

**CALIFORNIA COASTAL COMMISSION**

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# F15a

Application Filed: 7/2/2025  
 Action Deadline: 12/29/2025  
 Staff: Nolan Clark - SC  
 Staff Report: 9/19/2025  
 Hearing Date: 10/10/2025

## STAFF REPORT CDP AMENDMENT

**Application Number:** P-78-595-A2

**Applicant:** Potbelly Beach Club Homeowners Association

**Project Location:** On the sandy beach fronting 2 through 32 Potbelly Beach Road in the unincorporated New Brighton/Aptos area of Santa Cruz County (APNs 038-231-20 through 038-231-35, inclusive)

**Original Approval:** The original CDP authorized an approximately 900-foot long, 20-foot wide, and 10-foot tall rock riprap revetment

**Proposed Amendment:** Stack approximately 820 tons of rock (comprised of approximately 752 tons of imported rock and approximately 67 tons of rock that has migrated onto the beach and would be collected) on the existing originally authorized revetment; recognize 200 tons of similar rock work that was not permitted; remove 14 unpermitted private beach access staircases across/over the revetment; and recognize and repair/replace one shared beach access staircase

**Staff Recommendation:** Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to repair, maintain, and modify the configuration of an existing rock revetment by stacking approximately 820 tons of rock (752 tons of imported rock and 67 tons of rock that has fallen and/or slumped off of the revetment onto the beach that would be collected) into voids and holes along the revetment within its originally permitted profile and configuration, and to recognize similar past rock work of about 200 tons that never received required CDPs. The Applicant also proposes to remove 14 private concrete and/or wooden private beach access staircases that span the revetment and that were developed without benefit of a coastal development permit

(CDP), and to recognize (and repair/replace) a single such private staircase to provide private beach access from Potbelly Beach Road.<sup>1</sup> Finally, and in part in order to address nearly fifty years of condition compliance violations related to a lack of required vegetative screening over the revetment, the Applicant had agreed to install landscaping intended to help screen the revetment from public views.

The proposed rock work accounts for 10.2% of the revetment in this case, and thus (1) does not modify more than 50% of the revetment, (2) the modified revetment would not constitute a replacement structure at this time, and (3) the proposed development is appropriately considered a revetment repair and maintenance project as opposed to a revetment replacement project. This is an important distinction inasmuch as the Coastal Act and its implementing regulations require that a replacement revetment be considered analytically as if it were a proposed new revetment, whereas a repair and maintenance application does not reconsider the appropriateness of a revetment in the first place, rather it is focused on the repair and maintenance work itself. Through that repair and maintenance lens, the proposed project still raises coastal hazard, public recreational access, public view, and marine resource concerns, but not on the scale of a new revetment, and these concerns can all be appropriately addressed, including through requirements for construction BMPs and post-construction restoration, monitoring based on as-built plans, assumption of risk, future notice/disclosure, and a renewed emphasis on and commitment to required vegetative screening and other visual mitigations.<sup>2</sup>

In sum, staff recommends approval of a CDP amendment for the project with a series of implementing conditions that speak to the dangers of pursuing coastal development in harm's way while protecting coastal resources at this dynamic shoreline interface. The motion necessary to implement the staff recommendation can be found on **page 4**.

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<sup>1</sup> Potbelly Beach Road is a private road where the public is not allowed, and thus while the staircase to be retained and improved would lead to and from the publicly used beach and the private the road, the general public would not be allowed to use the staircase, and rather it would only provide beach access to the homes on Potbelly Beach Road.

<sup>2</sup> And staff notes that the Coastal Act and LCP violations attributable to the unpermitted staircases, and the lack of required vegetative screening, will be resolved moving forward if (1) this CDP amendment application is approved pursuant to the staff recommendation, (2) the amended CDP is issued, and (3) the Applicant undertakes the authorized development in compliance with the amended CDP's terms and conditions (see also the "Violation" section of this report for more information).

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**EXHIBITS**

- Exhibit 1 – Location Maps
- Exhibit 2 – Site Area Photos
- Exhibit 3 – Historical Aerial Photos
- Exhibit 4 – Proposed Project Plans

## 1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit amendment 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 amendment 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** the proposed amendment to Coastal Development Permit Number P-78-595 pursuant to the staff recommendation, and I recommend a **yes** vote.*

**Resolution to Approve CDP Amendment:** *The Commission hereby approves Coastal Development Permit Amendment Number P-78-595-A2, 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 this CDP amendment 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 CDP amendment is granted subject to the following standard conditions, which replace, supersede, and become the special conditions of CDP P-78-595, as amended, through and including CDP amendment P-78-595-A2:

- 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 CDP amendment is granted subject to the following special conditions, which replace, supersede, and become the special conditions of CDP P-78-595, as amended, through and including CDP amendment P-78-595-A2:

