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# W18d

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## STAFF REPORT CDP APPLICATION

**Application Number:** 3-23-0176

**Applicant:** California Department of Fish and Wildlife

**Project Location:** A roughly 160-acre portion of the 872-acre Moss Landing Wildlife Area on the northern side of Elkhorn Slough and immediately inland of Highway 1 in unincorporated Moss Landing, Monterey County

**Project Description:** Construct a new, 920-foot-long setback levee topped by a 14-foot-wide ADA accessible trail; recontour an 850-foot-long section of the Elkhorn Slough bank; restore marsh and eelgrass; maintain/improve former salt ponds; enhance parking lot, add signage, and make other related public access improvements.

**Staff Recommendation:** Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION

The California Department of Fish and Wildlife (CDFW) proposes to implement a habitat resiliency and access enhancement project to protect, restore, maintain, and improve habitat and enhance public access in the 872-acre Moss Landing Wildlife Area (MLWA). The focus of the project is a 161-acre area primarily composed of retired salt evaporation ponds that now serve as critical nesting habitat for the federally threatened western snowy plover. Current site conditions pose an existential threat to this vulnerable nesting site. The managed pond system is protected from the main channel of Elkhorn Slough by a levee built in the 1800s that was not constructed to withstand the impacts of sea level rise and severe weather events caused by climate change. Additionally, rapid erosion of the bank at the project site poses a near-term threat to the structural integrity of the levee; in some locations, erosion has already reached and

begun to impact the levee itself. Resultingly, without intervention, the existing levee is expected to breach in 7-10 years, exposing the managed ponds to tidal inundation that will effectively destroy the plover nesting habitat, and likely cause water quality and additional sedimentation issues in Elkhorn Slough.

The proposed project includes lowering the existing levee, recontouring the shoreline along the existing levee to eliminate the unstable scarp that contributes to the high local erosion rate at the site, restoring the marsh along the bank, and constructing a new setback levee<sup>1</sup> approximately 150 feet north of the existing levee. This proposed approach can be understood as a nature-based adaptation strategy intended to slow erosion at the site while still allowing for a fully functional shoreline and marsh ecosystem. Furthermore, CDFW will plant eelgrass offshore to expand existing beds and associated habitat values. Erosion will be further managed by improving public access facilities and installing symbolic fencing to prevent foot traffic from impacting bank vegetation.

Coastal Act issues raised by the proposed project include potential impacts to sensitive and protected habitats and public coastal access, including as affected by coastal hazards and erosion. With respect to sensitive habitats, the primary goal of the project is to improve the resiliency of plover nesting habitat while maximizing the habitat values of adjacent salt marsh, shoreline, and tidal slough habitats. The current project design is the result of a detailed planning process, including extensive coordination between Commission staff, CDFW staff, and CDFW's partner Ducks Unlimited. While the project does involve a high degree of engineering and site manipulation in terms of levee construction, it must be reviewed from a lens that the site is currently managed salt ponds that are borne from almost 150 years of human intervention. Today, this intervention has resulted in a site that serves as federally-designated critical habitat for western snowy plovers, and the proposed project is meant to maintain and enhance this habitat into the future. Without the proposed project, the site would be inundated by Elkhorn Slough waters and its status as plover habitat would be eliminated. As such, and with a series of proposed measures meant to protect water quality and biological resources during and after construction, the project can be found consistent with Coastal Act wetland, sensitive habitat, and biological resources policies.

With respect to public access, CDFW has proposed to improve and expand existing public access at the site. The existing public access trail atop the existing levee will be retained (although at a lower elevation) and will connect to a new ADA accessible trail atop the new levee to form a trail loop. Along the shoreline section of the trail loop CDFW will install a series of fishing and wildlife viewing platforms with symbolic fencing and fishing rod holders to enable these popular uses while minimizing the trampling of marsh vegetation. In addition, parking area and driveway improvements will allow the onsite parking facilities to reopen, providing increased safe, convenient, and free public parking. Furthermore, the proposed project includes important project elements related to environmental justice and equitable coastal access including the expansion of

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<sup>1</sup> A setback levee is a type of levee that is located a distance from the main channel, allowing a more natural meandering flow as compared to a typical levee which is located directly adjacent to the water and results in a more channelized waterway.

programming and outreach to under-resourced communities, ADA accessibility improvements, multilingual signage, and maintaining access free of charge to the site. These public access improvements will enable substantially more people to visit and enjoy the site while reducing the ecological and erosion related impacts of that visitation.

Finally, with respect to coastal hazards and erosion, the project's purpose is to address on-site erosion that currently threatens the levee system and the habitat supported by it. In addition, in terms of potential hydrological changes and resultant off-site erosion impacts, CDFW performed extensive hydraulic modeling of the project's potential impacts on the site and all of Elkhorn Slough, finding that the project will not adversely impact the surrounding area. The only long-term impact the project is expected to have on the Slough is the local decrease in erosion and sedimentation at the project site resulting from the proposed eelgrass and marsh restoration and new gently sloping levee system. These conclusions have all been affirmed by the Commission's staff engineer.

