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Staff:	Sarah MacGregor - SC
Staff Report:	9/19/2025
Hearing Date:	10/10/2025

STAFF REPORT
CDP APPLICATION

Application Number:	**3-24-0048**
Applicant:	Richard J. Loughead Jr. and Tammy Lee Loughead
Project Location:	On the beach and coastal bluff fronting 185 Naomi Avenue in the St. Andrews Tract area in the City of Pismo Beach.
Project Description:	Follow-up authorization to recognize temporary shoreline armoring work completed under Emergency Coastal Development Permit (ECDP) G-3-23-0069, comprised of the placement of concrete caps at the entrance to four seacaves, and the backfill of each void with concrete grout; as well as new armoring work comprised of a sculpted shotcrete fascia to mimic the bluff face.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending approval of a proposed project that would replace and augment existing armoring fronting a single-family residence located at 185 Naomi Avenue in the City of Pismo Beach. The project includes work completed under an ECDP that authorized the placement of concrete to close the eroded base/footing of the previous armoring, and to fill the voids of each of four seacaves with grout behind the concrete bag/form wall. This CDP application also includes the application of shotcrete to the bluff face to add stability to the armoring as well as to visually blend the concrete bag/form wall with the rest of the natural bluff face.

The site was originally armored in 1992 with four concrete bag walls in the bluff, but this armoring was severely weakened during the 2022/2023 winter storm season and King Tides events, and ECDP G-3-23-0069 allowed for the extension and augmentation of

the concrete bag walls in 2023. The house at the site pre-dates the implementation of the Coastal Act (i.e., January 1, 1977) and has not been redeveloped since, and thus qualifies as an existing structure for purposes of Coastal Act Section 30235. Further, the Applicants' house is in danger from erosion as that term is understood in Section 30235 terms as well, including as the voids if left unchecked could lead to collapse of the bluffs underlying the home. Further, in terms of minimization and mitigation under Section 30235, staff believes that there are a range of measures that can be applied to both limit impacts as much as possible with a project like this (armoring camouflage measures, construction BMPs, etc.), and to provide offsetting and commensurate mitigation for impacts that cannot be avoided. In terms of the latter, the primary mitigation is to offset adverse beach/shoreline impacts through the next twenty years through a plan that requires the Applicant to fund public coastal access improvements within the immediate project area, including repairs to the Vista Del Mar stairway, in coordination with the City. Other conditions require the armoring to be removed when the house is redeveloped, and require the Applicant to accept, internalize, and disclose all coastal hazard risks, among others.

In conclusion, the Coastal Act strictly limits shoreline armoring to very specific cases and under exacting criteria. This project, as conditioned, can be found consistent with these criteria. As such, staff recommends the Commission approve a CDP for the proposed project. The motion is found on page 4 below.

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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 3-24-0048 pursuant to the staff recommendation, and I recommend a* ***yes*** *vote.*
>
> ***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number 3-24-0048 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

2. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

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

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

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

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

3. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Final Plans.** PRIOR TO ISSUANCE OF THIS CDP, the Permittees shall submit two full size sets of Final Plans for the approved development to the Executive Director for review and written approval. The Final Plans shall: be prepared by a licensed professional or professionals (i.e., geotechnical engineer, surveyor, etc.); be based on current professionally surveyed and certified topographic elevations for the project area; and include a graphic scale. The Final Plans shall be substantially in conformance with the proposed plans (titled "Cliff Protection System" prepared by Applied Engineering, dated October 3, 2024 and dated received in the Central Coast District Office October 7, 2024 (see **Exhibit 3**)) except that they shall be modified to meet the following requirements:

   a. **Surfacing.** The concrete surfaces of all publicly visible portions of the project shall be faced with a sculpted shotcrete 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 emulate 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/remnant armoring. At least 10 working 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. Shotcrete work shall not commence until the Executive Director has approved the expected finish results in writing, which shall be timely granted.

   b. **Debris Removal.** All concrete and other debris, including concrete chunks, exposed rebar, and rubble from prior armoring efforts at this location, shall be removed to the maximum extent feasible. The required As-Built Plans (see Special Condition 3) shall include photographic evidence and an accompanying narrative description that demonstrates compliance with this requirement.

   All requirements above and all requirements of the Executive-Director-approved Final Plans shall be enforceable components of this CDP. The Permittees shall undertake development in conformance with this condition and the Executive-Director-approved Final Plans.

2. **Construction Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION,[1] the Permittees shall each submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include the following:

   a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall minimize impacts on coastal resources, including public access/parking, including by maximizing use of the developed blufftop portions of the Permittees' property for construction staging and materials storage, and minimizing use of shoreline public use areas for construction-related purposes as much as possible. Construction, including but not limited to construction activities, materials, and equipment storage, is prohibited outside of the defined construction, staging, and storage areas.

   b. **Construction Methods.** All construction methods to be used shall be clearly identified, and shall be required to protect coastal resources as much as feasible, including identifying all methods to be used to keep construction areas separated from public use areas as much as possible (including through use of unobtrusive fencing and/or other similar measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not significantly degrade public access and views during construction.

   c. **Construction Timing.** No work shall occur during weekends and/or during the summer peak months (i.e., from the Saturday of Memorial Day weekend through Labor Day, inclusive) unless, due to extenuating circumstances, the Executive Director authorizes such work, subject to applying all feasible measures to ensure maximum coastal resource protection. In addition, all work shall take place during daylight hours (i.e., from one-hour before sunrise to one-hour after sunset). Nighttime work and lighting of the work area is prohibited.

   d. **Construction BMPs.** All erosion control/water quality best management practices (BMPs) to be implemented during construction to protect coastal water quality and other coastal resources shall be clearly identified, including at a minimum all of the following:

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

[1] Where such construction includes the proposed application of shotcrete.

drains, shall be equipped with appropriate construction-related containment and treatment equipment.

2. **Equipment.** Equipment washing, refueling, and/or servicing shall take place at appropriate off-site, level and inland locations (to help prevent leaks and spills of hazardous materials at the project area), and preferably on an existing hard surface area (e.g., Permittees' driveway, contractors' yard, etc.) or an area where collection of materials is similarly facilitated. All construction equipment shall also be inspected and maintained at a similarly sited inland location to prevent leaks and spills of hazardous materials at the project area.

3. **Good Housekeeping.** The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site; etc.).

4. **Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday.

5. **Intertidal Grading Prohibited.** Grading of intertidal areas is prohibited, except where expressly approved by this CDP or where approved development is sited in such areas, and except for removal of concrete, riprap, rubble, and debris, all only allowed when tidal waters are not present.

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

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

e. **Property Owner/Easement Holder Consent.** For any construction activities that may occur on properties (and/or on easements or similar legally defined areas) not owned by the Permittees, including but not limited to construction that requires equipment access on and/or across such other properties, evidence of

review, approval and consent from such property owners allowing such activities shall be provided, where such consent shall only be deemed to have been given if the consent is for development consistent with the terms and conditions of this CDP, including as it affects such properties.

f. Restoration. All beach/shoreline recreational areas and other public recreational use areas and all beach/shoreline recreational area access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction or as soon as practical based on access limitations due to low & high tide. Any native materials impacted shall be filtered as necessary to remove all construction debris. All debris removal requirements associated with **Special Condition 1** shall apply.

g. Construction Site Documents. Copies of the signed CDP and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times during construction, where such copies shall be available for public review on request. All persons involved with construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

h. Construction Coordinator. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the coordinator's contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number (with message capabilities) and an email that shall be made available 24 hours a day for the duration of construction, and that shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.

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

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

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

3. **As-Built Plans.** WITHIN THREE MONTHS OF COMPLETION OF CONSTRUCTION, the Permittees shall submit one electronic copy and two paper copies of complete As-Built Plans to the Executive Director for review and written approval showing all elements of the approved development as built, including in relation to all property lines and adjacent development. The As-Built Plans shall be substantially consistent with the Executive Director-approved Final Plans required by **Special Condition 1**, and any changes between the two shall be highlighted. The As-Built Plans shall include color photographs (in hard copy and jpg format) that clearly show the as-built project, and that are accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, the photographs shall be from upcoast, seaward, and downcoast viewpoints on the beach and/or bedrock platform, and from a sufficient number of viewpoints as to provide complete photographic coverage of the approved development. Such photographs shall be at a scale that allows comparisons to be made with the naked eye between photographs taken at different times and from approximately the same vantage points; recordation of GPS coordinates would be desirable for this purpose. The As-Built Plans shall include vertical and horizontal reference data from inland surveyed benchmarks (which shall be clearly identified) for use in future monitoring efforts, and shall include the required debris removal verification specified in **Special Condition 1**. The As-Built Plans shall be submitted with certification by a licensed civil engineer with experience in coastal structures and processes, acceptable to the Executive Director, verifying that the development has been constructed in conformance with the Executive Director-approved Final Plans (**see Special Condition 1**).

4. **Public Access Enhancement Plan.** PRIOR TO ISSUANCE OF THE CDP, and no later than three months from the date of the Commission's approval of this CDP (i.e., by January 10, 2026), the Permittees shall submit two copies of a Public Access Enhancement Plan (Plan) to the Executive Director for review and written approval, where the Plan shall include evidence of approval by the City of Pismo Beach Community Development Department Director. The Plan shall provide for either:

   a. **Vista Del Mar Stairway.** Repairs and enhancements to the Vista Del Mar stairway, which shall at a minimum include structural stability improvements as well as coloring and contouring of the staircase to visually blend its exposed concrete elements with the natural bluff, where the latter shall be subject to the same provisions as are articulated in Special Condition 1(a); or

   b. **Other Improvements.** Other coastal public access and recreational improvements that shall be implemented as near as possible to the project site, where such enhancements shall, in the opinion of the Executive Director, provide offsetting mitigation at least equivalent to the Vista Del Mar Stairway work described above.

The Plan shall include a schedule that identifies expected timelines for the Vista Del Mar Stairway project or the alternative improvements described in this condition above, all of which shall be constructed, installed, operational, and available for general public use as soon as possible, but no later than January 1, 2028.

All requirements above and all requirements of the Executive-Director-approved Public Access Enhancement Plan shall be enforceable components of this CDP. The Permittees, and the City when such improvements are undertaken by the City but funded by the Permittees, shall undertake development in conformance with this condition and the Executive Director-approved Public Access Enhancement Plan.

5. **Public Recreational Access Easement.** WITHIN SIX MONTHS FOLLOWING ISSUANCE OF THE CDP, the Permittees shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private entity, approved by the Executive Director, a public recreational access easement for public recreational access use in perpetuity, as described below.

   a. **Easement Area.** The easement area shall consist of all areas of the Permittees' property located seaward/beachward of the toe of the bluff or the outer edge of the concrete footing where applicable, as generally depicted in **Exhibit 5**.

   b. **Allowed Uses and Development.** No development, as defined in Coastal Act Section 30106, shall occur within the easement area except for the following: (1) construction of the approved development and removal of debris, all as identified in the approved Final Plans (see Special Condition 1); (2) repair, maintenance, debris removal, and improvements associated with the approved development, consistent with the terms and conditions of this CDP; and (3) development only for the express purpose of further improving public recreational access, consistent with the intent and use of the easement, consistent with the terms and conditions of this CDP. The document shall provide that the offer of dedication shall not be used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property, and shall also provide that public access consistent with the terms and conditions of these CDPs shall be uninterrupted at all times, including before and after the offer is recorded.

   c. **Recordation.** The document shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed, and it shall include a metes and bounds legal description of the legal parcel subject to this CDP as well as a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the perimeter of the easement area within the subject property, prepared by a licensed surveyor based on an on-site inspection of the easement area.

   d. **Duration.** The offer to dedicate shall run with the land in favor of the People of the State of California, binding all Permittees successors and assigns in perpetuity; shall be irrevocable for a period of at least 21 years, such period running from the date of recording; and shall indicate that the restrictions on the

use of the land shall be in effect upon recording and remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

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

   a. **Evaluation.** All project components shall be regularly monitored by a licensed civil engineer with experience in coastal structures and processes to ensure structural and cosmetic integrity including, at a minimum, evaluation of concrete competence, spalling, cracks, movement, outflanking and undercutting; and evaluation of compliance with all required surface treatments of **Special Condition 1**. Such evaluation shall also assess any project related elements that have become visible or more visible due to erosion or any other coastal hazards, and shall identify steps necessary to contour and/or color/stain such exposed areas as required by this CDP.

   b. **Photo Documentation**. All project elements shall be photographed annually from an adequate number of inland and seaward locations as to provide complete photographic coverage of the approved development, where such photographs shall be in roughly the same locations as provided in the As-Built Plans (see Special Condition 3).

   c. **Reporting.** Monitoring reports covering the above-described evaluations shall be submitted to the Executive Director for review and written approval at five-year intervals by May 1st of each fifth year following completion of construction (with the first report due May 1, 2030, and subsequent reports due May 1, 2035, May 1, 2040, and so on) for as long as the approved development exists at this location. The reports shall identify the existing configuration and condition of the armoring, shall recommend actions necessary to maintain all project elements in their approved and/or required state consistent with the terms and conditions of this CDP, and shall include the above-described photographic documentation (in color hard copy and jpg format). Any proposed actions necessary to maintain the approved development in a structurally sound manner and its approved state shall be implemented within 30 days of Executive Director approval, unless a different time frame for implementation is identified by the Executive Director. In addition to the every-five-year requirement, separate and additional monitoring reports subject to the same requirements shall be submitted within 30 days following either (1) an El Niño storm event comparable to a 20-year or larger storm, or (2) an earthquake of magnitude 5.5 or greater with an epicenter in or offshore of San Luis Obispo County.