- 1. Approved Project.** Subject to the above standard and these special conditions, CDP P-78-595 authorized a 900-foot long, 20-foot wide, and 10-foot tall riprap revetment on the sandy beach and bluff seaward of 2 through 32 Potbelly Beach Road (APNs 038-231-20 through 038-231-35, inclusive) as described in and shown on the plans titled “Potbelly Beach Club Beach Protection,” prepared by Bowman and Williams, Inc., dated May 1978. In addition, and also subject to the above standard and these special conditions, CDP amendment P-78-595-A1 authorized the addition of 1,800 tons of rock across the revetment face, and CDP amendment P-78-595-A2 authorized: (1) importing approximately 752 tons of rock, collecting approximately 67 tons of rock that migrated onto the beach, and stacking all such rock into voids and holes along the revetment within its originally previously permitted profile and configuration pursuant to the base CDP; (2) recognizing 200 tons of rock work that occurred in 1987 and 1989 without CDPs; (3) removing all private staircases that span the revetment (which is not optional, and is a requirement of CDP P-78-595, as amended); (4) vegetative screening of the revetment (which is not optional, and is a requirement of CDP P-78-595, as amended); and (5) one beach access staircase located between 26 and 28 Potbelly Beach Road (APNs 038-231-32 and 038-231-33, respectively); all as described in and shown on the plans titled “Potbelly Beach Road Revetment Maintenance Project,” prepared by Bowman and Williams, Inc., dated September 2025, and dated received in the Coastal Commission’s Central Coast District Office on September 11, 2025 (see CDP amendment P-78-595-A2 Exhibit 4) and/or as described/required in these special conditions.
- 2. Revetment Screening Plan.** The revetment shall, at vegetation maturity, be completely screened as seen in beach views with native vegetation (i.e., native to the Monterey Bay area) designed to blend in with the sandy beach and dune environment to the maximum extent feasible, where such screening elements shall be maintained in good condition for as long as any portion of the revetment remains extant. By January 1, 2026, the Permittee shall submit a Revetment Screening Plan to the Executive Director for review and written approval that identifies all measures that will be taken to ensure that the required vegetative screening effect is achieved and maintained thereafter (including if that requires the installation of planter boxes (where such planter boxes shall only be made of wooden materials and low enough in profile as to not be visible from public vantage points as much as possible) along the inland edge of the revetment, covering the revetment with sand and planting with native vegetation, planting cascading vegetation at the top of the revetment, etc.). The Plan shall identify interim and final success criteria designed to achieve the required screening as soon as possible (e.g., survivorship, percent coverage, etc.), with an interim goal of final success within 5 years (i.e., no later than December 31, 2030), and shall provide that all native plantings be maintained in **healthy, thriving**

**condition** and be replaced as necessary to maintain the required screening. All requirements above and all requirements of the Executive Director-approved Revetment Screening Plan shall be enforceable components of this CDP, as amended. The Permittee shall undertake development in conformance with this condition and the Executive Director-approved Revetment Screening Plan.

- 3. Staircases.** All private beach access staircases located on/across the subject revetment shall be completely removed by the completion of construction of the approved revetment restack project under CDP amendment P-78-595-A2, with the exception of one beach access staircase located between 26 and 28 Potbelly Beach Road (APNs 038-231-32 and 038-231-33, respectively). The single retained staircase shall be sited and designed to visually blend in with the revetment and the required vegetative screening as much as possible, including being set down within/below the elevation of the revetment itself as much as possible, and with respect to any necessary railings (which, if required, shall be made of natural materials (i.e., wood)). The seaward-most tread/landing of the staircase (i.e., bottom step) shall not extend seaward of the toe of the revetment. By acceptance of this CDP, as amended, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that any other beach access staircase on, over, and/or through the subject revetment without CDP authorization will constitute a knowing and intentional violation, subject to the enforcement remedies provided by Chapter 9 of the Coastal Act and the Santa Cruz County LCP.
- 4. Construction Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION ASSOCIATED WITH CDP AMENDMENT P-78-595-A2, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include the following:

  - a. Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall minimize impacts on coastal resources, including public access/parking, including by maximizing use of the developed blufftop portions of the Permittee's 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 possible, 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 possible 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 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., Permittee's 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, as amended, 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 Permittee, 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 amendment, including as it affects such properties.
- f. Restoration.** All beach/shoreline recreational area and other public recreational use areas and all beach/shoreline recreational area access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any native materials impacted shall be filtered as necessary to remove all construction debris.
- g. Construction Site Documents.** 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 the 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, as amended.
- j. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

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

- 5. **As-Built Plans.** WITHIN THREE MONTHS OF COMPLETION OF CONSTRUCTION ASSOCIATED WITH CDP AMENDMENT P-78-595-A2, the Permittee 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 approved development described in Special Condition 1 for CDP amendment P-78-595-A2, and any changes between the two shall be highlighted and clearly described. 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 that are sufficient to provide complete photographic coverage of the approved development, and shall be accompanied by a site plan or equivalent with each photographic viewpoint clearly noted. 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 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. 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 approved development (see Special Condition 1). The As-Built

Plans will also be submitted with evidence of compliance with the staircase requirements of Special Condition 3.

- 6. Monitoring and Reporting.** The Permittee shall ensure that the condition and performance of the approved as-built revetment is regularly monitored by a licensed civil engineer with experience in coastal structures and processes. 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 damage requiring measures to maintain the approved as-built revetment profile. Monitoring reports prepared by a licensed civil engineer with experience in coastal structures and processes, and covering the above-described evaluations, shall be submitted to the Executive Director for review and approval at five year intervals by May 1 of each fifth year (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 any portion of the revetment exists at this location. The Permittee shall also ensure that the condition and performance of the other approved (and required) project elements are regularly monitored as well, and the above-described monitoring reports shall also identify the configuration and condition of the revetment, staircase, drainage elements, and required vegetative screening; shall recommend actions necessary to maintain these and other approved (and required) project elements in their approved and/or required state; shall identify the location of the mean high tide line and any changes from past reports; and shall include photographs taken from each of the same vantage points required in the As-Built Plans with the date and time of the photographs and the location of each photographic viewpoint noted on a site plan.
- 7. Coastal Hazards Risk.** By acceptance of this CDP, as amended, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

  - a. Coastal Hazards.** All development at the subject site is, and may continue to be, subject to 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 Permittee: assumes the risks to the Permittee and the property that is the subject of this CDP, as amended, of injury and damage from coastal hazards in connection with the approved development; unconditionally waives 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, as amended, 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 accepts full responsibility for any adverse effects to people and/or property caused by the approved development.

