

CALIFORNIA COASTAL COMMISSION

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



Th16a

Filed: 4/5/2024
Action Deadline: 10/2/2024
Staff: Ryan Moroney - SC
Staff Report: 5/24/2024
Hearing Date: 6/13/2024

STAFF REPORT CDP APPLICATION

Application Number: 3-24-0020

Applicant: San Luis Obispo County Department of Parks and Recreation

Project Location: On the bluffs seaward of Highway 1 between the unincorporated town of Cayucos and the City of Morro Bay in San Luis Obispo County

Project Description: Construct a 12-foot-wide, 1.25-mile-long Class 1 multi-use public recreational trail to connect the City of Morro Bay with the community of Cayucos, including bridges, on-site bicycle and pedestrian enhancements; public trail connections; habitat restoration, and related improvements

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The San Luis Obispo County Department of Parks and Recreation proposes to construct a new formalized segment of the California Coastal Trail (CCT) comprised of a 12-foot-wide, 1.25-mile-long Class 1 bicycle and pedestrian trail that will connect the City of Morro Bay to the community of Cayucos to the north. The proposed development includes five free-span bridges, guard rails, retaining walls, pullout style interpretive panels, and signage, as well as habitat restoration at various locations along the length of the new trail. Importantly, the project proposes to fill a critical gap in the formalized CCT, thus better linking these two communities.

Coastal Act issues raised by the proposed project include the fact that the project area is subject to coastal hazards, includes some dune habitat features just below the bluffs, and is in a location of known archeological resources. Those issues are balanced by the

fact that the project will provide a safe, separated, and user friendly multi-modal coastal trail between the two coastal communities. The project has been envisioned for several decades, and should result in a substantial benefit to area residents and visitors, including to provide for broad views of and access to this impressive stretch of beaches, backing up to Highway 1 and the undeveloped foothills. The project, including as conditioned, also includes related amenities such as public parking, pullouts, interpretive signage, and other features making it friendly and accessible to the walking and biking public.

With respect to coastal hazards, while the majority of the length of the trail will be set back far enough from the bluff edge and shoreline to avoid armoring, a small portion of the proposed project would rely on new armoring in the form of new retaining walls to provide stability. This southern portion is located in a narrow pinch point between the beach and the highway, and the County determined that it was the least environmentally damaging feasible alternative to provide uninterrupted coastal access. As detailed further in this report, staff too concurs with this assessment, including as the CCT in this location can be considered coastal-dependent, there is really no other alternative alignment for this portion of the CCT, and it has been sited, designed, and conditioned to minimize and mitigate potential impacts. In addition, the project would include some nature-based adaptation elements in the form of using driftwood from the beach and dune creation atop it along portions of the back beach area that would be vegetated with native dune species to help increase resiliency more naturally. The project also includes conditions waiving the right to additional armoring and requiring removal/relocation inland over time in response to erosion threats, including in cooperation with Caltrans' adaptation planning efforts for this stretch of Highway 1. As such, the project is a critically important public recreational access asset and can be found consistent with the Coastal Act's coastal hazard provisions.

With respect to dune areas in the project area, the Applicant would be required to apply protective measures during construction, and to enhance dune areas following construction, resulting in up to nine acres of habitat restoration, based on updated habitat surveys and standard mitigation ratios. In addition, the trail can be considered a resource-dependent trail in light of its ability to foster public appreciation of these resources. As such, the project will ultimately enhance dunes, and can be found consistent with the Coastal Act's habitat provisions.

With respect to known and suspected archeological resources in the project area, consistent with the Commission's Tribal Consultation Policy, staff conducted outreach to all tribes identified on the Native American Heritage Commission list for this area, and consulted with all tribes that responded, including by providing them with a copy of the draft condition language, to which no objections were received. In addition, special conditions would require the County to notify interested local tribes prior to any ground disturbance activities, and to provide an additional opportunity for such representatives to monitor such activity in conjunction with a qualified local archeologist, and to assist with the preparation a plan for how to protect such resources if needed.

Lastly, the project is conditioned to include typical conditions for a project of this nature and location, including repair and maintenance, minor changes, other agency approvals, future permitting, and indemnification.

In sum, as proposed and conditioned, staff believes that the project represents an exciting opportunity to meet multiple Coastal Act and community objectives, including a new multi-modal California Coastal Trail connection between the communities of Cayucos and Morro Bay, as well as resource enhancements to the area's dune and bluff environment. Therefore, staff recommends approval as conditioned. The motion and resolution to effectuate this recommendation are found on **page 5** below.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION..... 5

2. STANDARD CONDITIONS 5

3. SPECIAL CONDITIONS..... 6

4. FINDINGS AND DECLARATIONS 15

 A. Project Location, Background, and Description 15

 1. Project Location..... 15

 2. Project Background..... 15

 3. Project Description 15

 B. Standard of Review..... 16

 C. Coastal Hazards 16

 D. Public Access and Recreation 19

 E. Habitat Resources..... 22

 F. Archeological Resources 27

 G. Other Project Considerations 28

 H. California Environmental Quality Act (CEQA) 29

5. APPENDICES..... 29

 A. Appendix A – Substantive File Documents..... 29

 B. Appendix B – Staff Contact with Agencies and Groups..... 30

EXHIBITS

- Exhibit 1 – Regional Vicinity Map
- Exhibit 2 – Proposed Project Plans
- Exhibit 3 – Project Area Photos

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 an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission **approve** Coastal Development Permit Number 3-24-0020 pursuant to the staff recommendation, and I recommend a **yes** vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number 3-24-0020 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. **Revised Final Plans. PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Permittee shall submit one electronic copy and two paper copies of Revised Final Plans to the Executive Director for review and written approval. The Revised Final Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a graphic scale. The Revised Final Plans shall be in substantial conformance with the proposed design plans (titled “Morro Bay to Cayucos Multi-Use Gap Closure Project” and dated January 4, 2024; see Exhibit 2), and shall show all on- and off-trail project components, including CCT trail connections and dune features, with the following additional detail:
 - a. **Retaining Wall Surfacing.** The concrete surfaces of all publicly visible portions of the project shall be faced with a sculpted concrete surface that mimics the natural undulating bluff landform in the vicinity in terms of integral mottled color, texture, and undulation to the maximum extent feasible. Any protruding elements (e.g., corners, edges, etc.) shall be contoured in a non-linear manner designed to evoke natural bluff undulations. All drainage and related elements within the sculpted concrete shall be camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden or inconspicuous as seen from public viewing areas, including camouflage of any expected drainage staining over time. The color, texture, and undulation of all such surfaces shall be maintained throughout the life of the approved development. All such surface treatments shall make use of paints, stains, sealants, and any other such materials that are appropriate for and safe for use in the marine environment. Such contouring and/or colorizing/staining shall also be required of any portion of the approved development that becomes visible due to erosion and/or displacement/removal of debris/riprap. At least 30 days prior to commencement of finish concrete surfacing, the Permittees shall submit to the Executive Director for review and written approval the qualifications of the contractor who will perform the finish concrete work, including photos and identification of (a) similar completed projects, and (b) expected finish results. Finished concrete work shall not commence until the Executive Director has approved the expected finish results in writing.
 - b. **Nature-based Coastal Resiliency Feature.** The Plans shall include a nature-based coastal resiliency feature in the form of dune creation along the back beach using existing and seasonal driftwood from the beach, covering it with sand, and planting with native dune species consistent with the requirements of the HMMP (see **Special Condition 3**).