7. **Future Maintenance.** This CDP authorizes future maintenance as described in this

special condition. The Permittees acknowledge and agree on behalf of themselves and all successors and assigns that it is the Permittees' responsibility to: (a) maintain the approved development in a structurally sound manner, visually compatible with the shoreline surroundings, and in its approved and required state, including with respect to all camouflaging/surfacing; (b) retrieve any failing portions of the approved development or related improvements that might otherwise substantially impair the use, aesthetic qualities, or environmental integrity of the beach, shoreline, and/or ocean; and (c) regularly inspect all approved development components for signs of failure and/or structural issues. Any such maintenance-oriented development associated with the approved development shall be subject to the following:

a. Maintenance. "Maintenance," as it is understood in this condition, means development that would otherwise require a CDP whose purpose is to maintain the approved development in its approved and/or required state, including with respect to retrieval of any debris emanating from the approved development and/or the project area.

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

c. Maintenance Notification. Prior to commencing any maintenance event, the Permittees shall notify planning staff of the Coastal Commission's Central Coast District Office, in writing, regarding the proposed maintenance. Except for necessary emergency interventions (see below), such notice shall, at a minimum, be given by first-class mail at least 30 days in advance of commencement of work. The notification shall include a detailed description of the maintenance event proposed, and shall include any plans, construction BMPs, engineering and/or geology reports, proposed changes to the maintenance parameters, other agency authorizations, and other supporting documentation describing the maintenance event. The maintenance event shall not commence until the Permittees has been informed in writing by Central Coast District planning staff that the maintenance event complies with this CDP. If the Permittees has not received a response within 30 days of receipt of the notification by the Central Coast District Office, the maintenance event shall be authorized as if Commission planning staff affirmatively indicated that the event complies with this CDP. The notification shall clearly indicate that the maintenance event is proposed pursuant to this CDP, and that the lack of a response to the notification within 30 days of its receipt constitutes approval of it as specified in this CDP. If the notification does not explicitly identify that a lack of response within 30 days of its receipt constitutes approval, then the automatic authorization provision does not apply.

d. Non-compliance Proviso. If the Permittees are not in compliance with any of the terms and conditions of the CDPs, 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 at the discretion of the Executive Director.

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

f. Duration and Scope of Covered Maintenance. Future maintenance under the CDP may be allowed subject to the above terms throughout the duration of the authorization (see **Special Condition 8**) subject to Executive Director review and written approval every 5 years (with the first such approval due by October 10, 2030, and subsequent approvals by October 10, 2035, October 10, 2040, and so on) to verify that there are not changed circumstances, understandings, or other issues associated with such allowance for maintenance events that necessitate re-review. It is the Permittees' responsibility to request Executive Director approval prior to the end of each 5-year maintenance period, and maintenance can only be carried out beyond October 10, 2030 (and beyond subsequent five-year periods) pursuant to these maintenance provisions if (1) the Permittees request an extension prior to the end of each 5-year maintenance period; and (2) the Executive Director extends the maintenance term in writing. The intent of this CDP is to allow for 5-year extensions of the maintenance term for as long as the approved development remains authorized unless there are changed circumstances, understandings, or other issues that may affect the consistency of this maintenance authorization with Coastal Act Chapter 3 and thus warrant a re-review of this maintenance condition. The Permittees shall maintain the approved development in its approved and required state consistent with the terms and conditions of these CDPs.

8. Additional Armoring Provisions. The approved armoring (see also **Special Condition 1**) shall be subject to all of the following:

a. Redevelopment. This CDP authorizes the armoring described in **Special Condition 1** until the time when the residence at 185 Naomi Avenue is either: (1) no longer present; (2) no longer requires armoring; or (3) is redeveloped as identified below. If any of these occur, then the Permittees shall immediately submit a complete CDP amendment application to the Coastal Commission to remove the armoring and restore the area to natural conditions. The specific changes to the residence that would constitute redevelopment in this case include: (1) 8 percent or more (equivalent to 190 square feet) increase in floor area compared to floor area as of October 10, 2025; (2) replacement of 50 percent or more of a major structural component including structural roof, exterior walls, and interior structural walls (taking into account previous replacement work undertaken since January 1, 1977); and/or (3) replacement of less than 50 percent of a major structural component where those alterations result in cumulative alterations exceeding 50 percent or more of that major structural

component (taking into account previous replacement work undertaken since January 1, 1977).

b. Armoring Modifications. (1) If the Permittees apply for a separate CDP or an amendment to this CDP to modify the armoring in a manner that substantially differs from that approved by this CDP, or to perform repair work that leads to replacement of 50 percent or more of the armoring; and (2) if that application is approved; then (3) that approval shall require additional commensurate mitigation for the impacts of the modified armoring on public views, public recreational access, shoreline processes, and all other affected coastal resources, where impact assessment and mitigation shall occur based on considering the modified armoring as a new replacement structure, and where mitigation already applied to date, including attributable to this CDP, shall not be credited.

c. Additional Mitigation Requirements. Impact assessment and mitigation under this CDP covers impacts to coastal resources through October 10, 2045. If the Permittees intend to keep the approved development in place after October 10, 2045, then the Permittees shall submit a complete CDP amendment application prior to that date that evaluates the coastal resource impacts associated with retention of the project past that date, and that provides commensurate coastal resource mitigation (as it relates to public views, public recreational access, shoreline processes, and all other affected coastal resources) for the proposed renewal/re-authorization period (e.g., the next 20 years). The same 20-year mitigation requirement shall apply in the same way to subsequent 20-year periods, unless the Commission alters such requirement in its action on the CDP amendment application.

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

9. Coastal Hazards. By acceptance of this CDP, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns, that:

a. Coastal Hazards. The approved development is and may be subject to future coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, tidal scour, coastal flooding, landslides, bluff and geologic instability, bluff retreat, liquefaction and the interaction of same, many of which are likely to worsen with future sea level rise.

b. Assume Risks. The Permittees: assume the risks to the Permittees and the property that is the subject of this CDP of injury and damage from coastal hazards in connection with the approved development; unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the 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 such hazards; and accept full responsibility for any adverse effects to people and/or property caused by the approved development.

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

11. **Real Estate Disclosure.** Disclosure documents related to any future marketing and/or sale of the subject property (i.e., 185 Naomi Avenue, APN 010-501-010), including but not limited to specific marketing materials, sales contracts and similar documents, shall clearly notify potential buyers of the terms and conditions of this CDP. Copies of the CDP shall be provided in all real estate disclosures.

12. **Other Agency Approvals.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittees shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, or authorizations for the approved development have been granted by any other applicable agencies that may have such oversight over the approved development (including at least the U.S. Army Corps of Engineers, California State Lands Commission, Central Coast Regional Water Quality Control Board, and the City of Pismo Beach) or written evidence that no permits, permissions, approvals or other authorizations from these agencies are required. The Permittees shall inform the Executive Director of any changes to the Commission-approved development required by other agencies. Such changes shall not be incorporated into the approved development until the Permittees obtain CDP amendments, unless the Executive Director determines that no amendments are legally required.

13. **Future Permitting.** None of the CDP exemptions that might be provided by Public Resources Code Section 30610 (and/or related implementing regulations) shall apply to the approved development, and any and all future proposed development related to this project and/or this CDP shall require a new CDP or CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines that such CDP or CDP amendment are not legally required.

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

15. **Liability for Costs and Attorneys' Fees.** The Permittees 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 Permittees 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 Permittees 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. By acceptance of this CDP and its terms and conditions, the Permittees irrevocably agree to this obligation, which shall be continuing in nature and remain in full force and effect regardless of whether this CDP approval is invalidated as the result of the litigation contemplated by this condition or otherwise changed in any way.

16. **Deed Restriction.** WITHIN ONE YEAR OF ISSUANCE OF THIS CDP, the Permittees shall submit to the Executive Director for review and written approval documentation demonstrating that they have executed and recorded against the parcel governed by this CDP a deed restriction (Deed Restriction), in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to CDP 3-24-0048, the California Coastal Commission has authorized development on the subject property subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the terms and conditions of CDP 3-24-0048 as covenants, conditions and restrictions on the use and enjoyment of the property. The Deed Restriction shall include a legal description of the entire parcel governed by CDP 3-24-0048, and shall also indicate that, in the event of an extinguishment or termination of the Deed Restriction for any reason, the terms and conditions of CDP 3-24-0048 shall continue to restrict the use and enjoyment of the subject property so long as any part of the approved development, including if modified, remains in existence on or with respect to the subject property.

4. FINDINGS AND DECLARATIONS

A. Project Location and Background

The project site is located on the bluff, at the toe of the bluff, and on the beach seaward of 185 Naomi Avenue in the St. Andrews Tract neighborhood of the City of Pismo Beach, which is in the upcoast part of the City's shoreline north of the central downtown area and Pismo Pier. The blufftop portion of the site is one of three single family homes along this stretch of the bluff and is located on the southernmost end of Seacliff Drive, which curves and transitions into Naomi Avenue. The blufftop is at an elevation of approximately +41 feet NAVD88[2] and the existing residence on the site is set back about 18 feet from the blufftop edge. The bluff along this block, including the upcoast neighbor and the public stairs leading to Memory Park, is mostly reinforced with a mix of shoreline armoring of varying ages and types. The project site fronts a narrow beach area that is mostly accessible at low tides, where sandy beach access is provided to the public from a stairway owned by the City of Pismo Beach about 200 feet upcoast at

[2] The North American Vertical Datum of 1988.

Memory Park.

The Applicants in this case own a blufftop home that was originally constructed around 1970. And while, per the City's permit history, the house has undergone certain additions and alterations since then, as discussed subsequently in this report, the available data suggests that the home has not been redeveloped[3] in the time since CDPs have been required,[4] and thus constitutes an "existing" structure as that term is understood in relation to Coastal Act Section 30235.[5]

In terms of permit history, the Commission, on appeal, approved CDP A-4-PSB-91-48 in 1991 which authorized the construction of concrete bag cement walls to cap and seal four seacaves, the backfilling of the caves with grout, and the application of shotcrete on the bluff face to visually contour the concrete bag wall into the natural bluff face. The Commission also approved ECDP G-3-23-0069 in 2023 for the placement of concrete forms to fill the void that had opened between the bottom of the original concrete bag wall and the top of the bedrock platform at the entrance to the four seacaves. This CDP application is the required follow-up regular CDP application to that ECDP.

The parcel is zoned in the LCP as Single-Family Residential (R-1) with a Hazards Overlay Zone. The objective of the Hazards Overlay Zone is, among other things, to prevent unsafe development in hazardous areas, as further described subsequently. See **Exhibit 1** for location maps and **Exhibit 2** for California Coastal Records Project photos of the site from 1972 to 2024.

[3] Based on available records, the house in 1970 was 2,374 square feet and additions to it over the years total 989 square feet or about 42% increase (see additional details on this point in Footnote 28). In addition, there appears to have been other alterations that have occurred since 1977, including the installation of skylights and the removal of a chimney per California Coastal Records Project images. However, there are no CDPs for such work, and the City has indicated that building permit records from the late 1980s to early 1990s were destroyed in a flood; thus, there is no permit evidence of these alterations to determine the extent and scope of structural alteration. Thus, based on the totality of evidence, there isn't clear documentation to conclude the residence has been redeveloped, and thus appears to be an existing structure in Section 30235 terms.