- c. Public Trust.** Other than the approved revetment footprint, this CDP, as amended, does not allow encroachment onto public trust lands, and any future encroachment shall be removed unless (1) the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain; and (2) the State Lands Commission (or other designated trustee agency) authorizes the encroachment through a lease and/or other approval.
- 8. Other Agency Approvals.** PRIOR TO COMMENCEMENT OF CONSTRUCTION ASSOCIATED WITH CDP AMENDMENT P-78-595-A2, the Permittee 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, Monterey Bay National Marine Sanctuary, California State Lands Commission, Central Coast Regional Water Quality Control Board, Santa Cruz County Community Infrastructure and Development Department, and California Department of Park and Recreation) or written evidence that no permits, permissions, approvals or other authorizations from these agencies are required. The Permittee 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 Permittee obtains CDP amendments, unless the Executive Director determines that no amendments are legally required.
- 9. Deed Restriction.** WITHIN ONE YEAR OF ISSUANCE OF THE AMENDED CDP (through and including CDP amendment P-78-595-A2), the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the subject properties a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, as amended, the California Coastal Commission has authorized development on the subject properties subject to terms and conditions that restrict the use and enjoyment of those properties; and (2) imposing the Conditions of this CDP, as amended, as covenants, conditions and restrictions on the use and enjoyment of the properties. The deed restriction shall (1) include a legal description of the each property governed by the CDP, as amended; and (2) indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP, as amended, shall continue to restrict the use and enjoyment of the subject properties so long as either this CDP, as amended, or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject properties.
- 10. Real Estate Disclosure.** Disclosure documents related to any future marketing and/or sale of the subject properties (i.e., 2 through 32 Potbelly Beach Road; APNs 038-231-20 through 038-231-35, inclusive) 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, as amended. Copies of the CDP, as amended, shall be provided in all real estate disclosures.

- 11. Public Rights.** By acceptance of this CDP, as amended, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP, as amended, shall not constitute a waiver of any public rights that may exist on the affected property, and that the Permittee shall not use this CDP, as amended, as evidence of a waiver of any public rights that may exist now or in the future.
- 12. Future Permitting.** None of the CDP exemptions that might be provided by Coastal Act 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, as amended, including future repair and maintenance of the subject revetment, shall be subject to the Coastal Commission's continuing CDP jurisdiction.
- 13. Minor Modifications.** The Permittee shall undertake development in conformance with the terms and conditions of this CDP, as amended, including with respect to all Executive Director-approved plans and other materials, which shall also be enforceable components of this CDP, as amended. 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.
- 14. Liability for Costs and Attorneys' Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and/or (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this CDP, as amended, the interpretation and/or enforcement of CDP conditions, or any other matter related to this CDP, as amended. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission. By acceptance of this CDP, as amended, and its terms and conditions, the Permittee irrevocably agrees to this obligation, which shall be continuing in nature and remain in full force and effect regardless of whether this CDP approval, as amended, is invalidated as the result of the litigation contemplated by this condition or otherwise changed in any way.
- 15. Revetment Redevelopment Status.** As of October 10, 2025, 10.2 percent of the revetment located on the bluff and sandy beach seaward of 2 through 32 Potbelly Beach Road (APNs 038-231-20 through 038-231-35, inclusive) has been modified relative to the 50 percent replacement threshold that applies pursuant to Title 14, Division 5.5, Section 13252(b) of the California Code of Regulations. By acceptance of this CDP, as amended, the Permittee acknowledges and agrees, on behalf of

itself and all successors and assigns, that 10.2 percent of the revetment has been modified to date, and that any future proposed work on the subject revetment shall include an accounting of the ways in which such work contributes to the overall 50 percent replacement threshold, inclusive of the 10.2 percent and any other applicable past revetment modification events.

#### 4. FINDINGS AND DECLARATIONS

##### **A. Project Location and Background**

The project site is located at the toe of the bluff and on the beach seaward of the Potbelly Beach Club (2 through 32 Potbelly Beach Road; APNs 038-231-20 through 038-231-35, inclusive) in the unincorporated Aptos area of Santa Cruz County. The Potbelly Beach Club is a private beach-level pre-Coastal Act subdivision consisting of sixteen single-family residences located between upcoast New Brighton State Beach and downcoast Seacliff State Beach.<sup>3,4</sup> See **Exhibit 1** for location maps, and see **Exhibit 2** for site area photos.