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Revised Final Plans.

- 2. As-Built Plans. WITHIN THREE MONTHS OF COMPLETION OF CONSTRUCTION**, the Permittee shall submit one electronic copy and two paper copies of As-Built Plans for Executive Director review and written approval showing all development authorized by this coastal development permit, all property lines, and all project elements. The As-Built Plans shall be substantially consistent with the approved Final Plans per Special Condition 1. 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 provide complete photographic coverage of the permitted trail and related structures and project elements at this location (e.g., the new pullouts, guard rails, retaining walls, nature-based dune features and associated 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.
- 3. Habitat Mitigation and Monitoring Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Permittee shall submit one electronic copy and two paper copies of a final Morro Bay Cayucos Trail Connector Project Habitat Mitigation and Monitoring Plan (HMMP) for Executive Director review and written approval. The HMMP shall be prepared by a qualified resource specialist approved by the Executive Director and shall identify areas of habitat restoration and monitoring of dune and related habitat areas affected by the project, including drainages, between Highway 1 and the sea within the project area between Toro Lane in Morro Bay and Studio Drive in Cayucos. These areas shall equal or exceed the appropriate mitigation ratios identified for wetland and ESHA impacts for a total of up to nine acres of restoration. The Plan shall include the following features:

 - a. Impact Avoidance Measures and BMPs.** A final survey identifying existing habitat and sensitive biological resources within the project area shall be included in the HMMP. Sensitive native plant species shall be flagged and avoided to the maximum extent feasible during restoration activities. Mitigation measures to avoid impacts to other sensitive biological resources, including but not limited to western snowy plover, San Luis Obispo owl's-clover, and Blochman's dudleya, shall also be included. The Plan shall also detail measures that will be implemented as part of the repair and maintenance plan identified in **Special Condition 7** below.
 - b. Removal of Non-native Invasives and Revegetation.** Restoration shall include the removal of invasive species (as recognized by the California Invasive Plant Species Council or California Department of Fish and Wildlife) and the seeding or planting of native species. If any type of pesticide is proposed, it shall be supported by a clear rationale as well as details on the proposed products (including any additives and registration numbers), how they will be used, an application schedule, precautions to limit runoff, and triggers for remedial action. Any plans for active revegetation shall be provided with supporting rationale and detail species palette(s), the size and number of container plants, and the rate and method of seed application, along with any planting supplements and/or

temporary irrigation plans. Native species shall be grown from seed and/or cuttings sourced from within the local coastal area. Grading shall be minimized and confined to measures designed to achieve natural contours in the restoration area. The plan shall detail proposed grading, if any, and appropriate measures to minimize erosion, particularly on steep slopes and bluffs while restoration is underway, including symbolic or temporary fencing/barriers and phasing of restoration along bluffs if necessary. Active restoration actions shall be completed as soon as possible, but no later than three years after the start of construction of the approved development, with the exception of any phasing needed to ensure the stability of the bluffs. The Executive Director may extend this deadline upon demonstration of good cause, provided the Permittee has shown due diligence towards meeting such deadline.

- c. Monitoring.** A detailed description of the monitoring methods, a clear rationale for method selection, and the analytical framework intended to be used for performance assessments shall be provided.
- d. Success Criteria.** Final success criteria based upon either reference sites or literature review (e.g., the Manual of California Vegetation community membership rules) shall be provided, and shall include native species cover, non-native species cover tolerance thresholds, and species diversity, and specifics for all sensitive species identified.
- e. Reporting.** Once initial restoration activities (i.e., non-native and invasive plant removal and initial native plantings) are completed, the Permittee shall submit annual restoration monitoring reports to the Executive Director for review and approval for at least five years and no less than three years absent any maintenance or remedial activity apart from weeding, whichever is longer, and if necessary, continuing until all final success criteria have been achieved. Annual reports shall identify restoration implementation and progress (including a presentation of monitoring results, assessment of progress toward meeting final success criteria, and any adaptive management recommendations).

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

4. Protection of Cultural and Archeological Resources.

- a. AT LEAST ONE MONTH PRIOR TO COMMENCEMENT OF ANY GROUND-DISTURBING CONSTRUCTION ACTIVITIES,** the Permittee shall (i) notify in writing, email, and/or phone calls, as necessary, the representatives of Native American Tribes listed on an updated Native American Heritage Commission (NAHC) contact list; (ii) invite all Tribal representatives on that list to be present and to monitor ground-disturbing activities; and (iii) arrange for any invited Tribal representative that requests to monitor and a qualified archaeological monitor to be present to observe project activities with the potential to impact archaeological and/or tribal cultural resources. A qualified archaeological monitor means qualified at a minimum by the California Office of Historic Preservation (OHP)

standards. The monitor(s) shall have experience monitoring for archaeological resources of the local area during excavation projects, be competent to identify significant resource types, and be aware of recommended Tribal procedures for the inadvertent discovery of archaeological resources and human remains. Evidence of written notification shall be made available to the Executive Director upon request.

- b.** If an area of tribal cultural and/or archaeological resources is discovered during ground-disturbing activities, all construction shall cease and shall not recommence except as provided in subsection (d) hereof, and the Permittee shall immediately notify and retain a tribal cultural resource specialist and a qualified archaeologist to analyze the significance of the find in consultation with the Native American Tribes listed on the NAHC list. The archaeologist and tribal cultural resource specialist shall immediately notify the Tribes on the NAHC list. Significance testing may be carried out only if acceptable to the affected Native American Tribe(s), in accordance with a Significance Testing Plan. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area that includes a reasonable buffer zone recommended by the monitor(s). Project activities may continue outside of the exclusion zone.
- c.** Should human remains be discovered on-site during the course of the project, immediately after such discovery, the on-site archaeologist and/or Native American monitor shall notify the County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. An “exclusion zone” may be established around the discovery area. If the County Coroner determines that the human remains are those of a Native American, the coroner shall contact the NAHC within 24 hours, pursuant to Health and Safety Code Section 7050.5. The NAHC shall deem the Native American most likely descendant (MLD) to be invited to participate in the identification process pursuant to Public Resources Code Section 5097.98. The landowner/Permittee shall comply with the requirements of Section 5097.98 and work with the MLD person(s) to preserve the remains in place, move the remains elsewhere onsite, relinquish the remains to the descendants for treatment, or determine other culturally appropriate treatment. Within five (5) calendar days of notification to NAHC, the Permittee/landowner shall notify the Coastal Commission’s Executive Director of the discovery of human remains and identify any changes to the proposed development or mitigation measures that may be needed related to the inadvertent discovery. The Executive Director shall maintain confidentiality regarding the presence of human remains on the project site. The Executive Director shall determine whether the identified changes are de minimis in nature and scope.
- d.** A Permittee seeking to recommence project activities within an exclusion zone following discovery of tribal cultural and/or archaeological resources (excluding the discovery of human remains, which shall follow Section 5097.98 as noted in (C) above) shall submit a Supplementary Archaeological Plan (SAP) prepared by the project archaeologist in consultation with the Native American Tribes listed on

the NAHC list. The SAP shall be submitted for the review and written approval of the Executive Director. If the Executive Director approves the SAP and determines that the SAP's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after this determination is made by the Executive Director in writing. If the Executive Director approves the SAP but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