In sum, as proposed and conditioned, staff believes that the project represents an exciting opportunity to meet multiple Coastal Act objectives, including improving ecological resiliency for critical plover habitat in the face of climate change and sea level rise, as well as significantly upgrading public access and recreation amenities, which will result in a much more visible, functional, and enjoyable public recreational experience for all. Commission, CDFW, and Ducks Unlimited staff have worked cooperatively and extensively on parameters throughout the project formulation process, and the result is one that should benefit coastal resources consistent with the Coastal Act at this important site into the future. Therefore, staff recommends that the Commission approve the project as conditioned. The motion and resolution to effectuate this recommendation are found on **page 5** below.

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### EXHIBITS

- Exhibit 1 – Project Location Maps
- Exhibit 2 – Project Components
- Exhibit 3 – Site Photos
- Exhibit 4 – Snowy Plover Nesting Survey Data
- Exhibit 5 – Proposed Project Plans
- Exhibit 6 – Proposed Mitigation Measures and Best Management Practices
- Exhibit 7 – Proposed Public Access Enhancements

## 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 3-23-0176 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number 3-23-0176 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.** This CDP authorizes the development expressly proposed by the Permittee (i.e., construction of a new setback levee; bank recontouring and restoration; public access improvements; eelgrass planting, water control infrastructure repairs, maintenance, and improvements, and related development) as described and shown in **Exhibits 2, 5, 6, and 7**, including all proposed best management practices and mitigation measures, and as modified by the terms and conditions of this CDP. The Permittee shall undertake development in accordance with the approved CDP's terms and conditions, including any Executive Director-required and approved plans. Minor adjustments to the terms and conditions of the CDP, including to any special conditions and/or required plans, may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; (2) do not adversely impact coastal resources; and (3) do not legally require a CDP amendment or new CDP.
- 2. Public Access Management Plan.** WITHIN ONE YEAR OF CDP ISSUANCE, the Permittee shall submit for Executive Director review and approval a Public Access Management Plan (Access Plan). The Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public use and enjoyment of the public access areas of the site area (including the parking area, levee paths, wildlife viewing platforms, fishing areas, signage, etc.). The Access Plan shall be implemented and all associated development completed as soon as possible, and no later than within two years of construction commencement. The Access Plan shall be substantially in conformance with the public access portion of the plans submitted to the Coastal Commission as shown and described in **Exhibits 2, 5, and 7**, except as modified by these special conditions, and shall at a minimum include the following:

  - a. Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified on an exhibit within the Access Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use).
  - b. Public Access Signs/Materials.** A description of all signs, handouts, brochures, and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (e.g., educational displays, interpretive signage, etc.), shall be provided. Public education/interpretive materials shall be provided in English and Spanish and in substantial conformance with that provided in **Exhibit 7**. Sign details showing the location, materials, design, and text of all public access signs (including the public access use hours described in **Special Condition 2(d)**) shall be included in the Access Plan. At a minimum, public access signs shall be placed in the parking area and adjacent to Highway 1 (including one "Coastal Access" sign

with the Commission's "feet and wave" symbols placed along Highway 1) for conspicuous viewing to alert the traveling public of the site's public access offerings. The signs shall be designed to provide clear information without impacting public views and site character.

- c. Public Access Disruption During Construction.** The site shall remain open to the public during construction and shall minimize disruptions to public access to the maximum extent feasible, while maintaining public safety. When construction requires closure of the site, such closures shall be subject to the review and approval of the Executive Director. When public access to the site is closed, signage shall clearly indicate to the public the expected duration and reason for the closure.
- d. Public Access Use Hours.** Public access areas and amenities, including all parking areas, trails, and viewing platforms, shall be open to the general public free of charge at least between sunrise and sunset every day, except when storms or other hazards present imminent risk of flooding or other significant risks to health and safety. In such circumstances, public access areas and amenities shall be promptly reopened in consultation between the Permittee and Executive Director.
- e. Access Restrictions.** The Access Plan shall identify the type and location of any signs, gates, fencing, bollards, or other such measures necessary to prevent unauthorized access (e.g., bollards/fencing to prevent vehicles from driving on the levees, fencing to direct people away from the boatyard area, etc.). All such measures shall be minimally visually intrusive and shall not impede access to the areas open for public use and enjoyment as identified in subsection (a).
- f. Public Access Areas and Amenities Maintained.** The public access components of the project shall be maintained in their required and approved state. In the event that the approved public access amenities (including but not limited to the trails, parking lot, wildlife viewing areas, etc.) are threatened with damage or destruction from coastal hazards, or become a hazard, or are damaged or destroyed by coastal hazards, such amenities shall be reconstructed with due diligence and speed, and with minimum disruption to continued public use (and/or relocated inland as necessary to provide long term stability). Prior to such relocation/reconstruction, the Permittee shall submit two copies of a Reconstruction/Relocation Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately complete and submit the required application. The Reconstruction/Relocation Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable), and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation.

- g. Programming and Outreach.** The Access Plan shall identify the goals, methods, and programs to increase equitable public access and environmental education for under-resourced communities and youth in the Moss Landing area (e.g., Royal Oaks, Watsonville, Pajaro, Castroville, and Salinas). This may include partnering with and expanding existing programming and outreach associated with the Elkhorn Slough National Estuarine Research Reserve's Community Engagement and Education programs (e.g., "Bilingual Bird Walks", bilingual "Careers in Science" programs for area 4<sup>th</sup> graders, family garden days, open houses, and other such programs), and may also include new programming and outreach that takes advantage of the unique characteristics of the site and its public access and recreation offerings (e.g., youth/community fishing days, school field trips, etc.).