The New Brighton/Aptos area is well known for excellent public access and recreation opportunities for nearby residents and the broader Santa Cruz County populace, as well as for visitors to the area, where these opportunities include beach walks, beach viewing, surfing, fishing, and other beach/ocean-centered activities. In fact, the site is near the northern end of a roughly 15-mile unbroken stretch of predominately fairly wide sandy beach area that includes five State beaches between the City of Capitola and the Pajaro River (i.e., New Brighton, Seacliff, Manresa, Sunset, and Zmudowski State Beaches), an area that is very popular to coastal visitors, including the area fronting the revetment.<sup>5</sup>

In terms of the revetment at the site, in 1978 the Commission issued CDP P-78-595 for the original construction of an approximately 900-foot long, 20-foot wide, and 10-foot tall revetment seaward of the above-mentioned homes. Shortly after the issuance of CDP P-78-595, in 1980, the Commission amended that CDP to allow an additional 1,800 tons of rock across the 900-foot length of the revetment. Subsequently, in 1987 and 1989, an additional 200 tons of rock was added to the revetment when Commission

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<sup>3</sup> Based on California Coastal Records Project imagery, it appears that not only does the Potbelly Beach Club subdivision pre-date the Coastal Act, but that at least 14 of the residences were also originally constructed pre-Proposition 20 (i.e., "The Coastal Initiative" of 1972) as well (all but residences at 26 and 28 Potbelly Beach Road), while the original construction of the remaining two homes appear to postdate the Coastal Act of 1976.

<sup>4</sup> A 17th residence that was also originally constructed pre-Coastal Act is located at 1 Potbelly Beach Road at the upcoast terminus of the road itself. That residence is not part of the homeowners association or Potbelly Beach Club, and the revetment that is the subject of this application does not extend in front of 1 Potbelly Beach Road.

<sup>5</sup> The area seaward of the revetment is subject to a public access easement held by the California State Coastal Conservancy that was established as part of the permitting associated with the Santa Cruz County Sanitation District's sewer line in the 1980s.

staff allowed such work without a CDP or a CDP amendment.<sup>6</sup> As of today the revetment fronting the Potbelly Beach Club consists of an estimated 10,000 tons of rock.

Finally, there are also Coastal Act and LCP violations at this location. Specifically, 14 concrete and/or wooden private beach access staircases have been constructed across/atop the revetment without CDP authorization. In addition, although the original CDP required that the revetment be buried in sand and vegetated like a coastal dune in order to completely hide the revetment from public view, none of that successfully occurred, and the revetment has been starkly visible for nearly 50 years, which represents a violation of the CDP's terms and conditions. Please see the "Violation" section of this report for more information.

See **Exhibit 1** for location maps, **Exhibit 2** for project area photos, and **Exhibit 3** for aerial photos of the project sites from 1972 to 2024.

## **B. Project Description**

The Applicant proposes to repair, maintain, and modify the configuration of the existing rock revetment by stacking approximately 820 tons of rock (752 tons of imported rock and 67 tons of rock that has fallen and/or slumped off of the revetment onto the beach that would be collected) into voids and holes along the revetment within its originally permitted profile and configuration, and to recognize similar past rock work of about 200 tons that never received required CDPs. Rock importation is proposed in this case because a number of the original revetment rocks have migrated so far seaward as to not be locatable or retrievable. Construction access to the beach and revetment site will occur between 6 and 8 Potbelly Beach Road, and construction materials and equipment storage will occur at an upland road shoulder area on Potbelly Beach Road itself.

In addition, the Applicant proposes to remove the aforementioned unpermitted private beach access staircases across the revetment, except for one located between 26 and 28 Potbelly Beach Road, that would be repaired/replaced to serve as the single beach access staircase between Potbelly Beach Road and the beach going forward.<sup>7</sup> Finally, and in part in order to address nearly fifty years of condition compliance violations related to a lack of required vegetative screening over the revetment, the Applicant had agreed to install landscaping intended to at least partially screen the revetment from

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<sup>6</sup> At the time, Commission staff identified the work as exempt maintenance. However, while CDP P-78-595 required that the revetment be properly maintained, it did not authorize future maintenance development. Thus, and because such activities are not exempt under the Coastal Act or its implementing regulations (due to locational and mechanized equipment limitations; see Title 14 California Code of Regulations (CCR) Section 13252), a CDP or a CDP amendment should have been required. Thus staff made a mistake, and that work was not appropriately permitted, because staff did and does not have the unilateral authority to authorize non-exempt development without a CDP.

<sup>7</sup> Potbelly Beach Road is a private road where the public is not allowed, and thus while the staircase to be retained and improved would lead to and from the publicly used beach and the private the road, the general public would not be allowed to use the staircase, and rather it would only provide beach access to the homes on Potbelly Beach Road.

public views. The expected project duration is approximately 30 days, during a period of low tide with low sand levels.

Please see **Exhibit 4** for proposed project plans, including proposed construction access and storage plans.

### **C. Standard of Review**

The proposed revetment development is located within the Commission's retained CDP jurisdiction area at the lower beach/ocean elevations, and is substantively associated with prior Coastal Commission CDP decisions and requirements, including CDP P-78-595, as amended. Although the proposed project here is for revetment modifications per the Commission's previous CDP, many of the terms and conditions of the CDP affect both the residences and the revetment on which they rely. To ensure that there is no ambiguity in that respect as to the proper permitting entity and standard of review, and to the extent it is even applicable, the Applicant, the County, and the Executive Director have all agreed to consolidated CDP processing as it relates to any areas that may be located in the County's CDP jurisdiction, pursuant to Coastal Act Section 30601.3. Thus the standard of review for the proposed project is the Coastal Act with the Santa Cruz County LCP providing non-binding guidance.