5. **Coastal Hazards Risk.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following:
 - a. **Coastal Hazards.** That the site is subject to coastal hazards consisting of episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tsunami, tidal scour, coastal flooding, landslides, bluff and geologic instability, bluff retreat, liquefaction and the interaction of same, many of which will worsen with future sea level rise.
 - b. **Assume Risks.** (1) All risks to the Permittee and to the property that is the subject of this CDP are assumed by the Permittee, including any injury and/or damage from coastal hazards in connection with this permitted development; (2) any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from coastal hazards are unconditionally waived; (3) the Commission, its officers, agents, and employees are indemnified and held harmless by the Permittee with respect to 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, against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to coastal hazards; and (4) all responsibility for any adverse effects to people and/or property caused by the approved development is assumed by the Permittee.
 - c. **Public Trust.** This CDP does not allow encroachment onto public trust lands, and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing and/or other approval.
6. **Coastal Hazards Response.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, to all of the following:
 - a. **CDP Intent.** The intent of this CDP and its terms and conditions is to allow for the approved trail project to be constructed and used consistent with the terms and conditions of this CDP for only as long it remains safe for occupancy and use without additional measures (beyond ordinary repair and/or maintenance, as

articulated in this condition below) to protect the structure from coastal hazards (as these hazards are defined by Special Condition 5(a) above). The intent is also to ensure that the approved project or portions of it are removed and/or relocated and the affected area restored to natural conditions under certain circumstances (e.g. in response to erosion threats, including in cooperation with Caltrans' adaptation planning efforts for this stretch of Highway 1) consistent with the Removal and Restoration Plan required in subsection (d) below.

- b. Section 30235 Waiver.** Any rights that the Permittee may have to construct shoreline armoring to protect the approved trail development, including rights that may exist under Coastal Act Section 30235, the San Luis Obispo County Local Coastal Program, or any other applicable laws, are waived.
- c. Removal and Restoration Plan.** If any of the following occurs, the Permittee shall, within the timeframe identified below, submit two copies of a Removal and Restoration Plan (RRP) to the Executive Director for review and written approval:
 - 1. Unsafe Conditions.** If any portion of the approved project is threatened and/or damaged by coastal hazards and if a government agency with legal jurisdiction has ordered that the threatened and/or damaged portion of the approved development is not to be used, via a final order not overturned through any appeal or writ proceedings, due to that threat or damage, and if such government agency concerns cannot be abated by ordinary repair and/or maintenance, the RRP shall provide that all development meeting the "do not use" criteria is removed and/or relocated to the degree necessary to allow for such government agency to allow use of the remainder of the development after implementation of the approved RRP. All areas from which structural elements are removed shall be restored to natural conditions.
 - 2. Setback Triggers.** In the event that the edge of the blufftop recedes to within five feet of the approved trail, but no government agency has ordered that the trail be closed, then the RRP shall address whether any portions of the approved trail are threatened by coastal hazards. The RRP shall identify all those immediate or potential future measures that could stabilize the approved trail considering such coastal hazards threats without going beyond ordinary repair and maintenance and without reliance upon shoreline armoring, including, but not limited to, removal and/or relocation of portions or all of the approved trail and restoration of affected areas to natural conditions.

The RRP shall be submitted as soon as possible after, but in no case later than 30 days after, any of the above criteria are met. In cases where one or more of the above criteria is met, the RRP shall be required to meet all requirements for all triggered criteria. In all cases, the RRP shall also ensure that: (a) all non-building development necessary for the functioning of the approved trail (including but not limited to access and utilities) is modified/relocated as needed as part of the removal/relocation episode; (b) all removal areas are restored to natural conditions of a quality consistent with adjacent natural areas; and (c) all modifications necessary to maintain compliance with the terms and conditions of this CDP,

including the objectives and performance standards of these conditions, are implemented as part of the RRP.

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

- 7. Repair and Maintenance.** For maintenance-oriented development associated with non-armoring components of the approved development, this CDP authorizes limited future repair, maintenance, and/or improvement development that is determined by the Executive Director to: 1) fall within the overall scope and intent of this CDP; 2) be consistent with the City of Morro Bay and San Luis Obispo County LCPs; and 3) not have any significant adverse impacts to coastal resources. Any development that the Executive Director determines does not meet such criteria shall require a separate CDP or a CDP amendment, as directed by the Executive Director.

For maintenance-oriented development associated with the armoring components of the approved development, this CDP authorizes future maintenance and repair development be subject to the following:

- a. Maintenance/Repair.** “Maintenance” and “repair” as understood in this portion of this special condition means development that would otherwise require a CDP, with the purpose to maintain and/or repair the approved armoring development in its approved and/or required state pursuant to the terms and conditions of this CDP.
- b. Other Agency Approvals.** The Permittee acknowledges that these armoring maintenance and repair stipulations do not obviate the need to obtain permits and/or authorizations from other agencies for any future maintenance or repair.
- c. Maintenance/Repair Notification.** At least two weeks prior to commencing any armoring maintenance and/or repair activity, the Permittee shall notify, in writing, planning staff of the Coastal Commission’s Central Coast District Office. The notification shall include: (1) a detailed description of the maintenance/repair proposed; (2) any plans, engineering, geology, or other reports describing the event; (3) a construction plan that clearly describes construction areas and methods, and that is consistent with the parameters of **Special Condition 1** above; (4) other agency authorizations; and (5) any other supporting documentation describing the armoring maintenance/repair event. Armoring maintenance/repair shall not commence until the Permittee has been informed by planning staff of the Coastal Commission’s Central Coast District Office that the armoring maintenance proposed complies with this CDP. If the Permittee has not been given a verbal response or sent a written response within 30 days of the notification being received in the Central Coast District Office, the armoring maintenance shall be authorized as if planning staff affirmatively indicated that the armoring maintenance/repair complies with this CDP. The notification shall

clearly indicate that armoring maintenance/repair is proposed pursuant to this CDP, and that the lack of a response to the notification within 30 days constitutes approval of it as specified in the CDP. If the notification does not clearly and explicitly indicate same, then the automatic authorization provision does not apply. In the event of an emergency requiring immediate armoring maintenance, the notification of such emergency shall be made as soon as possible, and shall (in addition to the foregoing information) clearly describe the nature of the emergency.