All requirements above and all requirements of the approved Public Access Management Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Public Access Management Plan.

- 3. Maintenance and Monitoring.** This CDP authorizes future maintenance as described in this special condition and subject to the following protocols:
- a. Maintenance.** "Maintenance," as it is understood in this condition, means development that would otherwise require a CDP whose purpose is to maintain the overall permitted development (e.g., the new setback levee, public access amenities, restored bank area, and managed pond improvements) and make improvements in their approved configuration, including retrieval of any project components that may be displaced from the approved design, removal of accumulated sediment in water control infrastructure, cleaning and repair of water control structures, removal of vegetation to enhance plover nesting habitat, etc. This CDP authorizes maintenance activities for a period of 10 years (i.e., to September 6, 2033). The duration of authorized maintenance activities may be extended beyond 10 years by the Executive Director if the Permittee submits a written request to do so prior to the expiration date (and prior to any subsequent expiration date) where such request shall summarize the effectiveness of the CDP in meeting project objectives, including in terms of maintaining plover habitat values, public coastal access, and coastal resource protection, and include any changes needed to better meet these objectives, and all as informed by monitoring reports per Special Condition 3(d) below. The expiration date may be extended by up to ten years at a time, and shall only be extended if there are not changed circumstances that the Executive Director determines would require the proposal to be heard as a new CDP or CDP amendment.
- b. Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits and/or 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 activities. Except for necessary emergency interventions (see below), such notice shall be given by at least 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.

- d. Monitoring.** Each year for the first five years after construction is complete, and once on the tenth year, the Permittee shall provide monitoring reports documenting the state of the approved project and its progress in meeting project objectives. Monitoring reports shall at a minimum include photographs of the parking area, setback levee, and shoreline, and shall clearly document any erosion at the site. Reports shall also include a brief description of project successes, challenges, and any anticipated future adaptive management/maintenance needs. Monitoring reports may be combined with maintenance notifications to repair any documented project issues. Any extension of the permitted 10-year maintenance period shall also include updated monitoring requirements.
  - e. Non-compliance Proviso.** If the Permittee is not in compliance with any of the terms and 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 and the discretion of the Executive Director.
  - f. 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).
- 4. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to hazards from episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal and riverine flooding, and the interaction of same; (ii) 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 this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of

such claims due to such hazards), expenses, and amounts paid in settlement arising from any injury or damage.

- 5. 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.

#### 4. FINDINGS AND DECLARATIONS

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

###### 1. Project Location

The proposed project is located within a roughly 160-acre portion of the Moss Landing Wildlife Area (MLWA), which altogether comprises 872 acres of tidal salt marsh, former (now retired) salt ponds, levees, an abandoned building and boatyard, and public access improvements including trails and a viewing platform, owned by the California Department of Fish and Wildlife (CDFW). The MLWA is bounded by Highway 1 to the north and west, Elkhorn Slough to the south and east, and agricultural grazing land to the north. The Moss Landing Harbor is located to the southwest, on the west side of Highway 1 from the MLWA. The project area is the section of the MLWA closest to Highway 1 and includes the main driveway, parking area, a section of the bank of Elkhorn Slough, and five former salt evaporation ponds built into an area of historic salt marsh. The ponds are now managed by CDFW and its partners (including Ducks Unlimited) as habitat for a number of shorebirds and waterfowl, including nesting habitat for the federally-threatened western snowy plover. An approximately 830-foot-long section of levee separates the managed pond system from the main channel of Elkhorn Slough and protects the managed ponds from tidal inundation. The waters of Elkhorn Slough at this location fall within the Elkhorn Slough State Marine Conservation Area and the Monterey Bay National Marine Sanctuary, designations affording ecological protections for the area but still allowing for recreational fishing and low-intensity public access.

The MLWA is a popular destination for hikers, birders, and recreational fishers despite limited public access amenities and vehicular parking. Kayaking and waterfowl hunting (by boat) are allowed in the greater MLWA, but not within the managed ponds, with most of those visitors accessing the area from the Moss Landing Harbor or Kirby Park. The only terrestrial method of public access to the MLWA is via the Highway 1 driveway

entrance. The driveway and parking lot area are currently closed to vehicles due to damage and disrepair, but the public may enter on foot at this location. The only public parking currently available is an informal pullout at the driveway entrance and along the highway shoulder. Existing recreational facilities at the site include an approximately 1,000-foot-long section of trail atop the levee that divides the managed ponds from the main channel of Elkhorn Slough, informational signage, and two wildlife viewing platforms accessed via the levee trail. See **Exhibit 1** for location maps and **Exhibit 3** for site photos.

