the residence without a CDP and the installation of nine armoring tiebacks without a CDP.

Significantly, in 2005, Commission staff observed significant work on the residence underway, with the middle section of the home removed and much of the remaining home's non-structural components removed (see photos in **Exhibit 10**). Commission enforcement staff sent a letter to the City explaining that a CDP was required for such work, and asking them to either take action to enforce the LCP or to allow the Commission to take the lead on enforcement. The letter was also shared with this Applicant in 2005, and the Applicant and the City both responded, claiming that the work was repair and maintenance and that no CDP was required. This led to a yet unresolved dispute between Commission and City staffs as to the necessity of a CDP for the development. City staff had granted building permits for the work on the residence, which included the roof (including some structural elements, although the full extent is unknown); the removal and reconstruction of portions of the existing front, interior, and rear walls; replacement of a portion of the foundation; and a 70 square-foot addition. Coastal Commission staff continue to assert, including in renewed

⁹⁰ 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) as regards 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 seawalls occupying coastal waters. Giving precedence to the more particular provisions of Section 30235 over the more general provisions of Sections 30233(a) and is in accord with generally applicable principles of California law (see, for example, Civil Code Section 3534 ("Particular expressions qualify those which are general")).

correspondence in early 2022, that the work undertaken on the house is development requiring a CDP and is neither exempted nor excluded from the CDP requirement of the LCP, including because (1) there are no exclusions that apply in Pismo Beach;⁹¹ (2) the work went beyond repair and maintenance work, but even if it could be characterized as repair and maintenance work, it occurred in a location where such work requires a CDP; and (3) much like the repair and maintenance exemption, the exemption for improvements to single-family residences that otherwise might apply here specifically does not apply due to the site location within 50 feet of the edge of a coastal bluff.⁹² The Commission concurs with this assessment. To date, however, the City has not required that the Applicant apply for a CDP to authorize the work done to the house, nor has the Applicant acted to resolve this matter, and that violation remains open and unresolved.

The tiebacks were installed in 2005, without CDP authorization, in response to observed erosion while the Applicant was carrying out the work approved by CDP No. A-3-PSB-02-016. The Applicant was made aware of this violation in 2005, and Commission staff, in consultation with the Commission's Senior Engineer at the time, Dr. Lesley Ewing, determined that although the tiebacks were not necessary, their removal would further destabilize the bluff. The tiebacks would be authorized as part of this application (see **Special Condition 1(c)**). Therefore, issuance of the permit, and the subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit will result in resolution of the tieback violation going forward.

In addition, there appears to have been additional unpermitted development that occurred on the property, as described above under 'Project Background,' wherein the shotcrete facing was extended an additional six feet beyond the Commission-approved armoring structure, over the bluff at the downcoast extent of the property. While staff has not found any records authorizing this development, the extra material has since eroded from the bluff and the area in question has been re-armored pursuant to the temporary authorization provided by the ECDPs, which staff is proposing to be permanently authorized by this application.

The Applicant is not proposing to include resolution of the violations relating to the 2005 unpermitted house development in this application and, thus, even if this application is approved, and the CDP is exercised, violations will remain on the subject property that will not be addressed by the Commission's action on this application. The matter has

⁹¹ The Coastal Act allows for local governments to propose, and the Commission to approve, categorical exclusions for explicitly specified categories of development in certain circumstances (commonly referred to as 'categorical exclusion orders'), but no such orders apply in the City of Pismo Beach.

⁹² See Coastal Act Section 30610(a) and CCR Section 13250. The City of Pismo Beach LCP does not specifically describe exempt development, but this is immaterial since the exemptions often found in LCPs emanate from the Coastal Act and the Commission's implementing regulations. Because LCPs derive their statutory authority from the Coastal Act, LCP exemption provisions typically simply echo those found in the Coastal Act and must be understood and interpreted consistent with the Coastal Act and its implementing regulations.

been referred to the Commission's enforcement division to consider options for future action to address the violations.

Although development has taken place prior to submission of this CDP application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act, and the LCP as non-binding guidance. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development, except as otherwise expressed herein.

H. OTHER

Public Rights

The area associated with this CDP application includes land that may be public (e.g., the area of the filled void and 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 11**).

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 12**).

Disclosure

The proposed project represents a unique set of facts, including with respect to the site's past history associated with previous development. And this CDP includes important conditions reflecting the set of facts as they apply to this approval, including the required conditions of approval. In order to ensure that the terms and conditions of this approval are clear to this Applicant as well as any future owners, this approval requires that the CDP terms and conditions be recorded as covenants, conditions, and restrictions against use and enjoyment of the property, and that all real estate disclosures include clear explanation of the CDP and its terms and conditions (see **Special Conditions 13 and 15**).

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 9** 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

To ensure that the proposed project is authorized by all applicable regulatory agencies, **Special Condition 14** requires the Applicant, prior to commencement of construction activities, 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 as constructed and proposed except as modified by the special conditions. Any project changes, including with respect to any Executive Director-approved plans required pursuant to the special conditions or in terms of identified requirements in each condition, shall require an amendment to this CDP unless the Executive Director determines that no amendment is legally necessary (**Special Condition 16**).⁹³

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Pismo Beach, acting as the lead CEQA agency, categorically exempted the project from the provisions of CEQA (pursuant to Section 15301 of the CEQA regulations applicable to existing facilities).

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (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.

⁹³ Note that **Special Condition 14** can be justified in Commission CDP approvals to account for the needed minor refinements and changes that commonly occur as projects are being built out. This operational flexibility is important, particularly for complicated projects like this one.

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 Documents⁹⁴

- Files for A-3-PSB-02-016, G-3-20-0025, G-3-21-0023, and G-3-21-0035

B. Appendix B – Staff Contact with Agencies and Groups

- Applicant's representatives
- Surfrider Foundation
- City of Pismo Beach Planning Division

⁹⁴ These documents are available for review in the Commission's Central Coast District office.