- d. Maintenance/Repair Coordination.** Armoring maintenance/repair activity shall, to the degree feasible, be coordinated with other maintenance/repair activity proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the beach and beach access points. As such, the Permittee shall make reasonable efforts to coordinate their maintenance/repair activity with other adjacent property maintenance/repair activities, including adjusting their maintenance/repair activity scheduling as directed by planning staff of the Coastal Commission's Central Coast District Office.
- e. Restoration.** The Permittee shall restore all beach and other public access areas impacted by construction activities to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office upon completion of restoration activities to allow for a site visit to verify that all project and beach-area restoration activities are complete. If planning staff should identify additional reasonable measures necessary to restore project and/or beach areas, such measures shall be implemented as quickly as feasible.
- f. Noncompliance Provision.** If the Permittee is not in compliance with permitting requirements of the Coastal Act, including the terms and conditions of any Coastal Commission CDPs or other coastal authorizations that apply to the subject property, at the time that an armoring maintenance/repair event is proposed, then such armoring maintenance/repair that might otherwise be allowed by the terms of this future maintenance/repair condition may be disallowed by the Executive Director until the Permittee is in full compliance with the permitting requirements of the Coastal Act, including all terms and conditions of any outstanding CDPs and other coastal authorizations that apply to the subject properties.
- g. Emergency.** Notwithstanding the emergency notifications set forth in subsection (c) of this special condition, nothing in this condition shall affect the emergency authority provided by 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).

h. Duration of Covered Maintenance/Repair. Future armoring maintenance under this CDP is allowed subject to the above terms until June 13, 2034, where that armoring maintenance term may be extended by the Executive Director if the Permittee requests and the Executive Director grants, in writing, such extension, where such extensions can be in increments from at least one to up to ten years at a time. The Executive Director may decline to extend any maintenance term if the Executive Director determines that there are changed circumstances associated with such allowance of armoring maintenance/repair events that necessitate re-review, including in terms of non-compliance (subsection (f) above) or undo coastal resource impacts. It is the Permittee's responsibility to request Executive Director approval prior to the end of each armoring maintenance/repair period pursuant to these armoring maintenance/repair provisions, and the term shall only be extended if the Permittee requests an extension prior to the end of each armoring maintenance/repair period and only if the Executive Director extends the armoring maintenance/repair term in writing.

The Permittee shall maintain the approved development in its approved and required state, and consistent with the terms and conditions of the CDP.

- 8. Minor Modifications.** All requirements of the terms and conditions of this CDP, including related to any Executive Director-approved plans, shall be enforceable components of the CDP. Minor adjustments to the terms and conditions of this 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.
- 9. Other Authorizations. PRIOR TO COMMENCEMENT OF CONSTRUCTION,** the Permittee shall provide to the Executive Director evidence of other required authorizations for, or alternatively evidence that no such authorizations are needed, for the development authorized by this CDP (e.g., California Department of Fish and Wildlife, California State Water Resources Control Board, etc.) The Permittee shall inform the Executive Director of any changes to the project required by such entities, where such changes shall not be incorporated into the project until the Permittee obtains a Commission-approved amendment to this CDP, unless the Executive Director determines that an amendment is not legally required.
- 10. Future Permitting.** Any and all future proposed development related to this project, this project area, and/or this CDP shall be subject to the Coastal Commission's continuing CDP jurisdiction. This CDP authorizes limited future repair, maintenance, and/or improvement development that is determined by the Executive Director to: 1) fall within the overall scope and intent of this CDP; 2) be consistent with the San Luis Obispo County LCP; and 3) not have any significant adverse impacts to coastal resources. Any development that the Executive Director determines does not meet such criteria shall require a separate CDP or a CDP amendment, as directed by the Executive Director.
- 11. 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 assigns challenging the approval or issuance of these CDPs, the interpretation and/or enforcement of CDP conditions, or any other matter related to these CDPs. 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.

4. FINDINGS AND DECLARATIONS

A. Project Location, Background, and Description

1. Project Location

The proposed project would be located in San Luis Obispo County, on the coastal bluffs west of and adjacent to Highway 1, between the Highway and the Pacific Ocean. It would extend from the northern portion of Morro Bay at the Yerba Buena Street/Highway 1 intersection to the south end of Studio Drive in Cayucos and be located along existing coastal access points at the North Point Natural Area in Morro Bay, and the south end of Studio Drive, as well as informal coastal access areas such as the Chevron Marine Terminal pier landing across from Toro Creek Road. See **Exhibit 1** for regional location maps and **Exhibit 3** for photos of the site.

2. Project Background

According to the County, the purpose of the project is to provide a continuous, safe, and scenic off-highway coastal trail connecting Morro Bay with Cayucos for bicycles and pedestrians while maximizing users' contact with the coast and avoiding/minimizing adverse environmental impacts. The proposed project is specifically identified in the County's Parks and Recreation Element of the General Plan and also located within the California Coastal Trail corridor, and been in development since 2004, including in collaboration with San Luis Obispo Council of Governments (SLOCOG), California Coastal Conservancy, California Department of Transportation (Caltrans), California Department of Parks and Recreation (State Parks), Cayucos Citizens Advisory Committee, San Luis Obispo Bike Club, the San Luis Obispo County Bicycle Coalition, Commission staff, as well as several departments of San Luis Obispo County.

3. Project Description

The proposed project includes construction of a 12-foot-wide, 1.25-mile-long asphalt trail on top of approximately 6 inches of compacted aggregate base, including five free span bridges that are 12 feet wide. The largest bridge would cross Toro Creek and would be approximately 200 feet long, while the others are over drainageways and are less than 80 feet long. The project also proposes a Midwest guard rail near the middle of the project that is 32 inches high and is proposed to separate the trail from Highway 1 at the former pier landing area near Toro Creek where the trail would be within 5 feet of

the highway. Along the downcoast portion of the proposed trail, approximately 650 linear feet of retaining walls are proposed due to the narrow width of the bluff in this location, and would be wrapped in geofabric reinforced with a 1-inch layer of concrete and covered with a rock veneer, or poured in place with the outside facing wall formed and filled with colored concrete to blend in with the surrounding dune. The project also includes three pull outs/interpretive areas that would educate trail users of the history, wildlife, and environment; trail identification signage and bike route street markings along local streets in both Morro Bay and Cayucos and the reorganization of a parking area at the southern end of Studio Drive. In addition, the project includes removal of non-native invasive species, including iceplant, along portions of the project north of Toro Creek, as well as habitat restoration at various sites along this section of trail. And finally, the project proposes to incorporate a nature-based coastal resiliency feature in the form of dune creation along the back beach utilizing existing and seasonal driftwood from the beach, covering it with sand, and planting with native dune species. See **Exhibit 2** for proposed project plans.