## **2. Project Background**

The project site is an area of historic salt marsh that was developed in the late 1800s into a system of evaporation ponds that produced salt for local fish canneries. Salt production halted in the 1970s, and the property was designated as a wildlife area in 1985. Today, the retired salt evaporation ponds serve as important habitat for a variety of birds. In the spring and summer months, when managed pond water levels drop, the exposed sandy soil is used by the federally threatened western snowy plover for nesting, and in the winter when the managed ponds are full, brown pelicans and other waterfowl use them as an overwintering site that offers safety from terrestrial predators. While the managed ponds are anthropogenic in nature, they now provide nesting habitat that is critical for the plover population of the Monterey Bay. In 2006, pursuant to CDP waiver 3-04-044-W,<sup>2</sup> CDFW completed Phase 1 of the Moss Landing Habitat Enhancement Project which included the reconfiguration of the managed ponds to improve plover breeding and foraging habitat. In 2012, pursuant to CDP waiver 3-11-024-W,<sup>3</sup> Phase two of the project was completed, including topographical and vegetative improvements within the managed ponds to improve plover habitat, and the installation of public access improvements.

## **3. Project Description**

The proposed project constitutes Phase 3 of the Moss Landing Habitat Enhancement Project, which is intended to further improve habitat resiliency and public access at the MLWA. The section of levee that separates the managed ponds in the MLWA from the main channel of Elkhorn Slough provides protection of the pond system from tidal inundation by enabling the water levels in the ponds to drop in the spring and summer (thus exposing the soils for plover nesting). This section of levee is rapidly eroding and CDFW expects it to fail within the next 7-10 years if left unchanged. Levee failure would result in the summer inundation of the ponds and loss of plover nesting habitat. The proposed project includes a new setback levee to protect plover habitat from tidal inundation that could occur due to levee failure and sea level rise; bank recontouring and restoration of the existing levee to help reduce local erosion rates; public access improvements; and drainage infrastructure maintenance, repairs, and improvements.

These four parts are described more specifically as follows:

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<sup>2</sup> Approved by the Commission in October 2004.

<sup>3</sup> Approved by the Commission in July 2013.

- 1. Setback Levee:** A new, 920-foot-long setback<sup>4</sup> levee will be constructed approximately 150 feet north of the current levee alignment. At its top, the new levee will be 14 feet wide, and the sides will have a gentle 10:1 slope. The levee is intended to protect the managed ponds from tidal inundation if the bank and existing perimeter levee continue to erode north into the MLWA. The new setback levee is expected to provide at least 65 years of erosion protection and 80 years of sea level rise resiliency to the plover nesting habitat.
- 2. Nature-Based Bank Erosion Protection and Restoration:** The existing perimeter levee will be lowered, and the area between the old and new levees will be filled to an elevation conducive to high marsh habitat. The shoreline, which currently forms an unstable scarp that periodically caves into the Slough as it is undermined by tidal action, will be recontoured to a 10:1 slope to reduce local erosion rates and allow for marsh restoration. After bank recontouring is complete, eelgrass will be planted just offshore to facilitate the expansion of existing eelgrass beds and associated habitat values.
- 3. Public Access Improvements:** The existing trail located atop the perimeter levee will be lowered along with the levee and will be connected with a new trail atop the new levee to form a trail loop. The trail located on the new levee will be 14 feet wide and surfaced to comply with Americans with Disabilities Act (ADA) requirements. The remaining portions of the loop trail will be 10 feet wide and constructed of earthen materials. The existing western fishing/wildlife viewing platform is currently threatened by erosion and will be relocated inland to connect with the new trail, and the eastern platform will remain in place with some repairs. Two fishing/wildlife viewing areas will be located at-grade with the path on the eastern and western sides of the section of shoreline trail. Between the two larger platforms, three smaller fishing areas, where the path width widens to accommodate fishers, will be added, along with fishing rod holders. Symbolic fencing and multilingual directional and interpretive signage will be installed to minimize off-trail use, particularly along the bank. The Highway 1 driveway entrance will be re-paved, and a portion of the informal parking area at the entrance will be paved. Low areas of the gravel driveway and parking area will be raised, and the visitor kiosk will be replaced in place. These improvements will allow for the reopening of a parking area serving at least 14 vehicles, including one ADA accessible parking spot.
- 4. Infrastructure Maintenance:** Infrastructure within the salt ponds themselves will be repaired, maintained, and improved, including: the removal of silt and sediment that impairs drainage features; construction of sediment traps; cleaning and repair of water control infrastructure; selective removal of vegetation to enhance pond connectivity for plover chicks; repair of a walkway needed for maintenance; and the addition of gravel or oyster shells to enhance plover habitat.

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<sup>4</sup> A setback levee is a type of levee that is located a distance from the main channel, allowing a more natural meandering flow as compared to a typical levee which is located directly adjacent to the water and results in a more channelized waterway.

See **Exhibits 2 and 5** for the proposed project components and project plans.

## **B. Standard of Review**

The entirety of the project is located within the Coastal Commission's original CDP jurisdiction. The standard of review for development within the Commission's original jurisdiction is Chapter 3 of the Coastal Act.