### **D. CDP Amendment Determination**

#### **1. Applicable Coastal Act Provisions**

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

**Section 30001.** *The Legislature hereby finds and declares: (a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem. (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation. (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction. (d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.*

**Section 30001.5.** *The Legislature further finds and declares that the basic goals of the state for the coastal zone are to: (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state. (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal*

*zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners. (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast. (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone. (f) Anticipate, assess, plan for, and, to the extent feasible, avoid, minimize, and mitigate the adverse environmental and economic effects of sea level rise within the coastal zone.*

In short, 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 (including public recreational access, sensitive habitats, natural landforms, public views, marine resources), as summarized below.<sup>8</sup>

### **Public Recreational Access**

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*

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<sup>8</sup> See, for example, more than 40 sections found in Chapter 3, including sections related to public access, recreation, the marine environment, and land resources.

*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 and water recreational 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 beach/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 it 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, rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and

provides fundamental direction to maximize public recreational access opportunities with respect to projects along the California coast that raise 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),<sup>9</sup> it is also important to consider the effect of shoreline projects like this one on what is best understood as an ambulatory public trust area, including where structures can halt the inland migration of the mean high tide line, and thus potentially halt the inland migration of public trust areas, at least physically.<sup>10</sup> Thus, it is also important that the Commission assess the effect of the proposed project on public trust resources.

### **Marine Resources**

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

**Section 30230.** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

**Section 30231.** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition, Section 30233 only allows for fill of coastal waters in certain limited

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<sup>9</sup> 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.

<sup>10</sup> 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)).

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. ...*

Section 30230 and 30231 require that marine resources “be maintained, enhanced, and where feasible, restored.” Further, uses of the marine environment must be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. And Section 30233 limits the situations when coastal waters can be filled.

### **Public Views and Community Character**

The Coastal Act provides that the scenic and visual qualities of coastal areas are resources of public importance that must be protected, and that new development is required to protect public views and designed to be visually compatible with the surrounding area. In highly scenic areas, such as the viewshed in which the site is located, proposed development is also required to be subordinate to the character of its setting. 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 landforms, 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.*

Additionally, Section 30253(e) recognizes the importance of unique coastal communities as worthy of protection, such as the parks and beaches that line this stretch of Aptos, where feasible, stating:

**Section 30253(e).** *Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

### **Coastal Hazards and Shoreline Armoring**

Shoreline armoring of all kinds (e.g., seawalls, revetments, retaining walls, bulkheads, etc.) generally has significant adverse impacts on the coastal resources protected by the above described provisions of Chapter 3 of the Coastal Act, leading to unavoidable impacts on natural landforms, public recreational access, natural processes (which also significantly impacts public recreational access) and public views.<sup>11</sup> 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. This general prohibition is echoed by Coastal Act Section 30253, which requires that all development must not create or contribute to erosion or destruction of the site, or substantially alter natural landforms, or in any way require shoreline armoring, stating, in applicable part:

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

Section 30235, however, allows the Commission to approve armoring under very limited circumstances:

**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.*

...

Under Section 30235, armoring is allowed when required to serve coastal-dependent uses or to protect public beaches or existing structures in danger from erosion, and only

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<sup>11</sup> 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 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), 2-21-0912 (San Francisco PUC Ocean Beach Armoring), 3-22-0440 (Casanova Armoring), and 3-22-1027 (Hofmann Seawall).

when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In other words, when there are qualifying uses, beaches, or structures,<sup>12</sup> armoring must be allowed only if it is required to serve/protect them, meaning when there are no other less environmentally damaging feasible alternatives that can perform that same function.<sup>13</sup> When framed in this way, Section 30235's limited requirement to approve shoreline armoring is probably best understood as an exception 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 armoring.

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.<sup>14</sup> 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."<sup>15</sup> 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.<sup>16</sup> 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.'"<sup>17</sup>

In short, the Coastal Act reflects a broad legislative intent to allow armoring under only certain very limited circumstances, generally only for coastal-dependent uses or structures that existed when the Coastal Act was adopted and when such structures are

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<sup>12</sup> 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 armoring by Section 30235 are existing structures, including private structures (e.g., residences).

<sup>13</sup> 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.

<sup>14</sup> 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).

<sup>15</sup> *Casa Mira* at 388.

<sup>16</sup> 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).

<sup>17</sup> *Casa Mira* at 385.

in danger from erosion and impacts are avoided or mitigated (Section 30235), but new development constructed after adoption of the Act generally is not entitled to armoring due to its coastal resource impacts (Sections 30253, et. al.).

***Repair and Maintenance vs. Replacement***

Finally, while the above described Coastal Act provisions apply to the evaluation of proposed development in CDP applications,<sup>18</sup> Coastal Act Section 30610(d) exempts certain repair and maintenance activities that do not result in the addition to, enlargement, or expansion of the object of repair and maintenance from CDP requirements in certain circumstances, but requires CDPs for these same activities when there is potential for certain adverse coastal resource impacts. The Commission's Regulations (California Code of Regulations, Title 14, Division 5.5 (CCR)) further identify and provide relevant detail on making such determinations. In terms of CDP requirements for armoring, CDPs are essentially always required for armoring projects as they involve the placement of materials on the sandy beach and/or on the armoring itself, and they typically involve the presence of mechanized construction equipment and materials on the sandy beach and bluff areas.<sup>19</sup>

The Commission's Regulations also provide direction on whether proposed armoring development is considered repair and maintenance versus work that will result in a replacement structure that needs to be evaluated as a new structure. Specifically, CCR Section 13252(b) states:

*(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.*

Thus, a fundamental first step for evaluating proposed armoring CDP applications like this is whether the proposed development constitutes repair and maintenance, or whether it is significant enough that it tips the scales to the point that it is considered a replacement structure thus triggering an altogether new CDP review as a new replacement structure per CCR Section 13252(b). In cases where the work proposed constitutes replacement of less than 50% of the structure (as measured cumulatively over time), the Commission considers the impacts from the revetment itself to have already been evaluated and addressed via the underlying CDP that allowed for the armoring in the first place, and thus the coastal resource impact evaluation generally focuses on the impacts associated with the repair/maintenance activities themselves (i.e., where will the equipment be staged to complete the work; how will the duration of activities impact coastal resources, including public recreational access, at the protect site; what are the construction BMPs designed to limit impacts; what mitigation measures are provided to offset identified coastal

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<sup>18</sup> See Coastal Act Sections 30106 (describing the types of activities that constitute 'development') and 30600 (requiring a CDP for such development).

<sup>19</sup> CCR Section 13252(a) explicitly requires CDPs in all such cases.

resource impacts; etc.) as opposed to evaluating the impacts associated with the entire revetment (i.e., what are the long-term impacts associated with the revetment's existence to the public's use of the beach, sand supply, visual resources, etc.). However, once such repair and maintenance exceeds the 50% threshold cumulatively over time, the Commission's regulations state that the extent of such work is substantial enough that such activities constitute a replacement armoring structure that must be evaluated analytically as if it were a proposed new armoring structure overall. One way of considering this concept is that absent the 50% or more replacement via repair and maintenance episodes over time, the revetment would likely have reached the end of its anticipated useful life and would require full replacement, where full replacement means that the armoring structure is re-evaluated as if the armoring structure as a whole were newly proposed. In any case, while repair and maintenance CDP review is typically fairly straightforward analytically, and primarily consists of accounting the cumulative degree to which such episodes add up towards the 50 percent replacement threshold (and also applying commensurate mitigations, and applicable terms and conditions), replacement armoring is much more involved, because that evaluation applies to the whole of the armoring structure, including whether it is allowed to be approved via the Section 30235 override or not. In this case, and as further described below, the proposed project constitutes less than 50 percent repair and maintenance, and the Commission's reviewing lens is thus more limited, relatively, in scope.

## **2. Coastal Act Consistency Analysis**

### ***Coastal Hazards and Shoreline Armoring***

In terms of coastal hazards, 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 (the latter being the applicable question for this proposed project) subject to the requirement that adverse impacts to local shoreline sand supply (as well as other coastal resource impacts) 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.<sup>20</sup>

While the full suite of Coastal Act provisions would be in full force and effect for a brand new or replacement armoring device, including an evaluation of whether there is a qualifying structure, use, or public beach allowed armoring, and mitigation for adverse coastal resource impacts associated with such armoring, in this case, the proposed work qualifies as repair and maintenance under the Commission's Regulations. Specifically, and as noted previously, the proposed project consists of importing approximately 752 tons of rock as well as retrieving approximately 67 tons of rock, for a total of approximately 820 tons of rock work, that will be collected and restacked onto the revetment fronting the sixteen residences at the Potbelly Beach Club (APNs 038-

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<sup>20</sup> See footnote 11.

231-20 through 038-231-35, inclusive). In addition, and as described previously, the proposed project also includes recognition of similar past such rock work episodes totaling roughly 200 tons of rock.

Per the terms and conditions of the base CDP, the CDP authorized the revetment to be comprised of 10,000 tons of rock, where rock has fallen off of the structure over time, and is less than that amount now. By importing and restacking 1,020 tons back to its approved configuration (i.e., no enlargement, addition, or expansion), the Applicant here is proposing to replace 10.2 percent of the overall revetment by rock tonnage (i.e., 1,020 tons divided by 10,000 tons equals 10.2 percent). Thus, per the terms of CCR Section 13252(b), the revetment is not being replaced by 50 percent or more.

Accordingly, the revetment fronting the Potbelly Beach Club is eligible for up to an additional 39.8 percent of rock restack/replacement. Importantly, once the 50 percent threshold is reached through subsequent projects, the development would constitute a redeveloped armoring structure that would need to be evaluated anew.<sup>21</sup> And here, future repair and maintenance activities are not authorized via the subject CDP amendment authorization,<sup>22</sup> and thus any future repair and/or maintenance and/or other revetment activities would require separate CDP authorization. As part of any such CDP (or CDP amendment) application, any development affecting the revetment will be required to include an accounting of the ways in which such development relates to the enlargement, material change, and other alteration criteria above, including providing an up-to-date accounting of same.<sup>23</sup> Because the proposed project falls under the 50 percent threshold specified in CCR Section 13252(b), it may be considered repair and maintenance activities. Therefore, the Commission need not evaluate the revetment as a replacement structure at this time; rather, the Commission must evaluate only the proposed repair event for its potential coastal resource impacts.