[4] CDPs have been required at this location since February 1, 1973 (pursuant to 1972's Proposition 20, "The Coastal Initiative"), and subsequently since January 1, 1977 (pursuant to the 1976 Coastal Act).

[5] The Commission has historically implemented the Coastal Act and its regulations (i.e., Title 14, Division 5.5, Section 13252(b) of the California Code of Regulations) such that if the major structural components (i.e., exterior walls, floor, roof structure, or foundation) of a home are replaced by 50 percent or more (measured cumulatively since January 1, 1977), or the gross square footage is increased by 50 percent or more, then it must be evaluated as a replacement structure measured against the Coastal Act through a CDP application. Conversely, if it doesn't tip the 50 percent threshold, then it is considered an "existing structure" for purposes of Section 30235. This distinction is important because only homes that constitute existing structures in this way are eligible to use the Section 30235 'override' to allow approval of shoreline armoring that otherwise would be required to be denied by other coastal resource protection provisions of the Coastal Act. Such application and definition of the term "existing structure" as applying only to pre-1977 structures was recently upheld by the California Court of Appeals in a 2024 published decision (see *Casa Mira Homeowners Assn. v. California Coastal Com.,* 107 Cal.App.5th 388 (2024)).

B. Project Description

The proposed project constitutes a replacement[6] of the armoring device previously approved in 1991 (and built in 1992). The scope of work includes development completed under ECDP G-3-23-0069, which includes the placement of concrete forms in the space between the bottom of the existing concrete bag wall and the top of the bedrock at the entrance to four seacaves. The concrete forms are approximately 3 feet in height and span a total of 56 linear feet. Vertical reinforcing bars that had been damaged were reinstalled into the bedrock and the seacaves were backfilled with approximately 20 cubic yards of concrete. The project also proposes to apply an eight-inch layer of shotcrete over the concrete bags and concrete forms for each of the four seacave plugs, where such concrete will span a total of 56 linear feet and will be approximately 20 feet tall. The work approved under the ECDP was completed in approximately seven hours over the course of two days, where all work was completed at low tide, all tools were carried by hand to the site, and a concrete truck with a boom pump was staged on the site at the top of the bluff. See **Exhibit 3** for the proposed plans and **Exhibit 4** for a visual rendering.

C. Standard of Review

The proposed project spans a mix of jurisdictional boundaries. The proposed armoring itself appears to be located just above the mean high tide line within the City of Pismo Beach's CDP jurisdiction,[7] but construction activities extended into the Commission's retained CDP jurisdiction with workers crossing through the wet sandy beach area to access the site via the Memory Park stairs. The proposed development is also substantively associated with prior Coastal Commission CDP decisions and requirements, including in terms of substantively modifying the previous armoring approved under CDP A-4-PSB-91-48, and requisite follow-up regular CDP application for Commission issued ECDP G-23-0069. In order to resolve the potential competing facts on potential CDP jurisdiction here, the Applicants, the City, and the Executive Director have all agreed to consolidated CDP processing pursuant to Coastal Act Section 30601.3, and thus the standard of review for the proposed project is the Coastal Act, with the City of Pismo Beach LCP providing non-binding guidance.

D. CDP Determination

1. Coastal Hazards

Applicable Coastal Act Provisions

[6] The Commission's determination herein that the proposed scope of work constitutes a replacement armoring device subject to a full Coastal Act evaluation as if it were new is consistent with similar past cases (e.g., see Grossman Armoring in CDP 3-23-0014 and Rockview Seawall in CDP 3-16-0446). In those cases and this one, the devices were past their useful lives and required significant augmentation, including complete replacement of the footings/foundation and filling of the now expanded seacaves, in order to continue functioning as proper shoreline armoring. The Commission applies those same analytic understandings, as guided by Section 13252(b) of the Commission's regulations, in this case as well.

[7] Based on the Applicant's estimation. That said, it is also possible that the area in question was subject to the public trust at some time in the past, which would mean that it would be located in the Commission's CDP jurisdiction.

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

> ***Section 30001.*** *The Legislature hereby finds and declares: (a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem. (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation. (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction. (d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.*
>
> ***Section 30001.5.*** *The Legislature further finds and declares that the basic goals of the state for the coastal zone are to: (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state. (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners. (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast. (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone. (f) Anticipate, assess, plan for, and, to the extent feasible, avoid, minimize, and mitigate the adverse environmental and economic effects of sea level rise within the coastal zone.*

In short, the law recognizes the coastal zone as a special place, where coastal resources are of “paramount concern”, and requires that it both be protected against degradation, and enhanced where feasible. To implement these objectives, Chapter 3 of the Coastal Act includes a series of specific provisions that clearly and emphatically require the protection of coastal resources, from public recreational access to coastal habitats to public views and landforms.[8] And, perhaps just as clearly, and as explained in detail subsequently, armoring generally has significant adverse impacts on the coastal resources protected by Chapter 3 of the Coastal Act, leading to unavoidable impacts on natural landforms, public recreational access, natural processes (which also

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

significantly impacts public recreational access) and public views.[9] These impacts are all inconsistent with the Coastal Act's resource protection requirements, and consequently, the Coastal Act generally directs that armoring be denied in order to meet these coastal resource protection requirements. In other words, the Coastal Act generally prohibits armoring except under very limited circumstances, and this general prohibition is echoed by Coastal Act Section 30253, which makes it clear that all development, including armoring, is not to be approved if it will cause erosion or destruction of the site, or substantially alter natural landforms,[10] which past cases have shown is predominately the case with armoring.[11]

In fact, as contrasted with the numerous Coastal Act resource protection provisions, both broad and specific, there is only one Coastal Act section that specifically allows armoring, Section 30235, and it includes important – and severely limiting – criteria. Section 30235 states, in applicable part:

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

Section 30235 requires the Commission to approve armoring under very limited circumstances, namely when required to serve coastal-dependent uses or to protect public beaches or existing structures in danger from erosion, and only when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In other words, when there are qualifying uses, beaches, or structures,[12] armoring must be allowed only

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[9] See, for example, Commission findings in LCP amendments LCP-3-SCO-20-0066-2 (Santa Cruz County Hazards Update) and LCP-3-MRB-21-0047-1 (Morro Bay Land Use Plan Update), and in CDPs A-3-SCO-07-095/3-07-019 (Pleasure Point Seawall), 3-09-025 (Pebble Beach Company Beach Club Seawall), 3-09-042 (O'Neill Seawall), 2-10-039 (Lands End Seawall), 3-14-0488 (Iceplant LLC Seawall), 3-16-0345 (Honjo Armoring), 3-16-0446 (Rockview Seawall), 2-17-0702 (Sharp Park Golf Course), 3-18-0720 (Candau Armoring), 3-20-0166 (Wavefarer Partners LLC Armoring), 3-22-0440 (Casanova Armoring), 2-21-0912 (SFPUC Ocean Beach Armoring), 3-22-1027 (Hofmann Seawall), and 3-23-0014 (Grossman Armoring).

[10] Section 30253 states, in applicable part, that "New development shall…Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area **or in any way require the construction of protective devices** that would substantially alter natural landforms along bluffs and cliffs" (emphasis added).

[11] See footnote 9.

[12] Two of the three qualifying uses are based on protecting important State shoreline priorities (coastal-dependent uses and public beaches). Importantly, armoring rarely protects beaches; rather, armoring typically leads to the incremental loss of beaches. In fact, when public beaches are in danger of erosion, such danger is typically exacerbated by armoring as opposed to protected by it because armoring typically not only occupies beach and shoreline space that would otherwise be available to public recreational uses, but it also inhibits the transmittal of beach-generating materials from bluffs, and typically leads to loss of beaches over time as an eroding shoreline bumps up against such armoring (also referred to as the 'coastal squeeze' or passive erosion). Thus, bracketing groins in certain circumstances, armoring is typically not a viable/fruitful response to protect a public beach in danger from erosion. Finally, past these two important State shoreline priorities, the only other development allowed

if it is required to serve/protect them, meaning when there are no other less environmentally damaging feasible alternatives that can perform that same function. Put differently, given that armoring has significant adverse impacts on a variety of protected coastal resources and is only required to be approved in very limited circumstances, implementation of the Coastal Act's resource protection policies generally requires denial of proposals for armoring.[13] When framed in this way, Section 30235's limited requirement to approve shoreline armoring is probably best understood as an exception with respect to the Coastal Act's coastal resource protection provisions, or put another way, an 'override' of the other Coastal Act sections found in Chapter 3 that would require the Commission to otherwise deny the project.

Importantly, the Section 30235 override as applicable to non-coastal dependent uses only applies to "existing structures." The issue of what constitutes an "existing structure" for Section 30235 purposes has been debated for many years, but was recently resolved by a Court of Appeal in the *Casa Mira* case.[14] There, the court held that "the phrase 'existing structures' in Section 30235 refers to structures that existed prior to January 1, 1977, the Coastal Act's effective date."[15] Thus, the Section 30235 requirement to allow for armoring despite its coastal resource impacts or its inconsistencies with other Coastal Act resource protective provisions only applies to coastal-dependent uses, or pre-Coastal Act development (development lawfully existing prior to January 1, 1977 that has not been redeveloped since), essentially allowing pre-Coastal Act structures the benefit of armoring as an exception to the otherwise applicable Coastal Act requirements.[16] As the court noted, this interpretation of existing structure in Section 30235 is necessary "to comport the Coastal Act's predominant goal of 'preservation of the fragile coastal ecology from overzealous encroachment."[17]

The purpose and structure of the Coastal Act support such an interpretation as well, as reflected in numerous policies of the Act. For example, not only does Section 30009 require a liberal interpretation to protect shoreline and beach resources,[18] but Section 30007.5 also directs the Commission to resolve conflicts in a manner that is "most protective of significant coastal resources."[19] And Courts have relied on Section 30009

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armoring by Section 30235 are existing structures, including private structures (e.g., residences) and in certain cases public coastal pathways.

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

[14] See *Casa Mira Assn. v. California Coastal Com.*, 107 Cal.App.5th 370 (2024), as modified on denial of rehearing (December 30, 2024), and where State Supreme Court review was denied (March 12, 2025).

[15] *Casa Mira* at 388.

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

[17] *Casa Mira* at 385.

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

[19] Section 30007.5 states, in applicable part: "The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in

to find that exceptions to the Act's requirements must be read narrowly,[20] and have also found that the Act is designed to ensure "that state policies prevail over the concerns of a local government" making "the Commission, not the [local government], the final word on the interpretation of the LCP."[21,22] The Coastal Act is thus the arbiter for understanding LCPs on these points. And in fact, courts have also previously found that LCP provisions must be understood in relation to the relevant Coastal Act section or sections from which a specific LCP provision derives its authority.[23] Furthermore, Section 30270 requires the Commission to "take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise;" and recognizing the inevitability of ever increasing impacts from armoring in an era of sea level rise underlines the importance of limiting the circumstances under which armoring can be approved.

It is thus perhaps unsurprising that the City of Pismo Beach LCP (which provides guidance, albeit non-binding, for this application) echoes the Coastal Act construct in this regard. Similar to the Act, the LCP includes a series of provisions focused on natural resource protection, with a special emphasis on protection of natural landforms and the shoreline and beach area,[24] including as this area helps to define the City, is a large part of its economic engine focused on tourism, and is an ingrained part of the City's social and cultural identity. To that point, the LCP too provides only a very limited exception for armoring, one that is in some ways even more limiting than the Coastal Act. Specifically, the LCP includes a Safety Element that speaks to issues of minimizing risks due to hazards, including shoreline hazards, and the need to ensure that private development not impose risks on the public at large. The LCP's Safety Element states:

> *The intent of the Safety Element is to establish policies that will minimize the potential of human injury and property damage by reducing the exposure of persons and property to natural hazards. … Exposure to the hazards addressed*

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carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources."

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

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

[22] California law affords "great weight" to the Commission's interpretation of the statutes and regulations under which it operates (see, for example, *Ross v. California Coastal Commission* (2011) 199 Cal.App.4th 900, 922-23; and *Reddell v. California Coastal Commission* (2009) 180 Cal.App.4th 956, 965).