## **C. Habitat Resources**

### **Applicable Coastal Act Provisions**

The Coastal Act regulates the type of development allowed within wetlands, sloughs, rivers, and other coastal waterways, including for restoration and flood control purposes. Sections 30233 and 30236 state (in relevant part):

**Section 30233(a).** *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: ... (6) Restoration purposes. (7) Nature study, aquaculture, or similar resource-dependent activities.*

**Section 30233(c).** *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Wildlife, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study ... if otherwise in accordance with this division.*

**Section 30236.** *Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

The Coastal Act also includes a suite of protections for sensitive habitats including aquatic habitats and the water quality needed to support their health. Coastal Act Sections 30230 and 30231 protect marine and inland watercourse biological resources stating:

**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.*

### **Analysis**

The proposed project is located within coastal wetlands (specifically, salt marsh and salt ponds), areas of historic wetland fill (i.e., the driveway, parking area, and existing levee), and the main channel of Elkhorn Slough, which is within the Monterey Bay National Marine Sanctuary. The project includes new areas of fill (for the new levee), grading along the salt marsh bank of the Slough, minor grading in the salt ponds themselves (primarily the removal of accumulated sediment in drainage infrastructure), and eelgrass planting within the waters of the Slough. The project area clearly qualifies as coastal wetlands, and indeed, Elkhorn Slough is one of the 19 wetlands referenced by Section 30233(c) as an acquisition priority for CDFW. As such, the project must meet the requirements related to wetland fill and alteration in Sections 30233(a) and 30233(c). Additionally, the proposed work along the bank, in the intertidal area, and in submerged lands of the Slough necessitates conformance with the marine resource protections of Sections 30230 and 30231. Finally, the project also includes a levee, which is a type of flood control infrastructure along a slough/channel that is typically regulated under Section 30236.

The proposed project includes elements of habitat protection, restoration, maintenance, and enhancement that can be understood together as a habitat resiliency project. The project area is biologically rich, and includes the main channel of the Elkhorn Slough, which supports robust populations of sea otters and harbor seals; a strip of north coast salt marsh habitat that runs along the bank of the Slough at the site; and the retired salt evaporation ponds that serve as foraging and overwintering habitat for a variety of shorebird and waterfowl species, as well as nesting habitat for the federally threatened western snowy plover. The site is designated by the U.S. Fish and Wildlife Service as critical habitat area for the snowy plover under the Endangered Species Act, and serves as a particularly important nesting site for the population of snowy plover in the Monterey Bay area. In years when weather and storm events result in severe beach erosion, the managed ponds in the project area serve as important early season nesting locations for plover. Survey data from the U.S. Fish and Wildlife Service and Point Blue Conservation Science (a non-profit that studies plover in the area) indicates that each year a substantial portion of the breeding pairs of snowy plover in the Monterey Bay region nest at the project site, and that the clutch hatch rate at the site is higher than the

regional average.<sup>5</sup> In all, nearly two decades of survey data indicates that the project site is a critically important nesting site for the Monterey Bay population of snowy plover that offers unusually high quality nesting habitat to this threatened species. **Exhibit 4** depicts plover nest site locations in the managed ponds from 2003 to 2021.

Current site conditions pose an existential threat to this vulnerable and important nesting site. The managed pond system is protected from the main channel of Elkhorn Slough by a levee constructed in the 1800s that was not designed to withstand the impacts of sea level rise and severe weather events caused by anthropogenic climate change. Additionally, rapid erosion of the bank at the project site (see site photos in **Exhibit 3**) poses a near-term threat to the structural integrity of the levee; in some locations, erosion has already reached and begun to impact the levee itself. Resultingly, without intervention, the existing levee is expected to breach in 7-10 years, exposing the managed ponds to tidal inundation that will effectively destroy plover nesting habitat, and likely cause water quality and additional sedimentation issues in Elkhorn Slough.

With respect to the wetland and marine environment, Section 30233 sets standards for diking, filling, and dredging of these habitat types. Coastal Act Section 30108.2 defines “fill” as “earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.” The Commission has long considered grading, excavating, and other ground-disturbing activities in coastal wetlands and estuaries to be a form of dredging/fill. Filling, diking, or dredging in wetlands is permissible under Section 30233 if: (1) it is for one of the seven allowable uses listed under Section 30233(a)(1)-(7), (2) there is no feasible less environmentally damaging alternative, and (3) feasible mitigation measures have been provided to minimize adverse environmental effects. Section 30233(c) further dictates that such diking, filling, or dredging must also maintain or enhance the functional capacity of the wetland or estuary, and that any alteration of wetlands specifically identified by CDFW must be further limited to a smaller subset of allowable uses including “very minor incidental public facilities” and “restorative measures.”

As discussed above, the proposed project includes the construction of a new setback levee in the managed pond nearest the main channel of Elkhorn Slough, grading and restoration of the wetland along the bank to reduce susceptibility to erosion, eelgrass planting, the removal of sediment from drainage control features used to manage the ponds for nesting plover, and public access improvements. Overall, the purpose of the project is to improve habitat resiliency at the site, perhaps most notably in terms of the new levee’s key role in retaining the pond’s function as federally-designated critical habitat for plovers, and the proposed fill is necessary to achieve this goal. Public access improvements merely take advantage of the fill necessary to make these resiliency improvements, requiring no additional fill to construct. As such, the project satisfies the first prong of the Section 30233(a) test because it provides for both restoration as well

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<sup>5</sup> The number of breeding adult plovers counted in the project area between 2013 and 2017 averaged 11% of the Monterey Bay region’s total. In addition, the clutch hatch rate for western snowy plover nests in the project area during 2019 was 50%, whereas the clutch hatch rate throughout the entire Monterey Bay region was 40%.

as nature study, and is also consistent with Section 30233(c), because the proposed fill is for restoration purposes.