B. Standard of Review

The project includes components within the Commission's retained CDP jurisdiction (near Toro Creek) as well as within the County's CDP jurisdiction (north of Morro Bay) and the City of Morro Bay's jurisdiction (near Toro Lane and North Point Natural Area). Under Coastal Act Section 30601.3, when a project requires a CDP from both a local government with a certified Local Coastal Program (LCP) and the Commission, the Commission may process a consolidated CDP application for the proposed development when the applicant, the local government, and the Commission's Executive Director agree to consolidate the coastal permit processing, and public participation is not substantially impaired by that review consolidation. In this case, the County, as both the applicant and the local government in charge of CDP processing, as well as the City of Morro Bay and the Executive Director agreed that consolidation was warranted. The legal standard of review for a consolidated CDP is Chapter 3 of the Coastal Act, with the policies of each relevant, certified LCP providing non-binding guidance.

C. Coastal Hazards

Applicable Coastal Act Provisions

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. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.*

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...

30101: *Coastal-dependent development or use means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.*

Analysis

Coastal Act Section 30253 requires new development to minimize coastal hazards risk in a manner without shoreline armoring. That said, Coastal Act Section 30235 is an override over other Coastal Act provisions that allows armoring if required to serve a coastal-dependent use or to protect an existing structure in danger from erosion subject to the requirement that adverse impacts to local shoreline sand supply are mitigated or eliminated. The Coastal Act provides for these limitations because shoreline armoring can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beaches.

While the majority of the project will be set back from the bluff edge and shoreline a sufficient distance to avoid the need for armoring, the downcoast portion of the proposed trail, between the North Point Natural Area and Toro Creek, is located within a very narrow bluff area., Portions of this area are fronted by what appears to be unpermitted rip rap.¹ In order to construct the trail along this stretch, the applicant proposes to construct approximately 455 linear feet of retaining wall between 3-6 feet in height between Highway 1 and the proposed trail, as well as approximately 700 linear feet of retaining wall along the seaward side of the proposed path. The rip rap would be restacked immediately along the base of the bluff and incorporated into the base of the trail and retaining structure in such a way as to leave no more exposed rip rap on the beach. In addition, all of the proposed retaining wall work would be colored and contoured to look as natural and bluff-like as possible. All of this proposed retaining wall work would be understood to be new shoreline armoring to both create and also protect the proposed trail project.

As noted above, Section 30235 of the Coastal Act acts as an override to potentially provide for shoreline protection in limited circumstances, including when it is required to serve a coastal dependent use and is designed to eliminate or mitigate adverse impacts on coastal resources, notwithstanding that other Coastal Act policies would normally direct its denial (e.g., for beach, access, view, landform alteration, etc, reasons). Thus, to warrant consideration of armoring, the Commission must find that the proposed trail is a coastal dependent use, as described in Section 30101.

In this case, the proposed trail would be part of the California Coastal Trail network, envisioned as a continuous interconnected public trail system along California's coast. The CCT, by definition, is intended to maximize access to ocean views and scenic coastal vistas and should be located as close to the ocean as possible. The project involves armoring in a small area that is essentially a pinch point between the bluffs and the highway, and thus retaining walls/armoring are needed to provide for this critical

¹ The rip rap is located against the base of the bluff, and Commission could not find any CDP record for it.

CCT linkage. Under these type of circumstances, namely when there is no other place to put the CCT, the Commission has both considered it to be a coastal-dependent use and to provide for its protection in certain cases.² And in this case, the Commission finds similarly, in that the proposed new trail can be considered coastal-dependent, inasmuch as this trail connecting to and along well-used public beaches requires a site adjacent to the sea to function for its intended public purposes. The express purpose of the trail is to facilitate and improve access to the immediate shoreline/sea for ocean viewing, ocean access (including for general beachgoing and surfing), and tidepooling. It is thus a coastal-dependent use, as it requires a location adjacent to the sea to function for its intended public purpose. Thus, the coastal dependent trail segment is eligible for consideration of armoring and meets the first test of Coastal Act Section 30235.

That said, to allow for such armoring, Section 30235 still requires that it be the least environmentally damaging alternative. Here, the County considered three other potential alternatives to the proposed armoring. Early in the design process, the County considered typical slope grading for the trail. However, it quickly became clear that slope grading wasn't an option between the NPNA and Toro Creek because the bluff and right-of-way (ROW) in this area is too narrow and the needed slope for construction would spill into Highway 1's travel lane. The County next considered placing the trail on the east side of Highway 1 by crossing at Yerba Buena Street to avoid trail construction in this area. However, a traffic analysis determined that the corner of Yerba Buena Street and Highway 1 is the most dangerous intersection along the trail corridor and placing trail users here could pose a safety concern (Final Environmental Impact Report (FEIR) page 4-87). The final alternative the County considered was to build the trail at the same elevation as Caltran's ROW in this area and support it with pilings in the existing rip rap. However, this design would put the trail too close to Highway 1; because of the narrow right-of-way, Caltrans would require a 54-inch-tall safety barrier wall that separates the bike trail from the highway. This 800 linear foot barrier wall would block views of the beach from Highway 1. This safety barrier wall was identified as a Class 1 impact to Aesthetics in the FEIR for this project. The County does not want to block the view of the beach and ocean from Highway 1, so this third alternative was rejected. Moreover, this design would also rely on shoreline armoring in the form of proposed pilings. Thus, the project can be understood as the least environmentally damaging feasible alternative. And as for mitigation, the project is in many ways self-mitigating in that it is a public access enhancement project comprised of over a mile of new CCT. In addition, and as discussed subsequently, the project includes about 9 acres of habitat restoration along the corridor. Finally, **Special Condition 1** requires the retaining wall to blend in as much as possible with the dune/bluff aesthetic, while also incorporating 'living shoreline' features at the base of the bluff to further enhance dune resources in this area. Thus, the project can be found to adequately mitigate its impacts in this case.

All of that said, the Applicant's geotechnical investigation acknowledges that the proposed project is located in an area susceptible to coastal hazards within the next 75

² For example, see CDP 3-16-0446 (Rockview Seawall and Accessway) and CDPs 3-18-0720, 3-20-0166, and 3-22-0440 (Pleasure Point Armoring/Access).

years or less, and the Applicant understands this to be the case. The fact is that this entire transportation corridor, including Highway 1, will be subject to coastal hazards likely within this time frame, and thus a comprehensive plan is needed to address long term planning for the site.³ Thus, the Applicant is willing to invest in the proposed project in the interim to allow the public to reap the substantial public benefits of it now and over the next fifty years or so, while a more long-term planning effort is undertaken. Thus, to acknowledge these facts, and ensure consistency with Coastal Act hazards requirements, the approval is conditioned to require the Applicant to assume all of the risk for developing in an area of coastal hazards, to waive the right to additional future shoreline armoring, to require the Applicant to monitor bluff retreat and to remove development that becomes threatened by such hazards based on actual circumstances and triggers over time (see **Special Conditions 5 and 6**). In this way, the project can provide great public recreational access benefits today while also being adaptive to future coastal hazards issues. When viewed holistically through this lens, the project can be found consistent with the requirements of Sections 30235 and 30253.