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

[24] See, for example, LUP Policy CO-15: "The ocean shore is, and shall continue to be, the principle open space feature of Pismo Beach. Ocean front land shall be used for open space, recreation and related uses where feasible and where such uses do not deteriorate the natural resource." And LUP Policy CO-17: "Shoreline structures, including piers, breakwaters, channel dredges, pipelines, outfalls and similar structures shall be sited to avoid significant rocky points and intertidal and sub tidal areas. The design and construction of revetment devices and other shoreline structures shall be prepared by qualified engineers in accordance with city standards which will avoid or minimize disturbance of sensitive coastal ecological resources."

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

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

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

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

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

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

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

> ***LUP Policy S-3 Bluff Set-Backs.*** *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The City shall determine the required setback based on the following criteria: (a) For development on single-family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be 25 feet from the top of the bluff (blufftop is defined as the point in which the slope begins to change from near horizontal to more vertical). …*
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> ***IP Section 17.078.050 Bluff hazard, erosion and bluff retreat criteria and standards.*** *(A) New structures shall be set back a sufficient distance from the bluff edge to be safe from the threat of bluff erosion for a minimum of one hundred years. The city shall determine the required setback based on the following criteria: 1. For development on single family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be twenty-five feet from the top of the bluff (blufftop is defined as the point at which the slope begins to change from near horizontal to more vertical). …*

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

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

> ***IP Section 17.078.060(D). Seawalls shall not be permitted, unless*** *the city has determined that there are no other less environmentally damaging alternatives for protection of existing development or coastal dependent uses. If permitted, seawall design must (a) respect natural landforms; (b) provide for lateral beach access; and (c) use visually compatible colors and materials and will eliminate or mitigate any adverse impacts on local shoreline sand supply. (emphasis added)*
>
> ***IP Section 17.078.060(F).*** *Shoreline structures, including groins, piers, breakwaters, pipelines, outfalls or similar structures which serve to protect existing structures, or serve coastal dependent uses and that may alter natural shoreline processes* ***shall not be permitted unless*** *the city has determined that when designed and sited, the project will:* ***1. Eliminate or mitigate impacts on local shoreline sand supply; 2. Provide lateral beach access; 3. Avoid significant rocky points and intertidal or subtidal areas; and 4. Enhance public recreational opportunities.*** *(emphasis added)*

Again, as with the Coastal Act, armoring is best understood through an LCP lens too as an exception that is to be allowed only under very limited circumstances. In fact, the LCP only allows armoring when required to protect existing principal structures, and only if it not only eliminates or mitigates impacts to sand supply, but also only if it provides lateral beach access, avoids significant rocky points and intertidal/subtidal areas, and enhances public recreational activities. High bars indeed, and in some respects even more limiting criteria than Coastal Act criteria.[25] And the LCP recognizes that such projects can adversely impact community and natural resource values at the shoreline. Tellingly, the LCP's Hazards and Protection Overlay (or "H") zone is intended to advise property owners that they are located in hazardous area, and to avoid putting the risk of their development upon the public and the community, including as it relates to the shoreline and beach. Again, stating:

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

In other words, the LCP prioritizes the protection – and in fact enhancement – of bluffs and beaches when development is located in hazardous areas, as is the case with the subject property in this application. And although these LCP policies are non-binding as it relates to the standard of review for this application, they do provide guidance, and only further reinforce the key Coastal Act understanding that the Act's coastal resource protection requirements, including protections of shorelines, natural landforms, and beaches, would suggest that armoring is essentially prohibited by all but one Coastal

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

Act policy, and that policy only requires approval of such armoring under exacting criteria. Thus, applications for armoring, such as this one, not only need to be evaluated against that criteria, but also need to be understood in terms of the overall Coastal Act context as it relates to coastal resource protection being a "paramount concern" and clearly the underlying objective in the coastal zone, which area is required to be understood as "a distinct and valuable natural resource of vital and enduring interest to all the people."

Consistency Analysis

As indicated above, Coastal Act Section 30235 is an override over other Coastal Act provisions that allows armoring if required to serve a coastal-dependent use or to protect an existing structure in danger from erosion (as applicable to this proposed project) subject to the requirement that adverse impacts to local shoreline sand supply are mitigated or eliminated. The Coastal Act provides for these limitations because shoreline armoring can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beaches.[26]

Thus, the applicable questions here under Coastal Act Section 30235 are whether: (1) there is an existing structure and/or a coastal-dependent use; (2) that existing structure is in danger from erosion and/or that coastal-dependent use needs to be served; (3) shoreline-altering construction is required to protect that existing endangered structure and/or to serve that coastal-dependent use; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply.[27] The first three criteria relate to whether the proposed armoring is necessary, while the fourth criterion applies to mitigating some of the impacts from the proposed armoring if it is deemed necessary.

Existing Structure/Coastal-Dependent Use

As noted in detail in the preceding analysis, the only types of structures that qualify as "existing structures" allowed armoring under Section 30235 are those that existed before January 1, 1977 and have not been redeveloped since.

In this case, as noted earlier, available evidence shows that the home at the subject site pre-dates CDP requirements and does not appear to have been redeveloped since 1977, and thus qualifies as an existing structure as applicable to Section 30235. Specifically, the residential structure onsite was built around 1970 (the residence appears in the 1972 California Coastal Records Project (CCRP) imagery) and totaled about 2,374 square feet in size with a 484 square-foot detached garage. Subsequent additions to the residence over the years totaled some 989 square feet, or a 42%

[26] *Id*.

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

increase.[28] Although photographic images over the years suggest there have been other alterations to the house, including what appears to be the installation of skylights and the removal of a chimney, there are no permit records for such work to affirmatively determine the extent and scope of structural alteration. In sum, the residence does not appear to surpass the 50% threshold established under CCR Section 13252(b), and can be considered an existing structure pursuant to the first test of Section 30235.

Danger from Erosion/Serving Coastal-Dependent Uses

The second Section 30235 test is whether the existing structure is in danger from erosion, or whether the coastal-dependent use would be served by the proposed project. In this case, there is no coastal-dependent use to be protected by the proposed armoring, and thus instead the degree to which the subject residence is in danger must be considered. As to the degree of danger at the site, the Coastal Act does not define the term "in danger." There is risk involved in maintaining development along a California coastline that is actively eroding and can be directly subject to violent storms, large waves, flooding, earthquakes, and other coastal hazards. Sea level rise and localized geography that can focus storm energy at particular stretches of coastline can exacerbate these risks. Put another way, all development along the immediate California coastline is in a certain amount of "danger." It is a matter of the degree of threat that distinguishes between danger that represents an ordinary and acceptable risk, and danger that requires shoreline armoring per Section 30235. Lacking a Coastal Act definition, the Commission has in the past evaluated the immediacy of any threat in order to make a determination as to whether an existing structure is "in danger" for the purposes of Section 30235 considerations. While each case is evaluated based upon its own particular set of facts, the Commission has in the past interpreted "in danger" to mean that an existing structure would be unsafe to use/occupy within the next two or three storm season cycles (generally, the next few years) if nothing were to be done (i.e., in the no project alternative). [29]

[28] Based on available records, the City of Pismo Beach issued CDP 3-PSB-02-399 in 2002 which included the conversion of the existing 484 square foot detached garage into habitable space and a 229 square foot addition to it. The City also issued a Building Permit in 2004 for a 128 square foot breezeway addition that connected the garage and living space to the primary residence, along with a 148 square foot bedroom addition. Thus, the additions to the home over time total 989 square feet (484 + 229 + 128 + 148 = 989 square feet) which represents a 42% increase in square feet (989/2,374 = 42%). It's important to note that LCP Policy S-6 permits armoring only when necessary to protect existing *principal* structures, in addition to the other "overrides" provided under Section 30235, where the Commission has typically understood a principal structure to exclude detached, uninhabitable structures. Thus, the square footage of the original detached garage was not included in the footprint of the house as it existed prior to 1977 for the redevelopment calculation but rather was included as part of the percent increase in square footage when the detached garage was converted to habitable space and was connected to the primary residence via the 128 square foot addition. In addition, the 2002 CDP authorized a new 792 square foot detached garage which is considered its own structure in this case, and where it would have been required to be set back far enough to avoid the need for armoring for the LCP minimum of 100 years, where that was required to be evaluated as if the armoring at the site at that time was not present.

[29] See, for example, CDPs A-3-SCO-07-095/3-07-019 3-07-019 (Pleasure Point seawall), 3-09-025 (Pebble Beach Company Beach Club seawall), 3-09-042 (O'Neill seawall), 2-10-039 (Lands End seawall), 3-14-0488 (Iceplant LLC seawall), 2-17-0702 (Sharp Park Golf Course revetment), 3-18-0720 (Candau Armoring), 3-20-0166 (Wavefarer Partners LLC Armoring), and 3-22-0440 (Casanova Armoring).

As previously noted, the bluff at this site was originally armored in 1992 under CDP Number A-4-PSB-91-48 that allowed for the filling of four seacaves with concrete bags, where such bags were tied into the bluff face with reinforcing steel, the caves were backfilled with concrete, and shotcrete was applied over a portion of the bluff. During the 2022/2023 winter storm season, wave action undermined the existing concrete bag walls removing most of the existing grout and shotcrete, and one of the Applicants' geotechnical reports[30] estimates that up to 25 concrete bags were washed away. In addition, the Applicants' second geotechnical report[31] found that the width of the undermined area for each cave ranged between approximately four feet to 11 feet where the gap between the bottom of the remaining concrete bags and the beach sediments below averaged just under three feet in height. The horizontal distance of the caves extends up to 16.5 feet into the bluff, where the horizontal distance between the eastern limit of one cave to the western limit of the residence was determined to be 2.45 feet. The Applicants' third geotechnical report[32] concludes that:

> *Based on the anticipated continued damage and erosion of the bedrock, as well as the terrace soil deposits above the bedrock having the inability to span voids from the caves below, there is a high potential for collapse of the terrace deposits, resulting in undermining and collapse of the residence.*

Put another way, the previously approved armoring, built in 1992 and operational for some 30 years, had essentially reached the end of its useful life, and had eroded away to the point that the coastal bluff it was protecting was now eroding again, and the sea caves previously filled with grout had expanded in size and were subject to potential collapse. The Commission's Coastal Engineer, Jeremy Smith, and then Geologist Dr. Joseph Street, evaluated the Applicants' geotechnical reports and related project materials and agreed with the conclusion that the residence was in immediate danger from erosion, thus qualifying for issuance of an ECDP, and agreed that capping the entrances to the four seacaves and backfilling the voids with grout was the appropriate temporary emergency response. Thus, the proposed project meets the second test of Section 30235, because the bluff could collapse and undermine the subject residence in a single major storm without the armoring, meaning that it is in danger from erosion.

Alternatives to Shoreline Armoring

The third Section 30235 test that the project must meet is that the proposed armoring must be "required" to protect the existing endangered structures or to serve the coastal-dependent use. In other words, Section 30235 is structured that the third test is met if shoreline armoring is the only feasible[33] alternative capable of protecting the existing endangered structures or serving the coastal-dependent uses. When read in tandem

[30] See "Recommendation for Cliff Protection System Repair" prepared by Earth Systems (September 2023).

[31] See "Observations and Measurements of Cliff Protection System Damage Resulting from Extreme Weather Events that Occurred During the Winter of 2023" prepared by Earth Systems (September 2023).

[32] See "Erosion Potential for Caves A and D" prepared by Earth Systems (September 2023).

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

with other applicable Coastal Act provisions cited in these findings, the Commission has in the past conceptualized this Coastal Act Section 30235 evaluation as a search for the least environmentally damaging feasible alternative that can serve to protect existing endangered structures or to serve the coastal-dependent uses. Other alternatives typically considered include: the "no project" alternative; relocation of endangered structures; drainage and vegetation measures on the blufftop; sand replenishment programs; and combinations of each. The Applicants have submitted an alternatives analysis,[34] and several potential alternatives are discussed briefly below.

No Project Alternative

The "no project" alternative in this case would result in the continued degradation and undermining of the existing armoring onsite, which serves as an integral part of the structural support for the residence, where at the time of issuance of the ECDP, the residence was found to be imminently threatened by the potential collapse of the terrace deposits within the seacaves. Further, the Applicants' alternatives analysis suggests that the work completed under the ECDP and the armoring constructed under the 1991 CDP approval will degrade quicker if the proposed shotcrete is not applied to the bluff face and would likely result in an imminent threat to the residence sooner than the typical 20-year lifespan used for evaluating armoring devices. The Applicants' alternative analysis also determined that there is a higher potential for errant concrete debris to fall within the rocky tide pools near the base of the bluff without the application of shotcrete, resulting in a continually deteriorating visual environment. The "no project" alternative is infeasible for those reasons.