In order to address the second prong of the Section 30233(a) test related to project alternatives, it is necessary to first understand the historical context of the project. Current site conditions, including the importance of the site to the Monterey Bay population of snowy plover, are a result of over a century of interconnected anthropogenic impacts. First, western snowy plover have experienced widespread habitat loss and degradation associated with development pressure and the introduction of invasive species in beach and sand dune habitats; these factors are some of the primary drivers of the plover's population decline, and why high-quality nesting sites are critically important to the future of the species. Second, climate change and the dune and beach loss associated with more intense winter storms and beach scour, as well as dune and beach loss associated with inundation due to sea level rise, poses ongoing risks to the remaining natural plover habitat. Third, the plover's use of the managed ponds as a nesting area is only possible because of the original diking and dredging of this area of historic salt marsh to create the ponds, as well as the maintenance and improvement efforts of CDFW and its partners to improve conditions for plover at the site.<sup>6</sup> Finally, the high erosion rates that currently threaten the nesting habitat are in large part due to a number of anthropogenic impacts (e.g., including climate change, shoreline vegetation trampling, and construction of the harbor) as discussed in greater detail in the Coastal Hazards and Erosion section below. Ultimately, the habitat value of the site for nesting plover, the importance of this habitat for the Monterey Bay plover population, and the threats to this habitat are all direct results of human activities. These interlocking anthropogenic impacts, and the need for an engineered approach to habitat resiliency in this case, are indicative of the cascading adaptation needs created by decisions dating back over a century to disrupt and attempt to control natural processes. In short, and somewhat paradoxically, the site's ability to serve as critical habitat for plovers and important habitat for other species is the result of human manipulation dating almost 150 years. It's within this context of these being managed ponds that the Commission must review the proposed project.

As such, while the new levee and maintenance activity represent relatively intensive forms of habitat management, the bank recontouring is proposed to be carried out in as natural manner as possible with a gentle sloping nature to allow for marsh vegetation to grow and wetlands to function. Other alternatives, such as the no project alternative, which would indeed let the pond system become more 'natural' by letting the levee erode away and convert the salt ponds into more permanently inundated marshes, would result in a loss of prime plover habitat. This alternative was dismissed as it would materially change the habitat system and adversely affect plovers. And a more 'hard' and engineered levee/armoring solution was dismissed as it would result in the loss of functional shoreline ecology and salt marsh habitat. As such, the proposed project is the least environmentally damaging alternative and passes the second prong of the Section 30233(a) test.

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<sup>6</sup> For example, Phases 1 and 2 of this project as permitted by CDP waivers 3-04-044-W and 3-11-024-W.



Finally, the proposed project includes all feasible mitigation measures as required by Sections 30233(a), as well as by Sections 30230 and 30231, to ensure protection of water quality and biological productivity. The project includes a suite of best management practices during construction such as erosion control measures, spill prevention, staging and stockpiling, equipment fueling and maintenance, hazardous materials management, fire prevention, and work site housekeeping. Biological avoidance and minimization measures include pre-construction biological surveys, construction crew education, construction timing to avoid the plover nesting season, conducting shoreline work during low tide to protect Slough water quality, various practices to protect marine mammals, and nesting bird survey and appropriate buffers. The proposed BMPs and mitigation measures form a well-developed plan to protect resource values at the site and are a product of close coordination between the CDFW and Commission Ecology staff in the planning phase of the project. This framework is highly protective of coastal resources, including marine resources and the biological productivity of coastal waters; it appropriately prioritizes the protection of coastal resources over other construction goals and allows for construction to take the time required to minimize construction impacts. For example, levee construction will not occur during plover nesting season, which is the primary reason construction is expected to take two years rather than one. Similarly, construction will halt if any marine mammal comes within 50 feet of construction activities to avoid any potential adverse effects to local seals and sea otters. **Special Condition 1** requires that the Permittee adhere to all BMPs and mitigation measures described in the application materials (see **Exhibit 6**), and **Special Condition 3** provides for monitoring and adaptive management to ensure project goals and benefits are realized, with potential changes and improvements made based on lessons learned.

In sum, while the proposed project includes some intensive grading and new levee creation, this level of intensity is appropriate for a managed pond system that is the result of decades of human intervention. As such, and as concurred by the Commission's staff ecologist team, the proposed project is the most appropriate path towards habitat resiliency at the MLWA. As such, the Commission finds that the proposed project meets the requirements of Sections 30233, 30230, and 30231 of the Coastal Act.

And finally, while Elkhorn Slough is best described as a tidal slough and marsh and not necessarily a river or stream as regulated by Section 30236, the levee/flood control measures of the project (i.e., the levee and bank recontouring) are substantially similar to the types of development traditionally regulated by 30236. This Coastal Act provision is similar to the requirements of Section 30233 as it governs wetlands, including authorizing development such as a levee when the purpose is for flood control and/or habitat restoration and when measures are employed to minimize any adverse environmental impacts. As described above, given that the project's purpose is to regulate flooding/inundation to protect the pond's habitat values to plovers, the project meets the allowable use criteria of Section 30236 as a flood control and habitat improvement project, and the proposed avoidance and minimization measures similarly can be understood to address any potential adverse impacts. As such, the project can be found consistent with Coastal Action Section 30236.