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:

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.*

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.*

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...*

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

30221. *Oceanfront land suitable for recreational use shall be protected for*

³ Indeed, when the Commission recently approved seismic retrofits to the Toro Creek Bridge, it imposed a requirement for Caltrans to perform such analysis. Moreover, Caltrans currently has a CDP application to retrofit the Southbound Toro Creek Bridge where a similar, and perhaps more robust, special condition is being considered for that case as well.

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.

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

As previously discussed, the trail connector project fills a critical gap in the CCT by connecting existing trail networks in the City of Morro Bay and the town of Cayucos to the north. The paved trail would run for approximately 1.25 miles along the existing Highway 1, and will incorporate improved visitor amenities such as vistas, signage and other amenities which currently do not exist. The new trail, which connects Cayucos to Morro Bay will allow the public to walk, run, bicycle, and view nature through open space areas. The trail itself is clearly consistent with Coastal Act policies that require maximization of public access because it will establish a completely new public access and recreational amenity where currently only limited access exists. For these reasons, it is consistent with both Sections 30210 and 30213. Furthermore, in terms of the trail's design, including its width and other public amenities, it is designed for both bicycle and pedestrian recreation in a way that will comfortably accommodate both uses consistent with these policies. In short, the project represents a critical component of the California Coastal Trail, and is an exciting opportunity to provide multi-modal coastal access options and to connect two coastal communities.

Special Conditions 1 and 2 require final plans and final as-built plans, respectively, to ensure that these facilities are included as enforceable elements of the project. The project thus represents a significant public access improvement in the region. For these reasons, the project maximizes public access and can be found consistent with the public access and recreation policies of the Coastal Act.

That said, it should be noted that during the local review process, some residents in the Toro Lane neighborhood of Morro Bay (who make up an HOA) opposed the proposed trail alignment along this stretch and requested that it be relocated onto the Highway 1 right-of-way instead. The HOA members claim that the project would over-burden an easement for public access required by the coastal development permit that authorized development of this neighborhood (CDP 3-93-01). And in fact, these neighbors sued the

city of Morro Bay (who holds the easement across Toro Lane) and the County to determine that this project would overburden the easement.⁴

With respect to which option is superior from a public access and recreation perspective, the County closely analyzed the two different options and determined that the project as proposed was the environmentally superior alternative for three reasons: safety, user comfort, and cost. First, with respect to safety, this proposed trail will provide a pedestrian/bicycle path off Highway 1 between Morro Bay and Cayucos. Currently bicycle and pedestrian users must walk or bike along Highway 1 adjacent to high-speed traffic to travel between these communities. Safety is the biggest reason for this trail in general, and locating a segment of this trail onto Toro Lane, delineated with sharrows, instead of along the shoulder of Highway 1, was identified as vastly superior from a safety perspective. This makes the users of this trail safer because they are completely separated from the high-speed traffic and high traffic volumes along Highway 1 and are placed on a low speed, low volume residential street with driveways only on one side of the street.

Moreover, the FEIR evaluated safety issues and identified, based on Caltrans' data, there were 18 accidents at the intersection of Highway 1 and Yerba Buena Street near Toro Lane 2000-2004. This is the highest accident rate along the trail's corridor. The data shows that 90% of accidents in this corridor happen at the lighted intersections along Highway 1.⁵ The FEIR shows that if the trail avoids these intersections, it creates a safer environment for both cars and bicyclists. The County indicates that there were 20 additional collisions since the FEIR's certification, thereby affirming the previous findings that locating the project at this intersection would increase conflict points and increase user and driver confusion.

Second, with respect to user comfort, high speed traffic along Highway 1 represents a major deterrent to walking/biking this one-mile segment. For example, according to the County a recent survey⁶ of more than 100 people in Morro Bay and Cayucos showed the following:

- 85% of residents walk or bike within Morro Bay and Cayucos
- 85% of trips between Morro Bay and Cayucos are in cars
- 10% of residents walk or bike between Morro Bay and Cayucos
- 75% of residents said the reason they don't walk or bike between Morro Bay and Cayucos is that they don't feel safe

⁴ The Commission is a real party in interest in the litigation.

⁵ https://slocountyparks.com/wp-content/uploads/2016/02/mb_to_cay_connector_final_eir_july_2010.pdf

⁶ The survey was compiled during the first quarter of 2022 by the County of San Luis Obispo, Department of Parks and Recreation as part of the 2022 Active Transportation Grant application for the Morro Bay to Cayucos Multi-Use Gap Closure Project. It includes over 100 respondents in the City of Morro Bay and the community of Cayucos.

- 85% say they would walk or bike between these communities if there were a trail separated from Highway 1
- 90% of residents say a trail that is separated from Highway 1 that connects Morro Bay to Cayucos is important and 80% say is extremely or very important
- 85% of residents walk or bike in Morro Bay and only 10% walk or bike along Highway 1

These results are consistent with the obvious – biking or walking along Highway 1 here is unacceptable to most people because the traffic volumes and high speeds along Highway 1 make the trail segment here less safe. By contrast, Toro Lane is a dead-end street (that dead ends into a public parking lot, that will also facilitate use of the trail) that has low traffic volume and low speed; it is level like the other streets and can be marked with sharrows as other local streets within the trail corridor.

And finally, with respect to the Toro Lane property owners' contentions regarding the easement at issue, it would appear rather clear that the easement provides for and allows for this type of trail on/through the neighborhood. The easement was part of the Commission's approval authorizing the demolition of a motel, and subdivision of the site into 10 residential lots, a one-acre public access lot for dedication to the City of Morro Bay, a two-acre bluff and beach lot dedicated to State Parks, and a "one-half acre common area/access road lot" back in 1993. Specifically, Special Condition 1.a of that CDP required the applicant to record an offer to dedicate "... an easement for public pedestrian and vehicular access to lot 11, the 'coastal access natural area' to be offered to the City of Morro Bay. ... Such easement shall be located along the entire length and width of the access road and any sidewalks provided on lot 12...." Lot 11 is the North Point Natural Area at the northern end of the neighborhood and currently owned by the City, and the easement language speaks to ensuring that pedestrian and vehicular access along the road is provided in order to ensure the public can access and use these park lands. Additionally, the findings of the staff report (which are exhibit B of the easement) state that the proposed public access area will accommodate "unlimited pedestrian volume." Clearly, the purpose and intent of this easement was to allow public access of the type proposed herein (i.e., a bike and pedestrian trail) along the length of the Toro Lane subdivision so that the public could freely traverse this area which is in line with the Coastal Act's mandate to maximize public access.

In conclusion, the project represents a public access enhancement and can be found consistent with the Coastal Act's public recreational access provisions.