Relocation of Threatened Structure

The current net area of the Applicants' parcel is approximately 11,000 square feet. When considering the requisite 100-year bluff setback per the LCP and Coastal Act Section 30253,[35] along with a bluff erosion/retreat rate of 4.5 inches per year, a relocated residence would need to be set back from the edge of the bluff some 38 feet. The LCP also requires 4-foot side setbacks and a fifteen-foot front setback, which altogether would result in an approximate buildable area of over 5,000 square feet, where the existing residence and garage total 4,155 square feet. However, the site is an abnormal "pie" shape where the front lot line is significantly narrower, spanning approximately 30 feet, and where the lot opens up significantly to the west/bluff side, with the top of the bluff spanning approximately 87 feet. Thus, given that a majority of the buildable lot is closer to the bluff, it isn't as straightforward an endeavor to simply 'lift up' and relocate the residence landward. And while it is likely that some partial removal of the westernmost portions of the residence and relocation elsewhere on the lot is possible, doing so would result in at least its partial demolition, which could have its own impacts including potential impacts on the residence's foundation and further degradation of the bluff and terrace deposits within the seacaves. Therefore, based on the above reasons, relocation of the threatened structure is not a feasible alternative to

[34] See "Geotechnical Investigation Report" prepared by Earth Systems (June 2024) and "Response to CCC February 7, 2024, Letter Requesting Additional Information" prepared by TW Land Planning and Development, LLC (July 2024).

[35] IP Section 17.078.050 requires new structures to be sited safe from erosion for 100 years.

address the erosion danger at the current time.

Enhanced Erosion Control/Landscaping/Drainage

Sometimes erosion can be abated via better erosion control, increased landscaping, and improved drainage. However, such measures on their own are typically more considered 'best practices' for blufftop development, and they can help extend the useful life of setbacks from blufftop edges, but on their own are typically incapable of protecting against the type of major bluff failure to be expected at this site. In this case, the Applicants' geotechnical report found that site design, including existing drainage control measures, appear to have addressed surface runoff where significant indications of erosion of the terrace deposits were not observed. Furthermore, the mode of bluff failure of most concern here is not so much driven by terrestrial processes (i.e., unfavorable drainage, soil saturation, etc.) as it is driven by marine forces that are actively leading to the formation of the seacaves. This alternative is not feasible in this case as a stand-alone project either.

Armoring

Ultimately, non-armoring solutions are incapable of protecting the existing endangered structure in this case. And while it is true that a variety of armoring types and designs could be used, and various alternatives were evaluated by the Applicants under the CDP application for the original armoring in 1991 (such as a 12-foot high vertical concrete seawall), the proposed project minimizes impacts to coastal resources, including because the proposed armoring minimizes its seaward encroachment and its footprint on usable beach space (where the majority of new concrete was placed landward within the seacaves) and the Applicant completed the work authorized under the ECDP without the use of heavy equipment and with minimal impacts from construction (i.e., the placement of the concrete forms and grout backfill was completed in under 7 hours). Furthermore, the site's geography, including natural groins and labile beds within the Monterey formation, limits alternative armoring options, including due to access constraints, where the work completed under the ECDP required workers to hand carry tools to the site and access to the site was provided via the Memory Park stairs. Further, all work was done at low tide and the Applicants agreed to the use of concrete forms in lieu of concrete bags, per Commission technical staff recommendations, to eliminate the potential for marine debris to enter the water from the degradation of the concrete bags as they become exposed to wave attacks and abrasion. Additionally, one of the purposes of the proposed new shotcrete surfacing is to mimic natural bluff undulations and camouflage all concrete surfaces so as to visually blend in with the surrounding bluff and beach aesthetic as much as possible. As such, the Commission concurs with the Applicants that the proposed project represents the least environmentally damaging feasible alternative, including when coastal resource impacts and mitigations are factored in (see below sand supply discussion, and see subsequent findings related to public recreational access, public views, and marine resources, all incorporated here by reference).

Thus, the proposed project meets the third test of Section 30235 in that the proposed project, as conditioned, is the least environmentally damaging feasible alternative to protect an existing structure in danger.

Sand Supply Impacts

The fourth test of Section 30235 (and the LCP) that must be met is that the armoring must be designed to eliminate or mitigate adverse impacts to local shoreline sand supply.

Shoreline Processes

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

Encroachment on the Beach/Shoreline Recreational Area

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

In this case, the combined footprint of the proposed work (i.e., the concrete forms placed at the foot of the four seacaves and the proposed shotcrete) totals 143.4 square feet (the armoring will total 64.3 linear feet, where 49.3 linear feet includes both concrete forms and shotcrete for a depth of 2.66 feet (2-foot concrete forms plus 8 inches of shotcrete) and 15 linear feet includes only the 8-inches of proposed shotcrete, thus resulting in a weighted average depth of 2.23-feet from the base of the walls).[36]

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

Fixing the Shoreline Position (the "Coastal Squeeze")

On an eroding shoreline, beach and shoreline recreational areas will exist between the shoreline/waterline and the bluff as long as sand and space is available to form a beach. As bluff erosion proceeds in a natural setting, the profile of the beach also retreats, and the beach area migrates inland along with the bluff. This process essentially stops, however, when the backshore is fronted by a hard protective structure, such as a revetment or a seawall. Experts generally agree that where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the sea and the upland.[37] While the shoreline on either side of the armor continues to retreat, shoreline in front of the armor eventually stops at the armoring. This effect is also known as passive erosion or "coastal squeeze." The beach/recreational area will narrow, being squeezed between the moving shoreline and the fixed backshore, and this represents the loss of a beach and recreational shoreline as a direct result of the armor. The coastal squeeze phenomenon caused by armoring will only be exacerbated by climate change and sea-level rise. As climate change causes the seas to rise ever faster, beach and recreational shoreline areas will retreat inland at an increasingly rapid pace.[38,39] If the inland area cannot also retreat, eventually, there will be no available dry beach area and the shoreline will be fixed at the base of the armoring structure. In the case of an eroding shoreline, this represents the loss of a beach and shoreline recreational area as a direct result of the armoring.

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

[38] Sea level rise (SLR) will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. In the past century, the average global temperature has increased by about 0.8°C (1.4°F), and global sea levels have increased by 7 to 8 inches (17 to 21 cm). In addition, SLR has been accelerating in recent decades, with the global rate of SLR tripling since 1971 (IPCC, 2021). There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research. Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2024) and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2024). These documents also describe how, with SLR, shoreline development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, rising groundwater, and shoreline and bluff erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach width if the beach is squeezed between the landward migrating ocean and a fixed backshore. For example, for a shoreline with a slope of 40:1, a simple geometric model indicates that every foot of SLR will result in a 40 foot landward movement of the ocean/beach interface, resulting in significant loss of beach habitat and recreational space. This change could also expose previously protected backshore development to increased tidal/wave action and flooding, and those areas that are already exposed to such conditions will be exposed more frequently and with greater severity.

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

Specifically, beach and shoreline recreational areas are diminished as the beach is compressed between the ocean migrating landward and the fixed backshore. Such passive erosion impacts can be calculated over the time the proposed armoring is expected to be in place. Consistent with the Commission's experience that shoreline armoring often needs to be reinforced, augmented, replaced, or substantially changed within twenty years of its original installation, and to provide for re-review on a regular basis to allow for consideration of possible changes in policy, law, and physical conditions associated with armoring, the Commission evaluates this impact for an initial twenty-year period from date of approval for this CDP which in this case will amount to 22-years from the installation of the armoring under the ECDP in September 2023. After this 22-year initial mitigation period, additional impact analysis will be needed (see **Special Condition 8**) to assess the appropriate additional mitigation necessary at that time, if any.

The Commission has in the past used a methodology for calculating the passive erosion impacts of a seawall, or the long-term loss of beach/shoreline area due to fixing the back beach. Specifically, the lost area is equivalent to the footprint of the beach/shoreline area that would have been created by natural erosion processes absent the armoring and is equal to the long-term average annual erosion rate multiplied by the width of property that has been fixed by a shoreline protective device. In this case, the combined concrete forms for each seacave spans 64.3 linear feet as measured parallel to the primary shoreline (as opposed to the entire undulating length of the armoring, which is how the Commission does this calculation), and the average longshore long-term annualized erosion rate at this location on unarmored bluffs is 4.5 inches/year (as determined by the Applicants' geotechnical consultants, and as concurred on by the Commission's Coastal Engineer, Jeremy Smith). Therefore, the impacts due to the proposed project from fixing the back beach would be the loss of approximately 519.3 square feet (37 square feet of which accounts for the armoring that has been in place under the ECDP for the last two years, where the armoring constructed under the ECDP spans 49.3 linear feet, and 482.3 square feet is associated with the next 20-years of impacts for the 64.3 linear feet of armoring proposed under the CDP) of beach/shoreline loss through 2045 (i.e., beach/shoreline area that would have been created naturally if the back beach had not been fixed by the replacement and augmented armoring through that time period).

Thus, the seawall footing/foundation and void fill results in a loss of approximately 662.7 square feet of beach and shoreline recreational area (143.4 square feet associated with the seawall's footprint and 519.3 square feet associated with coastal squeeze due to such armoring over the initial 22-year time frame). There is no doubt that such impacts represent significant public recreational access impacts, including the loss of the socio-economic value of beach and shoreline recreational access area, for which the Coastal Act requires mitigation. The most obvious in-kind mitigation for these impacts would be to create a new 662.7 square-foot area of beach/shoreline recreational area to replace that which will be lost over the first 22 years with an identical area of beach/shoreline recreational area in close proximity to the eliminated beach/shoreline recreational area. While in concept this would be the most direct mitigation approach, in reality, finding an area that can be allowed to erode and turned into a beach and ensuring it does so appropriately over time is very difficult in actual practice. At the same time, the

calculations of affected area do provide an appropriate relative scale for evaluating alternative mitigations. For example, in the past, the Commission has looked at several ways to value such beach and shoreline areas in order to determine appropriate in-lieu mitigation fees, including evaluating the recreational value of the beach/shoreline recreational area in terms of the larger economy, as well as the real estate value of the land that could be acquired to replace the lost beach/shoreline area.

In terms of the recreational beach/shoreline value, the Commission has recognized that in addition to the more qualitative social benefits of beaches and shoreline areas (recreational, aesthetic, habitat values, etc.), beaches and shoreline recreational areas provide significant direct and indirect revenues to local economies, the state, and the nation. Most people recognize that the ocean and the coastline of California contribute greatly to the California economy through activities such as tourism, fishing, recreation, and other commercial activities.[40] There is also value in just spending a day at the beach and having wildlife and clean water at that beach and being able to walk along a stretch of beach and shoreline. There is also the societal benefit to beaches and shoreline areas, including the ways in which they contribute to local community, state social fabric, and cultural identity, although it is difficult to put a price tag on either of these.

Thus, these recreational impacts are in many cases difficult to quantify, including at sites such as those in northern Pismo Beach including in the St. Andrews Tract/Spindrift neighborhoods where visitation data needed for certain economic impact models are lacking. In other cases where visitation data is lacking, the Commission has found that using a real estate valuation method as a basis for identifying mitigation values allows for objective quantification of the value of beach and shoreline area, and that this valuation is appropriate both in terms of the scope of impacts and the rational basis for applying such methodology.[41] This method requires an evaluation of the cost of property that could be purchased and allowed to erode and turn into beach naturally to offset the area that would be lost due to the construction and continued placement of the augmented seawall over time.

Toward this end, the market values of representative blufftop properties in the St. Andrews Tract area were identified as a means to identify what it might cost to purchase such property and allow it to erode to create beach/shoreline recreational space.[42] Specifically, this review was conducted by looking at the sales of blufftop property in close proximity to the project site (specifically on Naomi Avenue and nearby Shoreline Drive) between the years 2020 and 2024. This value is then divided by the property

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

[41] See, for example, CDPs 2-10-039 (Land's End Seawall), 2-11-009 (City of Pacifica Shoreline Protection), A-3-PSB-12-042 and A-3-PSB-12-043 (Pismo Seawalls), 3-16-0345 (Honjo Seawall), 3-16-0446 (Rockview Seawall), 3-19-1287 (Fanshell Beach 17-Mile Drive Armoring), 3-20-0166 (Wavefarer Partners LLC Armoring), and 3-22-0440 (Casanova Armoring).