Accordingly, the following special conditions are included to ensure that the proposed repair and maintenance work is undertaken in a manner protective of coastal resources, including to the sensitive offshore environment and the site's sandy beaches that provide public recreational opportunities. Specifically, **Special Condition 4** requires Executive Director approval of a Construction Plan, prior to construction commencement, that clearly delineates the construction area, access, methods, and timing, and requires construction best management practices such as erosion and sediment controls, prohibits grading of the intertidal area, and requires full restoration of the site to pre-construction conditions upon completion of the project. Additionally, to further ensure that the project is properly maintained to ensure its long-term structural

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<sup>21</sup> There are other future project permutations that would similarly trigger the Commission to evaluate the revetment anew. For example, if future projects lead to modifications that would materially change its make-up (e.g., replacing boulders with poured concrete, etc.) and/or configuration.

<sup>22</sup> See footnote 6.

<sup>23</sup> While the replacement threshold has not been met at this time, the Commission may consider the armoring to meet such threshold if more restacking occurs or is proposed to occur than is noted here, or if there is any other alteration, enlargement, or material change that would similarly result in such armoring being understood as a replacement armoring structure.

stability, **Special Condition 6** requires regular submission of monitoring reports for Executive Director review and approval. Future monitoring reports must be understood in relation to clear as-built plans that are required to be submitted by the Applicant upon project completion as well (see **Special Condition 5**), and are required to provide for evaluation of the condition and performance of the completed project and its overall stability, and to provide recommendations for necessary repair and maintenance.

In addition, 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 dynamic environments is also susceptible to damage due to long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low interest loans, grants, subsidies, direct assistance, etc.) on the order of hundreds of millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, the Commission has in the past required applicants to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 7**), 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, as amended (see **Special Conditions 9 and 10**).

In conclusion, the proposed project, as conditioned, can be found consistent with Coastal Act Sections 30235 and 30253, including in terms of requiring structural stability over time, construction best management practices, complying with the approved project plans, regularly monitoring the approved revetment, and the Applicant's assumption of risk for developing in a hazardous location.

### ***Public Recreational Access***

In terms of public recreational access, as identified earlier, revetments can have significant adverse impacts to public access and recreation. In this case, the revetment at the site is located at the northern end of an essentially unbroken 15-mile stretch of sandy beach that is a popular site for beach-centered activities, including walking, bike riding, surfing, among others. Specific to this location, while the beach area immediately seaward of the project site is often inundated by the tides, the revetment itself is located on what would otherwise be sandy beach area contiguous with a stretch of beach historically and presently accessed by the public. Further, the revetment here fixes the back beach shoreline position, with the expected impact of a narrower available public recreational space over time as the beach erodes without the bluff behind it also eroding as a natural and unarmored shoreline otherwise would.<sup>24</sup> Consequently, because the

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<sup>24</sup> 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 –

revetment occupies beach space, fixes the back beach, and blocks sandy materials from entering into the shoreline sand supply systems,<sup>25</sup> continued maintenance and retention of the revetment here will have these continued impacts into the future. In this case, the subject project establishes a baseline to understand this riprap revetment going forward, including when the riprap revetment constitutes a redeveloped armoring structure (i.e., through storm damage, repair and/or maintenance, and/or other means) that is required to be evaluated anew as described previously. At that time, the revetment can be evaluated and, if authorized moving forward, then appropriate mitigation for these types of impacts can be considered and applied by the Commission, including as they pertain to public trust lands in the future should sea levels rise to a degree that shifts the mean high tide line and public trust area landward as it relates to the armoring.

Additionally, with respect to the proposed repair project before the Commission, construction impacts to the public recreational space include large equipment driving to/from and occupying the recreational beach area in and around the project site during the anticipated 30-day work period. To minimize these impacts, **Special Condition 4** requires that the Applicant submit a Construction Plan, for Executive Director review and approval, that minimizes the overall construction area, delineates and clearly demarcates the construction area, and prohibits construction activities during peak public recreational times such as weekends, holidays, peak summer months, etc. The Construction Plan also requires that all beach/shoreline recreational areas are restored to their pre-construction conditions or better within three days of project completion.

On the other hand, a potential public recreational access benefit associated with the proposed repair is that the project seeks to collect and restack revetment rocks currently located seaward of the revetment's permitted configuration, effectively removing them from the area accessed by the public today. In other words, while there may be temporary construction impacts and other longer-term coastal resource impacts that emanate from the armoring as described above, repair and maintenance such as this, when conducted consistent with the terms and conditions of this CDP and all applicable Coastal Act provisions, is expected to precipitate shorter- and medium-term public access benefits in the form of a cleaned-up public recreational area free of large revetment rocks that impede the use of publicly accessible beach space. That said, such benefits are not appropriately considered mitigation for the proposed project inasmuch as the rock that has moved seaward was never authorized to be present in that location in the first place.

In conclusion, due to the relatively narrow scope of the proposed repair project, most of the anticipated impacts to public recreational access are more temporary in nature reflective of construction activities in the shoreline area, whereas more permanent

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701., pg. 1 – 28; and Tait and Griggs (1990) "Beach Response to the Presence of a Seawall," Shore and Beach, 58, 11-28.

<sup>25</sup> The armoring prevents erosion of the bluff at the backshore, and thus sand and sand generating materials that would typically erode out of the bluff and find their way onto the beach and/or the larger sand supply system are instead retained in place, no longer supplying sand to the overall flow of sand through the beach system in the area.

impacts are anticipated in the longer-term and are to be addressed by the Commission at a later date when the revetment is redeveloped such that it is considered a replacement structure requiring new evaluation and compensatory mitigation. Conversely, there are also tangible public recreational access benefits to repair projects such as this, namely that doing so removes revetment rocks that currently occupy the recreational area immediately seaward of the revetment, albeit this is more a requirement that adheres to the revetment from past permitting than a new benefit that can be credited to the proposed project. In short, as conditioned, the project can be found consistent with the Coastal Act's public access and recreation provisions cited above.