E. Habitat Resources

The Coastal Act includes a suite of protections for sensitive habitats, both aquatic habitats and the water quality needed to support their health, as well as upland terrestrial habitats. 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.*

Coastal Act Section 30233 (in relevant part) addresses filling of open coastal waters, including allowing for such fill solely for specifically defined purposes such as certain public service uses and public recreational access:

Section 30233(a). *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities; (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basin, 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...*

In addition, for terrestrial habitats, Coastal Act Section 30240 provides:

Section 30240: (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.⁷*

⁷ Although not the standard of review, the County's LCP also requires protection of ESHA, including with respect to this type of work that specifically requires selection of the least environmentally damaging

Analysis

The project is located within a biologically sensitive area that includes bluff scrub, grasslands, dunes, and beach as well as several ephemeral drainages. Approximately 6 acres of central foredunes are located to the west of the project alignment. This community forms a transitional area between the sandy beaches and the bluff areas and is considered ESHA. The foredunes are vegetated by seafig (*Carpobrotus edulis*), beach saltbush (*Atriplex leucophylla*), and salt grass (*Distichlis spicata*), with associate species such as red sand verbena (*Abronia maritima*), silver beachweed (*Ambrosia chamissonis*), and sea rocket (*Cakile maritima*). Coastal scrub communities are restricted to areas along the coast of California and extending inland for approximately 2 miles. Along the Central Coast, this community may be sparsely to densely vegetated, and will typically lack grassy openings. Coastal scrub generally grows on exposed slopes with a variety of substrates. Typical associates include coyote brush (*Baccharis pilularis*), California sagebrush (*Artemisia californica*), bush monkeyflower (*Mimulus aurantiacus*), and sages (*Salvia* spp.). Coastal scrub provides habitat for numerous common wildlife species including brush rabbit (*Sylvilagus bachmanii*), California thrasher (*Toxostoma redivivum*), and western fence lizard (*Sceloporus occidentalis*). Approximately 6 acres of coastal scrub are located in the project corridor. These occurrences consist of remnant patches within the non-native annual grassland and larger stands located in the bluff drainages and at the North Point Natural Area (NPNA). These areas largely consist of coyote brush and show evidence of periodic disturbances. In addition, thirteen drainages, including 12 ephemeral drainages and Toro Creek, occur in the project corridor. All of the drainages convey storm flows to the mean high tide line and support sporadic wetland vegetation. All features support surface water or saturated soils for some portion of a typical year.

The area where the project is proposed includes dune habitat, coastal scrub, annual grasslands, and ephemeral drainages (which constitute wetlands) for the purposes of the Coastal Act. Thus analytically, the first question is whether the proposed project is allowable in these habitat types.

With respect to wetlands, 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 coastal waters 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.

feasible alternative (LCP ESHA Policies 1-3, 20-23, 25-28 and 29-30; LCP Coastal Zone Land Use Ordinance Section 23.07.170(d)).

The proposed project consists of a new bicycle and pedestrian pathway. The “fill” is to accommodate this pathway (a public service purpose) that provides public recreational access opportunities (pedestrian and bicycle use) to and over coastal waters.

Thus, this project satisfies the first prong of the test, because the proposed fill has a public purpose, and it is being undertaken by a public agency to safely serve the public’s transportation and coastal access needs along this corridor. Secondly, the proposed fill is incidental to the primary public purpose of providing a safe bicycle and pedestrian pathway. Therefore, the Commission finds that for the reasons discussed above, the fill for the proposed project is for an incidental public service purpose, and thus, is an allowable use pursuant to Section 30233(a)(4) of the Coastal Act.

The Commission also finds that the proposed development is consistent with the second prong of Section 30233(a) because there is no feasible less environmentally damaging alternative to the proposed project as conditioned. The pathway serves as a critical transportation and coastal access and recreation function, and its construction is key to those functions. The project is required to establish this critical linkage of the CCT; thus, the “no project” alternative is not feasible because a “no project” alternative would maintain no such connectivity at this location. There are also no other ways to cross the creek/wetland environment in this area, and thus some type of fill is necessary to both connect the two communities of Morro Bay and Cayucos, but also to provide for access to the area’s adjacent parks and open space lands. In short, the County determined through its project development process that the proposed trail alignment will have the fewest impacts on coastal resources compared to any other alternative. The Commission concurs with the County’s assessment that the project represents the least environmentally damaging feasible alternative, and thus satisfies the second prong of the Section 30233(a) test.

And lastly, the project includes mitigation requirements to satisfy the third prong of Section 30233(a), as well as requirements in Sections 30230 and 30231 to protect water quality and to minimize the alteration of streams and surface water flow. For construction and post-construction-related impacts, the project is conditioned to require the County to prepare a Habitat Mitigation and Monitoring Plan (HMMP) which will be developed in close consultation with Commission ecologists, as well as with applicable resource agencies (i.e., California Department of Fish and Wildlife, Regional Water Quality Control Board, and U.S. Army Corps of Engineers). The Plan will build on an already identified suite of measures identified in the project’s environmental documents to avoid impacts to sensitive habitats during construction, including through appropriate Best Management Practices and good housekeeping measures to prevent pollutant and sediment discharges, to reduce noise, and to protect sensitive species, including enclosure fencing to protect environmentally sensitive habitat areas.⁸ The Plan will further require the County to restore all impacts to the impacted habitats to their pre-construction state or better based on established mitigation ratios, resulting in up to nine

⁸ The County is considering an additional 200-foot bridge (for a total of 6 bridges) for this project. This bicycle/pedestrian bridge will be located directly north of the proposed Toro Creek Bridge and head north over fragile dunes and protect ESHA.

acres of habitat restoration. The Plan is codified as an enforceable component of this CDP in **Special Condition 3**. As such, the project is consistent with Coastal Act Sections 30230, 30231, and 30233.

With respect to the upland ESHA, as discussed above, the project is located in dune habitat as discussed above. While the project has been designed to minimize and avoid this habitat as much as possible, including as outlined in the detailed FEIR, it was not possible to avoid all such impacts. However, Coastal Act Section 30240 specifically allows resource-dependent uses such as low-intensity public access trails, restoration, and scientific research/nature study in ESHA, and the Commission has a long history of allowing such projects in ESHA so long as they are designed to avoid those impacts as much as possible, and mitigation measures are implemented to address those impacts.⁹ As discussed above, the project is conditioned to require the County to prepare a HMMP to do just this. The Plan will build on an already identified suite of measures identified in the project's environmental documents to avoid impacts to sensitive habitats during construction and will further require the County to restore all impacts to the impacted wetland and dune environment to their pre-construction state or better.

Finally, the Applicant has requested permission to perform routine maintenance and repairs on the project components for a 10-year period. Given the fact that the project is located in a dynamic environment, susceptible to coastal flooding and other hazards, this appears to be a reasonable request. That said, and due to the sensitivity of the location in terms of ecological resources, this type of work would ordinarily otherwise require a CDP. Therefore to accommodate the applicant's needs in this regard, and streamline the regulatory process, the **Special Condition 7** authorizes such work but requires a mandatory process for its evaluation so as to both ensure that such work is consistent with the scope of this CDP, and to ensure coastal resource protection otherwise, including through implementing the same avoidance and mitigation measures identified for project construction (e.g. timing restrictions for nesting season, water quality mitigation measures, biological monitoring, and similar BMPs) (see **Special Condition 3**).