[42] There would also be additional costs in the form of structures that might first need to be removed after purchase (e.g., houses), but that cost is not countenanced here.

square footage to derive a price per square foot. The square-foot calculated value provides an estimate of what it would cost to purchase/acquire an equivalent blufftop property area that could be allowed to naturally erode and provide a beach area roughly equivalent to what will be lost due to the augmented armoring over the initial 22-year authorization.

This evaluation focused on a total of five blufftop properties sold in the immediate vicinity between 2020 and 2024. Over this time frame, sales show a range of per-square-foot values from $172.66 per square-foot at the low end,[43] up to $567.18 per square-foot at the high end,[44] with an average of $328.51 per square-foot.[45] This value represents a reasonable estimate of the average market value per square-foot of blufftop properties in close proximity to the project site based on actual sales data in recent years, and is a valid estimate of the cost of purchasing such property.

Applying this land acquisition value to the 662.7-square-foot impact associated with the proposed armoring would result in a mitigation fee of $217,704 for the loss of beach and shoreline use areas based on the initial 22-year mitigation period (i.e., 662.7 square feet x $328.51/square foot = $217,704). The Commission finds that this mitigation fee amount is most closely tied to specific land values in the vicinity of the project, and is thus both reasonably related and roughly proportional to the anticipated impacts of the armoring on beach and shoreline recreational use areas for the first 22 years it is in place.

Shoreline Sand Supply Impacts/Retention of Potential Beach Material

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

[43] The property at 2091 Shoreline Drive sold for $1.2 million in 2024 and included 6,950 square feet of property, or $172.66 per square-foot.

[44] The property at 2171 Shoreline Drive sold for $4.2 million in 2023 and included 7,405 square feet of property, or $567.18 per square-foot.

[45] The other properties used to derive the average price per square foot for blufftop land in the immediate vicinity include the immediate upcoast and downcoast properties, 181 Naomi Avenue and 195 Naomi Avenue, the former of which had an average price per square-foot of $191.31 and the latter of which had an average price per square-foot of $200.60, and the final property considered, 2151 Shoreline Drive, had an average price per square-foot of $510.79.

interrupted and, if the armored bluff/shoreline area would have otherwise eroded, there will be a measurable loss of material to the beach/shoreline/offshore sand supply system area as a result.

In these cases, sand and sand generating materials would be added to the beach/shoreline at these locations, as well as to the larger littoral cell sand supply system fronting the bluff/shoreline, if natural erosion were allowed to continue (i.e., if the armoring was not there). The volume of total material that would have gone into the sand supply system over the lifetime of the shoreline protective device would be the volume of material between (a) the likely future bluff/shoreline configuration with shoreline protection; and (b) the likely future bluff/shoreline configuration without shoreline protection. A necessary component of the Commission's established methodology for calculating this sand volume is the percentage of sand in the bluff materials at the site. The Applicants' geotechnical consultant estimated (where such value was concurred on by Mr. Smith) that the amount of beach-quality sand retained by the proposed armoring would be approximately 157.08 cubic yards, which accounts for the armoring that has been in place under the ECDP and for the next 20-years going forward for the armoring constructed under the ECDP plus the proposed shotcrete. This amount, however, assumes that the bluff is uniform in shape and size, which it is not—there are seacaves present with voids, and these voids by definition do not have bluff materials from which sand would be created. The volume of sand that would ordinarily be created in these caves/voids is estimated by the Applicants' geotechnical consultant (and again concurred on by Mr. Smith) to be 9.5 cubic yards. This 9.5 cubic yard amount can be subtracted from the overall total. Thus, all told when considering the sand contributed to the littoral system through the formation of the caves, retention impacts are roughly 147.6 cubic yards (i.e., 157.08 cubic yards – 9.5 cubic yards = 147.6 cubic yards) over the initial 22-year mitigation period.

To mitigate for this loss of sand, the Commission has in the past required payment of an in-lieu fee to contribute to ongoing sand replenishment or other appropriate mitigation programs, where such fee is based on the cost of buying and delivering an equivalent volume of beach quality sand to the affected area. For purposes of this analysis, the cost of purchasing and delivering 147.6 cubic yards of beach quality sand is assumed to be roughly $35 per cubic yard.[46] Thus, an in-lieu fee to address this sand supply impact would be approximately $5,165 (i.e., $35/cubic yard x 147.6 cubic yards = $5,165 for the initial mitigation timeframe).

Approvable Mitigation

Accordingly, the value associated with the proposed project's sand supply and related beach/shoreline loss impacts through 2045 is approximately $222,869 (i.e., $217,704 + $5,165 = $222,869), which could be accommodated by collecting a mitigation fee in that amount. While requiring such a mitigation fee could commensurately mitigate for these impacts, the Commission has also instead required the provision of in-lieu public

[46] Although the Commission has been applying a fee of roughly $60 per cubic yard to this calculation based on past recent cases and evidence pertaining thereto, here the Applicant received three estimates to deliver beach quality sand to the site (determined to be bona fide by Mr. Smith), where the average of such estimates is $35 per cubic yard.

recreational access improvements to offset such impacts. Such mitigation strategies can allow for bona fide improvements to public recreational access infrastructure and utility so that mitigation benefits can be realized in the near term, and within the area of the impacts. In this case, the Commission finds that the best way to mitigate for the above-identified armoring impacts, as well as to enhance and maximize public access and recreational opportunities in the project area as required by the Coastal Act, is to require the Applicants to prepare and implement a Public Access Enhancement Plan (Enhancement Plan) with the objective of maximizing and enhancing public recreational access and utility at the Vista Del Mar stairway located just over a quarter-mile from the project site. Specifically, the Improvement Plan requires the Applicants to fund repairs and enhancements to the Vista Del Mar stairway, which will at a minimum include structural stability improvements as well coloring and contouring of the staircase to visually blend its exposed concrete elements with the natural bluff aesthetic (see **Special Condition 4**). The Enhancement Plan also allows for the identification of other coastal public access and recreational projects in lieu of the Vista Del Mar stairway repairs, subject to Executive Director approval, to provide for a commensurate amount of mitigation. Furthermore, the Applicant has agreed to provide a public recreational access easement seaward/beachward from the toe of the bluff or the outer edge of the concrete footing, including to address past CDP requirements (see **Special Condition 5**).[47]

These types of on-the ground public access improvement mitigation packages are preferred here to collecting funds for an undetermined mitigation project or a project with an uncertain timeframe for execution. There is also value in being able to realize such mitigation in the short term and within the vicinity of the project site, where completion of the improvements will provide fairly immediate (i.e., by January 2028) and tangible public benefits as opposed to an in-lieu fee that may not be used or applied for some time, where the time lag would reduce its effectiveness. In short, the above-described access improvements constitute an appropriate and adequate compensatory mitigation package to offset the impacts identified above, and to be able to find the project consistent with Section 30235 in this regard.

Duration of Authorization

As described above, the armoring meets the first test of Coastal Act Section 30235 and the LCP because the residence at 185 Naomi Avenue was originally built in the early 1970s, prior to the Coastal Act, and the available evidence does not conclusively show that it has been redeveloped in the time since CDPs have been required. As a result, and in the absence of new evidence indicating otherwise, it retains its 'existing structure' status under Section 30235 as long as it is not subjected to additional work that, along with the prior work, exceeds the threshold of redevelopment. In this case, as described

[47] CDP A-4-PSB-91-48 was conditioned for the Permittee to provide the Executive Director with copies of the public access dedication required by City of Pismo Beach CDP No. 90055. However, the Commission's condition referenced the wrong CDP, where the City permit that required the public access easement was CDP No. 91125, which was the CDP for the armoring on appeal that had been superseded by the Commission's CDP when it took jurisdiction over the project. The easement was thus never recorded. That said, the Applicants claims that public access seaward of the toe of the bluff has been provided for years and proposes an easement over this beach area as part of this CDP application. Thus, this CDP will resolve this conflict by requiring the recordation of a public access easement.

above, the Applicant undertook various improvements to the residence around 2002 and 2004, and the Commission has concluded that, based on the available evidence, it must treat the work as falling just short of it rising to the level of being considered redevelopment, but not by much.[48] Specifically, based on the information available, including from the City's building permits,[49] the residence has undergone an approximate 42 percent change in square footage since 1977.[50]

If the residence were to be redeveloped (e.g., an additional 8%, or 190 square feet, addition, or replacement of 50% or more of structural foundation, walls, or roof, measured cumulatively since 1977), then it would become clear that it would constitute a new replacement structure that needs to meet all LCP and Coastal Act requirements, including in terms of blufftop coastal hazard setback without reliance on armoring. In such a case, the residence would need to be sited and designed to ensure stability and structural integrity over time without reliance on shoreline armoring, including the armoring authorized by this CDP. If such re-siting to a location consistent with the LCP's 100-year setback (with a minimum 38-foot bluff setback, at least calculated based on conditions that apply today) is not possible, then the proposed additional structural work to the residence could not be permitted (or the house would need to be relocated, etc.). Thus **Special Condition 8(a)** outlines the parameters of what would constitute "redevelopment" of the residence, at which time armoring would no longer be authorized and would be required to be removed.

Similarly, and furthermore, the Coastal Act only compels approval of shoreline armoring when necessary to serve a coastal-dependent use or to protect a public beach or an existing structure in danger of erosion, and therefore shoreline protective devices are no longer allowed after the existing structures or coastal-dependent uses they protect are no longer present or no longer require armoring. As described throughout this report, shoreline armoring impedes public access to and along the shoreline, adversely impacts beaches and shoreline recreational areas, potentially increases erosion on adjacent properties, and visually impairs this coastal area, among other coastal resource impacts. Although in this case it is likely that the residence at 185 Naomi Avenue (i.e., the structure being protected by the proposed armoring) will be in place for some time, it is unclear how sea level rise and other coastal hazards may affect the shoreline in this area over time. So, it is still necessary to ensure that the approved shoreline armoring does not outlast the structure/use it was designed and approved to protect given its adverse coastal resource impacts. Thus, **Special Condition 8(a)** also limits the duration of this armoring approval to the time when the residence is no longer present or no longer requires armoring, whichever occurs first. If some portion of the residence is removed for any reason, while some portion is retained, all without triggering redevelopment thresholds, then the armoring is required to be reduced or modified so that it is the minimum necessary to protect the existing portions that are retained.

[48] Again, as described above review of information available for the work (including from City building permits) did not appear to suggest that 50 percent or more of the residence had been redeveloped, as the Commission understands and calculates redevelopment.

[49] See CDP 3-PSB-02-399 and City of Pismo Beach Building Permit B040250.

[50] See Footnote 28.

In terms of impact mitigation for the approved project, as discussed above, the mitigation for the Section 30235 impacts associated with the augmented armoring is based on an initial 22-year time period.[51] These impacts will continue to occur, though, for the full time that the approved armoring structure is in place, including beyond 22 years if it continues to be necessary to protect the residence. Using an initial time period of 22 years for the mitigation calculations ensures that the mitigation will cover the likely initial impacts from the armoring, but future impacts beyond the initial mitigation period are far more uncertain to predict at this point in time due to, among other factors, possible changes in sea level, storm frequency and intensity and direction of wave attack. The mitigation fee required under this approval may very well be sufficient to offset the continued impacts of retaining the armoring beyond the initial 22-year mitigation period, but an evaluation of ongoing project impacts to shoreline resources in the future may demonstrate that additional mitigation is necessary in order to adequately mitigate for ongoing project impacts to coastal resources. **Special Condition 8(c)** therefore requires the Applicants to reevaluate the impacts associated with the retention of armoring beyond the initial 22-year mitigation period and provide additional mitigation if deemed necessary to mitigate for additional impacts to coastal resources past the initial 22 years in the event that said impacts are not mitigated sufficiently under this approval.

Thus, as conditioned, the project satisfies the Coastal Act Section 30235 requirements regarding mitigation for sand supply impacts, and thus also meets all Section 30235 tests for requiring such armoring.