Therefore, as conditioned, the proposed project is consistent with the applicable Coastal Act habitat resource protection policies.

#### **D. Public Access and Recreation**

##### ***Applicable Coastal Act Provisions***

Coastal Act Sections 30210 through 30213, 30221, and 30223 protect public access and recreation. 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 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 30221.** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

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

These overlapping Coastal Act policies protect public recreational access to and along the beach/shoreline and to offshore waters for public recreational access purposes, particularly free and low-cost access. Importantly, Coastal Act Section 30210's requirement to maximize access and recreational opportunities represents a different threshold than to simply provide or protect such access, and it is fundamentally different from other like provisions in this respect. Namely, it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and it provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.

##### ***Analysis***

The MLWA is a destination that offers a range of public uses, including waterfowl

hunting,<sup>7</sup> fishing, bird watching, hiking, and kayaking. The MLWA is free to access, but current public access infrastructure, including the driveway and parking lot, is in disrepair and is resultingly closed to the public. The only parking currently available requires visitors to park in a small informal parking area with room for approximately seven vehicles at the entrance of the MLWA, and walk in via the driveway. Alternative parking is located at the North Harbor boat ramp and requires visitors to walk across Highway 1 to access the MLWA. This parking arrangement limits the number of visitors able to enjoy the site, is a public safety hazard, and is wholly inaccessible to wheelchair users despite the otherwise wheelchair friendly nature of existing (and proposed) facilities. Despite the inaccessibility of the site, and the general lack of signage visible from the highway, the MLWA remains a popular public access site for a variety of uses, and the small amount of informal parking currently available fills up quickly on the weekends.

The project as proposed will substantially improve and expand existing public access facilities at the site. The project includes upgrades to the existing driveway and parking lot that will allow the lot to reopen, tripling the amount of free parking available to the public and allowing wheelchair users to access the site. The project also includes a new ADA accessible trail atop the new setback levee, with the new trail connecting to the existing shoreline trail to form a trail loop. CDFW will add two large fishing/wildlife viewing platforms at grade on each end of the existing shoreline trail, and three smaller fishing area popouts will be added between them, so as to enable fishing along the entirety of the shoreline trail while leaving room for pedestrians to pass. Fishing rod holders will be installed in these areas for public use. One of the existing wildlife viewing platforms, which is currently threatened by erosion and sea level rise, will be relocated inland to overlook the area of restored marsh, and the other will be repaired. Symbolic fencing will be installed along the trails to protect marsh and plover nesting habitat, and bilingual educational and directional signage will be installed.

As such, the proposed project includes significant new public access and recreation amenities and upgrades, which will result in a much more visible, functional, and enjoyable public recreational experience. The Applicant expects to complete and open the new and improved access features of the project by the end of the two-year construction period, although as with any project of this scale, the construction timeline may be impacted by logistical hurdles. To codify these proposed elements, and to ensure clarity and ease of implementation into the future, **Special Condition 2** requires the preparation of a Public Access Management Plan (Access Plan) for Executive Director review and approval. The Access Plan's purpose is to maximize public access offerings by, among other things, specifying that public access/parking is free of charge, the location and type of facilities open to the public, hours of operation (i.e., at least sunrise to sunset),<sup>8</sup> location of signage and interpretive features, and measures to control access to off-limit areas (e.g., prohibiting vehicles on the levees, etc.). In

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<sup>7</sup> Hunting is not allowed in the managed ponds where plover habitat and pedestrian access is located, but it is allowed by boat in other areas.

<sup>8</sup> Although the Commission typically requires that public access facilities that are closed at night be open during daylight hours, and defines daylight hours as one-hour before sunrise to one-hour after sunset), CDFW is required by statute to limit access in such situations to sunrise to sunset.

addition, the Access Plan specifies that access is to remain open as much as possible during construction,<sup>9</sup> and also specifies protocols for rebuilding access infrastructure in case of coastal hazards damage. And lastly, the Access Plan is to serve as a vehicle for equitable public access by identifying opportunities to increase usage by local under-resourced communities, including specifying the programs and protocols related to outreach, engagement, and environmental education. The proposed improvements to public access infrastructure present an opportunity for CDFW to expand programming to the MLWA and create new programs that take advantage of the unique features at the site.

In conclusion, the proposed project will repair and improve public access and recreational facilities at the site, maximizing public access while protecting and enhancing sensitive coastal resources. Outreach and educational programming, ADA accessibility improvements, multilingual signage, and the continuation of free public access to the improved facilities also come with additional environmental justice benefits. As such, and for the reasons stated above, the Commission finds that the project is consistent with the public access policies of the Coastal Act.