⁹ The following is a non-comprehensive list of some of the projects the Commission has approved that include trail development through ESHA. The trails in these projects include paved and unpaved trails and boardwalks. Some provide pedestrian-only access, while others allow multi-use access, including bicycles and wheelchair access: CDP 2-07-018 (Sonoma County Regional Parks – multi-use path consisting of crushed rock, located in coastal scrub habitat containing sensitive plant species); CDP 3-01-101 (Del Monte Beach re-subdivision – boardwalk through dune habitat); 3-01-003 (Grover Beach Boardwalk – boardwalk through dune habitat); CDP 3-87-258 (Asilomar State Beach Boardwalk – boardwalk through dune habitat); CDP A-3-SLO-04-035 (PG&E Spent Fuel Storage – unpaved paths through coastal terrace prairie habitat); CDP 3-05-071 (Morro Bay Harborwalk – paved road and paved trail through dune habitat); CDP A-1-MEN-06-052 (Redwood Coast Public Access Improvements – unpaved paths through rare plant habitat and riparian habitat); 80-P-046-A1 (Humboldt County Public Works Subdivision – compacted gravel trail through riparian habitat); CDP 3-00-092 (Monterey Dune Recreation Trail and Parking Lot – paved multiuse path through dune habitat); CDP 1-07-005 (Crescent City Harbor Trail North Segment – Class I and Class III multiuse trails involving some wetland fill); CDP 3-97-062 (Sand City bike path – paved path through dune habitat); CDP 3-06-069 (Fort Ord Dunes State Park Improvements – unpaved path through dune habitat); CDPs 3-98-095 and 3-98-095-A1 (Elfin Forest Boardwalk – boardwalk through terrestrial habitat ESHA); CDP 6-06-043 (Otay River Valley Regional Park trails – decomposed granite trails through coastal sage scrub and wetland habitat).

In conclusion, the project is located in a rural area comprised of a mix of habitat types, including wetlands (i.e., the ephemeral drainages) and dunes. But the project is a type of use allowed within these habitat types, is designed to avoid these impacts as much as possible, and the County, through **Special Condition 3**, is required to implement further avoidance and mitigation measures, as well as restore the site and surrounding environment. For all these reasons, the project can be found consistent with the Coastal Act's habitat protection provisions.

F. Archeological Resources

Applicable Coastal Act Provisions

Archaeological and paleontological resources are types of coastal resources afforded protection under the Coastal Act. The following Coastal Act policy requires:

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

Analysis

According to the County's EIR, the project corridor is within the territory historically occupied by the Obispeño Chumash, the northernmost of the Chumash Hoken speaking peoples of California. Pre-historic marriage patterns and post mission settlement patterns have also identified Salinan people living in the northern portions of San Luis Obispo County. Archaeological evidence has revealed that the ancestors of the Obispeño settled in San Luis Obispo County over 9,500 years ago.

The County's EIR determined that because the depth of excavation for the trail is relatively shallow and the number of specific resources identified within the alignment of the proposed project is low, the potential that significant resources would be encountered during construction is relatively low. However, the proposed project would traverse a known cultural resources site eligible for the National Register of Historical Places. It has also been noted that the amount of historical disturbance within the project corridor has varied considerably and therefore confirming the precise location and integrity of resources has been challenging despite multiple subsurface surveys. Because of these factors, the EIR concluded that impacts resulting from the proposed project are considered potentially significant.

During the CEQA process, the Native American Heritage Commission (NAHC) identified 23 Native American groups or individuals who may have knowledge of cultural resources in the project area. The County sent letters to each representative, and three responses were received indicating that resources were likely to be encountered during construction. They also requested that both the cultural resources investigation and the proposed project be implemented in a non-invasive manner, and that Native American Monitors should be on-site during construction of the project.

In addition, as part of this CDP review, Commission staff did its own independent tribal outreach in accordance with the Commission's Tribal Consultation policy. Similar to the County's process, three tribes responded to that consultation process; the Northern Chumash Tribal Council, the yak tityu tityu yak tiłhini Northern Chumash Tribe, and the

Salinan Tribe of Monterey and San Luis Obispo Counties. Commission staff discussed the project with tribal representatives and shared draft special condition language to address the concerns raised by the tribe with respect to the likelihood of encountering cultural resources and the need for tribal monitoring for same. The project has therefore been conditioned to ensure that interested tribal groups shall be notified prior to any ground disturbance activities and have the opportunity to monitor same, and that an archeologist will be on site (see **Special Condition 4**). Thus, as conditioned, the project is consistent with the Coastal Act Section 30244 regarding the protection of archaeological resources.

G. Other Project Considerations

Minor Changes and Repair and Maintenance

This CDP authorizes the project proposed except as modified by the special conditions. As is typical of large and complicated construction projects like this, there can be the need for minor changes as circumstances dictate. Thus, this approval allows for such changes through either (a) a CDP amendment, or (b) if the Executive Director determines that no amendment is legally required, then such changes may be allowed by the Executive Director if the Executive Director determines that such changes: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources (**Special Condition 8**). Similarly, projects in the harsh coastal environment often require repair and maintenance over time. However, due to the location of this project in sensitive coastal areas (i.e., bluff top ESHA), such work would ordinarily require a separate CDP. The project is therefore conditioned to allow for such work over an initial ten-year period with built-in habitat avoidance features and BMPs established by the HMMP (**Special Condition 7**).

Other Agency Approvals

In addition to CDP authorization under the Coastal Act and LCP, the proposed project appears to affect resources protected by other resource agencies. To ensure that the Applicant has a sufficient legal interest to carry out the project consistent with the terms and conditions of this CDP and to ensure that the proposed project is authorized by all applicable regulatory agencies, **Special Condition 9** requires the Applicant to submit written evidence either of these other agencies' approvals of the project (as conditioned and approved by this CDP) or evidence that such approvals are not required. If there is any conflict, however, between those conditions and this CDP, this CDP shall govern.

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 10**).

Indemnification for Attorneys' Fees

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 11** requiring assumption of risk and 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.

H. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. San Luis Obispo County, acting as the CEQA lead agency, adopted the Final Environmental Impact Report for the Morro Bay to Cayucos Connector Trail on October 19, 2010. On June 24, 2022, the County issued an EIR Addendum addressing a revision to the project including widening the proposed pathway to better accommodate trail traffic, as well as minor alignment changes to avoid impacts.

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 Documents¹⁰

- CDP File 3-24-0020

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

B. Appendix B – Staff Contact with Agencies and Groups

- San Luis Obispo County
- Northern Chumash Tribal Council
- yak tityu tityu yak tilhini Northern Chumash Tribe
- Salinan Tribe of Monterey and San Luis Obispo Counties