Long-Term Stability, Maintenance, and Risk

Coastal Act Section 30253 requires the project to assure long-term stability and structural integrity, minimize future risk, and avoid additional, more substantial protective measures in the future. This is particularly critical given the dynamic shoreline environment in this area. Also critical to the task of ensuring long-term stability, as required by Section 30253, is a formal long-term monitoring and maintenance program. If the completed project were damaged in the future (e.g., as a result of wave action, storms, an earthquake, etc.), it could put the structural stability of the residence in danger. In addition, such damage could adversely affect nearby beaches and recreational use areas by resulting in debris on the beaches and/or creating a hazard to the public using the beaches and offshore areas. Therefore, in order to find the proposed project consistent with Coastal Act Section 30253, the project must be maintained in its approved and required state. Further, in order to ensure that the Applicants and the Commission know when repairs or maintenance are required, the Applicants must regularly monitor the condition of the completed project, particularly after major storm events. Such monitoring will ensure that the Applicants and the Commission are aware of any damage to or weathering of the completed project, and can determine whether repairs or other actions are necessary to maintain the completed project in their approved state. To assist in such an effort, monitoring plans should

[51] The timeframe was adjusted because the project was initially installed under emergency permits. The mitigation thus represents the impacts beginning from the initial date of construction (i.e., September 2023) and includes the 20 years from the date of Commission approval of this CDP, amounting to 22 years for the initial impact mitigation timeframe.

provide vertical and horizontal reference distances from the completed project to surveyed benchmarks for use in future monitoring efforts.

Thus, to ensure that the project is properly maintained to ensure its long-term structural stability, **Special Condition 6** requires regular submission of monitoring and maintenance reports. Such reports are required to provide for evaluation of the condition and performance of the completed project and its overall stability, and to provide for necessary maintenance, repair, changes, or modifications to the completed project. In addition, **Special Condition 7** authorizes the Applicants to maintain project components in their approved state through this CDP, subject to the terms and conditions identified by the special conditions. Such future monitoring and maintenance activities must be understood in relation to clear as-built plans that are required to be submitted by the Applicants (**Special Condition 3**).

In terms of recognizing and assuming the hazard risks for shoreline development, the Commission's experience in evaluating proposed development in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences, as well as more steady erosion and other coastal hazards, all as may be exacerbated by sea level rise. Separate from its impact on coastal resources directly, development in such dynamic environments is also susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) in the many, many millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, the Commission has in the past required applicants to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicants to assume all risks for developing at this location (see **Special Condition 9**), and also to require notice in any real estate transactions involving the site of the coastal hazard dangers, and the terms and conditions of this CDP (see **Special Condition 11**).

Finally, the Commission has long analyzed consistency with Section 30253 in terms of analyzing a project's risks and structural integrity over time, taking sea level rise into account. However, Section 30270 now explicitly requires the Commission to consider sea level rise when analyzing risks under Section 30253 and also requires the Commission to assess and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise. The findings above identify and assess the project's hazards-related impacts in a manner that accounts for sea level rise. As described above, the Commission has also imposed conditions to avoid, where feasible, and mitigate the adverse, hazard-related impacts of sea level rise, as they relate to these projects. For example, **Special Condition 6** requires submission of monitoring and maintenance reports to ensure that the project remains stable over time, and **Special Condition 7** authorizes maintenance of the project to ensure it does not erode or cause destruction of the site or surrounding area over time as sea levels rise and potentially cause the project to deteriorate. The above findings also describe how it is not feasible to completely avoid all project-related impacts because there is no less damaging alternative to the armoring in this instance. With these findings and conditions, the

project can be found consistent with Section 30270.

Coastal Hazards Conclusion

The proposed project, as conditioned, can be found consistent with the above described applicable Coastal Act provisions.

2. Public Recreational Access

Applicable Coastal Act Provisions

Protecting and providing for maximum public recreational access is one of the main cornerstones of the Coastal Act, where the most explicit such provisions are found in Sections 30210 through 30224, with other sections also speaking to similar goals and requirements (such as Section 30240 protecting parks and recreational areas). The Coastal Act states:

> ***Section 30210.*** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
>
> ***Section 30211.*** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*
>
> ***Section 30212(a).*** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. …*
>
> ***Section 30213.*** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. …*
>
> ***Section 30220.*** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*
>
> ***Section 30221.*** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*
>
> ***Section 30222.*** *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

> ***Section 30223.*** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*
>
> ***Section 30240(b).*** *Development in areas adjacent to … parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those … areas.*

These overlapping Coastal Act provisions protect public recreational access to and along the beach/shoreline and to offshore waters, particularly free and low-cost access. Specifically, Section 30210 requires the Commission to provide the general public maximum access and recreational opportunities, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access to the sea, including as it relates to the use of dry sand and rocky coastal areas. In approving new development, Section 30212(a) requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save certain limited exceptions, such as existing adequate nearby access. Section 30213 protects lower cost forms of access, such as the free access available at the shoreline at the project site. Section 30220 protects coastal areas suited for ocean-oriented activities, such as offshore surfing areas here, for such purposes. Sections 30221 and 30223 protect oceanfront and upland areas for public recreational uses, and Section 30222 prioritizes visitor-serving amenities providing for public recreational use. Section 30240(b) protects parks and recreation areas, like the shoreline at the site, from degradation, and requires any allowed development to be compatible with the continuation of those areas.

Finally, Coastal Act Section 30210's direction to maximize public access and recreation opportunities represents a different threshold than to simply provide or protect such access, and is fundamentally different from other similar provisions in this respect. In other words, it is not enough to simply provide public recreational access to and along the coast, and not enough to simply protect such access, but rather that such access must also be <u>maximized</u>. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction to maximize public recreational access opportunities with respect to projects along the California coast that raise such issues, like this one. In addition, with sea levels rising and coastal erosion, the mean high tide line will generally move landward over time depending on the beach/shoreline profile, seasonal tidal activity, and continued sea level rise. Given that that line often defines the demarcation point between public and private property (with the public's property lying on the seaward side, and generally held in public trust by the California State Lands Commission),[52] it is also important to consider the effect of shoreline projects like this

[52] The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds and manages these lands for the benefit of all people of the State for statewide purposes consistent with the common law Public Trust Doctrine ("public trust"). In coastal areas, the landward location and extent of the State's sovereign fee ownership of these public trust lands are generally defined by reference to the ordinary high-water mark (Civil Code Section 670), as measured by the mean high tide line (*Borax Consol. v. City of Los Angeles* (1935) 296 U.S. 10), and these boundaries generally remain ambulatory as natural processes dictate.

one on what is best understood as an ambulatory public trust area, including where structures can halt the inland migration of the mean high tide line, and thus potentially halt the inland migration of public trust areas, at least physically.[53] Thus, it is also important that the Commission assess the effect of the proposed project on public trust resources. In addition, the LCP includes public access and recreation provisions that reflect Coastal Act requirements and tailor them to Pismo Beach's unique shoreline, including:

> ***LUP Principle P-14 Immediate Ocean Shoreline.*** *The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region. This unique narrow strip of land should receive careful recognition and planning. The purpose of the beach it to make available to the people, for their benefit and enjoyment forever, the scenic, natural, cultural, and recreational resources of the ocean, beach, and related uplands.*
>
> ***LUP Principle P-22 Public Shoreline Access.*** *The continued development and maintenance of public access to the Pismo Beach coastline shall be considered an integral and critical part of the city's parks and recreation program.*
>
> ***LUP Policy PR-2 Ocean and Beach are the Principal Resources.*** *The ocean beach and its environment is, and should continue to be, the principal recreation and visitor-serving feature in Pismo Beach. Oceanfront land shall be used for recreational and recreation-related uses whenever feasible.*
>
> ***LUP Policy PR-6 Retention of All Existing Parks and Dedicated Open Space.*** *Any proposed loss of parks or dedicated open space areas shall be replaced at a minimum with the equivalent quality of acreage or facilities lost.*
>
> ***LUP Policy CO-15 Ocean Shore-Principal Open Space Resource.*** *The ocean shore is, and shall continue to be, the principle open space feature of Pismo Beach. Ocean front land shall be used for open space, recreation and related uses where feasible and where such uses do not deteriorate the natural resource.*

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

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

Analysis

As identified earlier, shoreline armoring can have significant adverse impacts to public access and recreation.[54] The northern extent of the City's shoreline consists primarily of rocky bluffs interspersed with generally smaller, and in some cases 'pocket', beaches. A narrow sandy beach, more accessible at low tides, begins just upcoast of the project site at Memory Park and extends downcoast just past the site where the rocky headland at Memory Park Outcrop limits lateral access further downcoast. The rocky intertidal zone in this area is also a popular tidepooling spot and is accessible from the bluff top area down to the beach level (and the beach/shoreline area at the site) via a public staircase at Memory Park.

The proposed project would have identifiable impacts on public recreational access, including through loss of beach/shoreline recreational use area where it is sited, incremental loss of beach due to the "coastal squeeze," and cumulative impacts to beach and shoreline recreation in the area (see discussion above in the "Coastal Hazards" section, incorporated here by reference). More specifically, the proposed project would eventually lead to a loss of available beach and shoreline recreation area for public access and recreation because the back of the beach/shoreline area will be fixed by the continued placement of the proposed armoring, and the ocean interface will gradually move landward as sea level rises due to climate change. In fact, sea level is expected to rise between 0.4 feet to 0.8 feet by 2040,[55] and thus it is likely that the proposed armoring will have discernible impacts on public access and recreation for as long as it is in place. In fact, with sea levels anticipated to rise almost a foot within the next 20 years, less of the beach/shoreline area seaward of the seawall will be available and such availability will be for a shorter period of time each day. These impacts will only be exacerbated as the years go on.

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

Public Trust

In addition to the Coastal Act provisions that support public access and equal opportunities for recreation, the Commission has the responsibility to protect public trust resources and public trust uses. Coastal Act regulations define public trust lands as "all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes," where such lands include "tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed, and which were subject to the Public Trust at

[54] See Footnote 9.

[55] *State of California Sea-Level Rise Guidance (2024 Science and Policy Update); California Natural Resources Agency & Ocean* Protection Council; Sacramento, California; June 4, 2024; 1-101.

any time."[56] In the common law, the doctrine traditionally protects in-water uses such as fishing and navigation, but has been extended to protect the environment and associated resources that affect trust lands, such as non-navigable tributaries supplying water to a lake, and groundwater resources that impact navigable waters.[57] California recognizes public recreational access as a component of public trust resources.

As noted earlier, the Coastal Commission is guided by the principle articulated in the *Milner* case that an upland owner cannot unilaterally and permanently fix the tidelands boundary with shoreline armoring, such as the armoring part of this proposal. Even so, as discussed above, the public's ability to recreate on the shoreline area will inherently be impacted as a direct result of the project, especially over time, which will interfere with public trust uses. These impacts on public trust uses are an additional impact basis for requiring mitigation.

Public Recreational Access Conclusion

To offset these impacts, the Commission and the Applicants have mutually agreed to a Public Access Enhancement Plan which requires the Applicants to fund public access improvement projects within the vicinity of the project site. Specifically, the Improvement Plan requires the Applicants to fund repairs and enhancements to the Vista Del Mar stairway, which will at a minimum include structural stability improvements as well coloring and contouring of the staircase to visually blend its exposed concrete elements into the natural bluff aesthetic (see **Special Condition 4**). The Enhancement Plan also allows for the identification of other coastal public access and recreational projects in lieu of the Vista Del Mar stairway repairs, subject to Executive Director approval, to provide for a commensurate amount of mitigation. Furthermore, the Applicant has agreed to provide a public recreational access easement seaward/beachward from the toe of the bluff or the outer edge of the concrete footing, including to address past CDP requirements (see **Special Condition 5**). Although these mitigations were required for coastal hazard policy consistency, it also offsets impacts from a public access and recreation perspective. Although a fair argument can probably be made that additional public recreational access mitigation is required, and that using the coastal hazard mitigation also for such access impacts is a form of 'double dipping' on such mitigation, the Commission notes that the impacts are overlapping and difficult to separate from one another.[58] To the extent that there are latent access impacts deserving of additional mitigation over and beyond that identified in the Coastal Hazard section above, the Commission finds that they are adequately mitigated in this case.

Similarly, in terms of remaining public access and recreation impacts that accrue due to project activities on the beach, and from construction overall (both that has already

[56] CCR Section 13577(f).

[57] See *Marks v. Whitney*, 6 Cal.3d 251, 259-260 (1971), *Nat'l Audubon Soc. v. Super. Ct.*, 33 Cal. 419, 436-437 (1983), and *Envtl. Law Found. v. State Water Res. Control Bd.*, 237 Cal. Rptr. 3d 393 (2018), respectively.