### **E. Coastal Hazards and Erosion**

The Coastal Act requires that new development address coastal hazards risks, including that such development does not create or significantly contribute to erosion. Section 30253 states (in part, emphasis added):

**Section 30253.** *“New development shall do all of the following: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (b) Assure stability and structural integrity, **and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area** or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...”*

### **Analysis**

Current erosion rates in Elkhorn Slough are high, particularly at the project site. Over the 20-year period between 2002 and 2022, some sections of the bank at the project site eroded by 34 feet or more (see **Exhibit 3**). Such dramatic erosion, both episodic and over the longer term, is due to several factors. First, when the Moss Landing Harbor and Highway 1 were originally constructed, the mouth of Elkhorn Slough was fixed in place, and the geometry of the shoreline in the slough was changed to accommodate the harbor and highway. These changes altered the hydrology of the slough, increasing the tidal prism and currents, which then caused erosion throughout the slough, including at the project site. Second, local subsidence and climate change induced sea level rise likely contribute to erosional trends in the Slough and at the project site. Third, public access is currently unrestricted along the section of bank in question. This has resulted in the loss of marsh vegetation due to trampling in some locations (also shown in

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<sup>9</sup> The Commission recognizes that certain areas must be closed to public use during construction activity. This CDP’s intent is to limit such closures as much as possible, and also to ensure that once construction activity is complete, all impediments to public access will be removed and the site’s parking lots, trails, viewing platforms, and other amenities will be fully open to public use.

**Exhibit 3**), and fishers often pound or screw personal fishing rod holders into the bank, damaging marsh vegetation and destabilizing bank soils. Both the loss of marsh vegetation and these fishing practices destabilize the shoreline and increase its susceptibility to erosion. Finally, and most significantly, the bank at the project site forms an unstable scarp that is subject to undermining and collapse, particularly in areas with little vegetation and heavy foot traffic (see **Exhibit 3**). Indeed, responding to the erosion of the existing levee that protects the salt ponds from complete tidal inundation (and thus loss of prime plover habitat) is the precise reason for the project, as described previously.

To address the high local erosion rate while maximizing habitat the proposed project includes the construction of a new levee system that aims to function as a nature-based adaptation strategy. The bank will be recontoured to eliminate the scarp and create a gentle 10:1 slope and will be revegetated with native marsh vegetation. The more gradual slope is expected to be far less susceptible to erosion by preventing large chunks of scarp from collapsing into the Slough, slowing local water velocities at the bank's edge, and stabilizing soils with native marsh vegetation. To protect shoreline vegetation and maintain bank stability, the project also includes the construction of five fishing platforms along the shoreline path, the addition of permanent fishing rod holders, and symbolic fencing to minimize trampling of marsh vegetation. Taken together, the nature-based adaptation strategies and public access management infrastructure are expected to substantially reduce erosion at the site and improve shoreline habitat values.

While the project as described above will address on-site erosion issues, it should be noted that the Moss Landing Harbor District has voiced concerns about the project's potential off-site erosion and sediment transport impacts, including in the harbor itself. The District has identified concerns about potential impacts to harbor facilities, particularly that the project's change to the Slough's morphology may result in 'edge effects' that end up exacerbating erosion on either side of the new levee system. In addition, they've indicated the project may result in higher sediment loads within the Slough and resultingly more frequent and more expensive dredging operations required to keep the harbor open. To address these issues, the CDFW conducted a hydraulic study which modeled the project and various project alternatives under current conditions and with different levels of sea level rise. The modeling found that the project will not have any significant impact on water velocity in Elkhorn Slough, and as such is not expected to materially affect erosion rates off-site and create any edge effects. Indeed, as discussed above, the project is expected to reduce erosion at the site, including through marsh vegetation that will help absorb tidal water energy, which can in turn be reasonably expected to reduce the sediment load in the Slough. In other words, the Slough is a large and dynamic system with many factors affecting sediment loads and potential erosion. But this project, given the results of the Applicant's modeling, is not expected to cause any substantial change in Slough dynamics. The project has been designed to take a currently unstable scarped bank and restore a more gradual slope, setting back the levee away from the active shoreline to improve the resiliency of the important habitat and access infrastructure. All of these findings and conclusions have been reviewed and concurred by the Commission's Staff Engineer Jeremy Smith.

Lastly, with respect to coastal hazards more broadly, while the project is expected to reduce the risk of coastal hazards and erosion at the site, the project area is located in a low-lying area adjacent to Elkhorn Slough and is thus in a location potentially subject to flooding and other hazards risks. Development in such dynamic environments is susceptible to damage due to long-term and episodic processes. To ensure the Applicant acknowledges the risks inherent to the project location, **Special Condition 4** requires the Applicant to assume all risks of the development and indemnify the Commission in the event of any damage resulting from the approved project.

In conclusion, the project will play an important role in reducing local erosion at the site without negatively impacting ecosystems or infrastructure outside of the project area, consistent with Section 30253. As such, and for the reasons stated above, the Commission finds that the proposed project is consistent with Coastal Act Section 30253.

#### **F. 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 5** 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.

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

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. CDFW, acting as the CEQA lead agency, adopted a Final Initial Study and Mitigated Negative Declaration for the proposed project in December 2021.

The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has analyzed the relevant coastal resource issues with the proposal and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All above findings are incorporated herein in their entirety by reference.

Accordingly, the Commission finds that only as modified and conditioned herein will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will

not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

## 5. APPENDICES

### **A. Appendix A – Substantive File Documents<sup>10</sup>**

- CDP Files 3-04-044-W and 3-11-024-W

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

- California State Lands Commission
- Moss Landing Harbor District
- Ducks Unlimited Inc.

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<sup>10</sup> These documents are available for review in the Commission's Central Coast District office.