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

occurred under the ECDP and that will occur with the application of shotcrete), the Commission finds the same thing. The project will also have temporal public recreational access impacts during construction.[59] For the project components still to be completed under this CDP, **Special Condition 2** provides construction parameters that limit the area of construction, keep equipment out of coastal waters, limit the times when work can take place (e.g., to avoid both weekends and peak summer use months when recreational use is highest), clearly delineate and avoid to the maximum extent possible public use areas, and restore all affected public access areas at the conclusion of construction. A construction plan is required to implement these measures. In addition, to provide maximum information to the beach-going public during all construction, the Applicant must maintain copies of the CDP and approved plans available for public review at the construction site, as well as provide a construction coordinator whose contact information is posted at the site to respond to any problems and/or inquiries that might arise.

In conclusion, the required mitigation measures appropriately address public recreational access impacts associated with the proposed project. Therefore, as conditioned, the proposed project can be found consistent with the Coastal Act access and recreation provisions cited above.

3. Public Views

Applicable Coastal Act Provisions

Coastal Act Section 30251 states:

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

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

> ***LUP Principle P-7 Visual Quality is Important.*** *The visual quality of the city's environment shall be preserved and enhanced for the aesthetic enjoyment of both residents and visitors and the economic well being of the community.*

[59] As previously noted, work completed under the ECDP occurred over the course of 2 days and took approximately 7 hours, where all work was conducted at low tide, and all equipment was carried by hand to the site and didn't require the use of large heavy machinery. The ECDP included the Commission's standard construction best management practices (BMPs), and the post construction report submitted by the Applicant after installation of the ECDP project components indicated compliance with those BMPs.

Development of neighborhood, streets and individual properties should be pleasing to the eye, rich in variety, and harmonious with existing development. …

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

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

Analysis

The proposed armoring results in an artificial concrete material at the back of the beach/shoreline area, specifically at the foot of the bluff, that does not appear natural and adversely impacts the public viewshed (see photos, including time series arial images, in **Exhibit 2)**. The existing public viewshed and landform is currently degraded, including as it has been artificially manipulated for many years. Much of the shotcrete that was applied as part of the 1991 CDP is cracked, falling apart, or has washed away entirely leading to the exposure of the concrete bag wall behind the shotcrete facing. As conditioned, errant armoring and debris would be removed, which would enhance the existing visually degraded state, as well as making it safer for public access. Specifically, the proposed project would include removal of a significant portion of the existing deteriorated armoring (including notably the portions of the eroded shotcrete surfacing that have fallen on the beach below) (codified and further refined in **Special Condition 1(b)**).

In addition, the Applicants would sculpt, color, and texture the concrete surface of the project to approximate the natural bluffs (see photo simulations in **Exhibit 4**). These design treatments and additional project elements help to offset potential visual impacts of the armoring (see **Special Condition 1(a)**). However, in the Commission's experience, over time such armoring and associated visual mitigations will degrade, reducing the project's attempts to camouflage a large non-natural concrete structure in a natural environment and contributing to new visual impacts. Thus, the approval requires regular monitoring of the armoring elements to ensure that the coloring, texturing, and contouring are maintained in their as-built condition and requires the same treatment for any portion of the armoring that becomes visible due to erosion over time (see **Special Condition 7**). Furthermore, the Public Access Enhancement Plan requires coloring and contouring to the Vista Del Mar stairway to visually blend the staircase with the bluff, and thus such Enhancement Plan will also provide the benefit of visual improvements in the vicinity of the project site.

In short, the proposed project would enhance the currently degraded public view at this location via removal of detritus/remnant armoring and replacement armoring that is uniform in design to create an integrated and seamless experience, one that is required to visually mimic the natural bluff landform to the greatest extent feasible. Therefore, as conditioned, the proposed project can be found consistent with Coastal Act Section 30251.

4. Marine Resources

Applicable Coastal Act Provisions

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.*

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

> ***Section 30233.*** *(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities. (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps. (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities. (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines. (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas. (6) Restoration purposes. (7) Nature study, aquaculture, or similar resource dependent activities. …*

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

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

Analysis

The proposed project, including construction activities, would take place at the shoreline interface, including in the intertidal area and areas of submerged land. Coastal armoring has, at times, been shown to have significant impact on the habitat, biodiversity and functioning of beach and shoreline ecosystems, as well as their long term health and resilience, even if these effects are oftentimes difficult to quantify, including because beaches and shorelines are quite dynamic.[60] Sandy beach ecosystems support unique and often under-appreciated biodiversity and provide a suite of ecosystem services and functions.[61] These functions include rich invertebrate communities and food webs that are prey for birds and fish, buffering of wave energy by stored sand, filtration of large volumes of seawater, detrital and wrack processing and nutrient recycling, and the provision of critical habitat and resources for declining and endangered wildlife, such as shorebirds and pinnipeds.[62]

In terms of the requirements of Sections 30230 and 30231, the proposed project is expected to result in both temporary and longer-term impacts to these surrounding coastal water and beach/shoreline habitat areas, both from construction activities and the completed project. In terms of construction, the work authorized under the ECDP was completed in approximately seven hours over the course of two days, and the proposed shotcrete application is expected to be completed in a similar timeframe, where such construction involved workers using hand tools within the beach/intertidal area at the base of the bluffs, where the concrete boom pump was staged at the top of the bluff at the Applicants' property. During such construction time, the resource values of the affected area may be reduced. Construction noise, vibration, and overall activities and human presence are expected to adversely affect marine species and their habitat inside and adjacent to the established construction zone. Furthermore, although the direct construction impacts are expected to end when the construction activities conclude, the effect of such construction in and adjacent to coastal waters on the short-term productivity of the affected areas could extend beyond the construction timeline. In other words, the biological productivity during the construction period may not correct

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

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

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

itself instantaneously when construction concludes, rather its effects may linger for some time thereafter, affecting coastal waters/intertidal values until previous productivity levels have been reestablished. In addition, the amount of time necessary for the reestablishment of coastal waters/intertidal value also represents lost productivity (because this time period when the areas might otherwise be thriving would not be available as a foundation for encouraging such values). Thus, it's possible that there may be indirect and direct construction impacts, and also a "hangover" period of reduced habitat productivity as the habitat recovers over time. These impacts can be minimized by appropriate construction methods and BMPs during construction (see **Special Condition 2**), but they likely cannot be eliminated entirely.

Longer term, two impacts on marine resources can be expected. First, the armoring is likely to degrade (as has the existing armoring at the project site), both on a slower and more consistent basis over time as well as episodically in larger chunks. Although concrete is more inert than a number of other materials, it could still result in changes to the surrounding waters' water quality and habitat values, perhaps most obviously if larger chunks are dispersed into the ocean. Secondly, and as described earlier, armoring creates a barrier to natural shoreline migration, which leads to the types of sand and shoreline impacts previously described, including a narrowing and disappearing beach/shoreline area overall. That same narrowing and disappearing beach/shoreline also changes shoreline habitat conditions, including as it relates to accumulating sand and supporting intertidal and near tidal biodiversity and wildlife.[63] Moreover, as climate change causes the seas to rise ever faster, such areas and their habitat values will be lost and 'drown out' at an increasingly faster pace when the shoreline is armored, as here in this case. Section 30270 of the Coastal Act, read together with Sections 30230 and 30231, requires the Commission to assess and, to the extent feasible, avoid and mitigate these types of impacts, including as it relates to sea level rise.

In terms of Section 30233, as described above, portions of the project appear to be located partially within coastal waters, and the project does not provide for one of the seven enumerated and allowed types of uses/development in coastal waters. However, Section 30235 provides more specific Coastal Act direction when armoring is allowed, and that more specific manifestation takes precedence over the allowed types of fills under Section 30233. In other words, if armoring meets 30235 tests for approval, as it does here, then that can serve as an override to the types uses/development that can fill coastal waters, and that override applies to this case. This override does not, however, negate meeting other Section 30233 requirements as much as possible, including that the project be the least environmentally damaging feasible alternative, and that the project include feasible mitigation measures to minimize adverse environmental effects.[64]

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

[64] Note that other non-marine resource/habitat resource issues associated with such fill are addressed in previous findings. Note too that the requirements of Section 30233(a) regarding mitigating impacts and identifying the least environmentally damaging feasible alternative would still apply. The intent of this

In short, the project would occur in and adjacent to important marine resources, and is expected to result in some unavoidable marine resource impacts. These impacts are allowable both because the Coastal Act includes an armoring override, and because the project incorporates appropriate mitigation measures (as described in previous findings). Therefore, as conditioned, the proposed project can be found consistent with the above referenced Coastal Act requirements

5. Other

Public Rights

The area associated with this CDP application has been used by the public for access for many years, where such access is required to be formalized as part of this CDP through a public access easement. The Commission here does not intend its action waive any public rights that may exist on the affected property, and thus, the CDP is so conditioned to require the Applicants to agree and acknowledge same, including that the Applicants shall not use the CDP as evidence of a waiver of any public rights that may exist on the property now or in the future (see **Special Condition 10**).

Disclosure

The CDP includes important required terms and conditions, including as it relates to mitigation, as well as ensuring the completed project is monitored and maintained, both to satisfy those mitigations that are integral to the project's authorization, and to ensure that the public benefits of the project are provided. The project is also located in a hazardous location, and the property owner must assume all risks for development here. To ensure that the terms and conditions of approval are clear to the Applicants as well as any future owners, this approval requires that the CDP terms and conditions be recorded as covenants, conditions, and restrictions against use and enjoyment of the property, and that all real estate disclosures include clear explanations of the CDP and its terms and conditions (see **Special Conditions 11 and 16**).

Future Permitting

The project site presents complicated coastal resource issues, and is the site of past Commission approvals as well as this CDP, and the Commission finds that it is critical that any future development associated with the approved development be considered in that context. Thus, **Special Condition 13** specifies that none of the CDP exemptions that might be provided by Coastal Act Section 30610 (and/or related implementing regulations) will apply to the approved development, and any and all future proposed development related to this project, and/or this CDP will require new CDPs or CDP amendments that are processed through the Coastal Commission, unless the Executive Director determines that such CDPs or CDP amendments are not legally required.

Indemnification

finding is to explain the distinction between Sections 30233(a) and 30235 as it relates to armoring occupying coastal waters. Giving precedence to the more particular provisions of Section 30235 over the more general provisions of Sections 30233(a) is in accordance with generally applicable principles of California law (see, for example, Civil Code Section 3534 ("Particular expressions qualify those which are general")).

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 15** requiring reimbursement for any costs and attorneys' fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

Other Agency Approvals

The California State Lands Commission is responsible for determining the landward location and extent of the State's sovereign fee ownership of public trust lands and has jurisdiction and management authority over public trust lands, including all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The State Lands Commission also has review authority over public trust lands legislatively granted in trust to local governments. The Applicants received a letter from the State Lands Commission indicating that the proposed armoring appeared to be located landward of the MHTL, and chose not to exert lease or other authorization requirements at this time. At the same time, and in particular given the ambulatory nature of the MHTL and public trust areas, future changes at this site and/or future proposed activities may require State Lands Commission authorization. In addition, the project may require authorization from several other entities, including the U.S. Army Corps of Engineers, Central Coast Regional Water Quality Control Board, and City of Pismo Beach Community Development Department.

To ensure that the Applicants are able to carry out the proposed project consistent with the terms and conditions of this CDP, and to ensure that the proposed project is authorized by all applicable agencies, **Special Condition 12** requires the Applicants to submit written evidence of these other agencies authorizations of the project (as conditioned and approved by this CDP) or evidence that such authorizations are not required.

Minor Changes

Although a great deal of thought and planning has gone into the proposed project, including as it is affected by CDP terms and conditions, oftentimes minor unforeseen issues present themselves in complicated projects of this nature, particularly as construction gets underway, and it is important that the CDP is nimble enough to account for potential minor changes. Thus, minor adjustments to special condition requirements that do not require a CDP amendment or a new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources (**Special Condition 14**).

6. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that

would substantially lessen any significant adverse effect that the development may have on the environment. The City of Pismo Beach, acting as the lead agency under CEQA, categorically exempted the proposed project from the provisions of CEQA (pursuant to Section 15301(d) of the CEQA regulations applicable to existing structures).

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(c)). 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. 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. Thus, the proposed project as modified 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[65]

- CDP File 3-24-0048 and ECDP File G-3-23-0069

B. Appendix B – Staff Contact with Agencies and Groups

- City of Pismo Beach Community Development Department

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