### ***Marine Resources***

The proposed project would take place at the shoreline interface, including in the intertidal area and sandy beach areas. 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.<sup>26</sup> Sandy beach ecosystems support unique and often under-appreciated biodiversity and provide a suite of ecosystem services and functions.<sup>27</sup> 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.<sup>28</sup>

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 the surrounding coastal waters and beach/shoreline habitat areas, both from construction activities and the completed project. In terms of construction, the beach/intertidal area at the base of the bluffs will be occupied by construction equipment and activities throughout the 30-day duration of construction. 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

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<sup>26</sup> 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.

<sup>27</sup> 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.

<sup>28</sup> 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 4**).

Longer term, two impacts on marine resources can be expected. First, the revetment is likely to migrate seaward over time (as evidence by the proposed repair project), both on a slower and more consistent basis over time as well as episodically to a larger degree during higher energy wave events. Impacts from this phenomenon include additional revetment rocks on the beach environment, and within the important habitat areas as described above. 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.<sup>29</sup> 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,<sup>30</sup> 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. Because the proposed project is for the repair and maintenance of an existing revetment, the overall marine resource impacts are understood to have been addressed by the base CDP analysis, and are not further addressed here, but may be addressed in the future when the riprap revetment constitutes a redeveloped armoring structure (i.e., through storm damage, repair and/or maintenance, and/or other means) that is required to be evaluated anew. At that time, appropriate mitigation for these impacts can be considered and applied by the Commission, including as they pertain to marine resources, habitat values, and the expected narrowed shoreline in the face of rising sea levels.

That said, the proposed project still has unavoidable marine resource impacts, including those identified above in relation to proposed construction activities, as well as the potential for revetment migration into the marine environment. To help offset those impacts, native plant species can be established that will at least provide some dune-like biological resource value, and can help foster some beach-related marine resource

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<sup>29</sup> 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.

<sup>30</sup> Section 30270 of the Coastal Act states, "The Commission shall 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."

values by extension (see also the “Public Views” finding below, and **Special Condition 2**).

In short, the project would occur in and adjacent to important marine resources, and is expected to result in some temporary and longer-term marine resource impacts. These impacts are allowable in this case because the project incorporates appropriate mitigation measures (as described in previous findings) and provides some compensatory mitigation in the form of native landscaping. Therefore, as conditioned, the proposed project can be found consistent with the above-referenced Coastal Act requirements.

### ***Public Views***

The Coastal Act requires that development be sited and designed to protect public views to and along the ocean and scenic coastal areas as resources of public importance, to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas. Similarly, the County LCP is highly protective of coastal zone visual resources (LUP Objectives and Policies ARC-5.1 et. seq.). Applicable LCP policies dictate protection of public views through "minimizing disruption" to "ensure that development in designated visual resource areas protects the scenic character of visual resources" (LUP Implementation Strategy ARC-5.1a). LUP Policy ARC-5.1.3 concludes that screening shall be provided where development is "unavoidably sited" within visual resource areas, meaning that siting in such viewsheds is to be avoided. Ocean vistas are to be "retained to the maximum extent possible" (LUP Policy ARC-5.1.6), and development in view of public beaches is prohibited unless it is required for existing lots of record and for shoreline armoring, provided it is compatible with the surrounding built and natural environment (LUP Policy ARC-5.1.7). Additionally, enhancement of visually blighted areas is required with development approval (LUP Policy ARC-5.1.10). The LCP further requires that development "be visually compatible and integrated with the character of the surrounding neighborhoods or areas" and sensitively designed "so that its presence is subordinate to the natural character of the site," and requires protection of beach area "scenic integrity" by such measures as prohibiting most development in this area (IP Section 13.20.130).<sup>31</sup>

Public views of the site are generally from the beach, and take in not only the revetment but also residential development inland of it, all of which reduces the value of the public viewshed. That said, and similar to the discussion regarding overall revetment impacts, as repair and maintenance, public view impacts analyzed are limited to the roughly 820 tons of rock that are going to be manipulated here. There will certainly be short-term visual impacts during construction, which can be limited through construction BMPs, but

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<sup>31</sup> Note that IP Section 13.20.130 provides general requirements for the entire Santa Cruz County coastal zone, but also provides specific requirements for beach viewsheds (in subsection D). 13.20.130(D) requires, among other things, as follows: "The scenic integrity of open beaches shall be maintained. No new permanent structures on open beaches shall be allowed, except where permitted pursuant to LUP Chapter 5 (for required shoreline armoring), LUP Chapter 7 (for public recreational access improvements), or Chapter 16.10 SCCC (for required shoreline armoring). All structures that are allowed on open beaches shall be sited and designed to minimize visual intrusion, and the minimize unavoidable intrusion, including through the use of materials and finishes which harmonize with the beach character of the area. Natural materials are preferred."

they cannot be eliminated. As to post-construction, the effect of filling voids with the rock, as proposed, is not expected to significantly alter the current visual perception of the revetment, and thus its impact is rather limited in that sense. And, by removing rock that has dispersed seaward of the revetment, and putting it back onto the revetment, there will be a beneficial public view impact as these areas will revert to sandy beach. That said, such benefits are not appropriately considered mitigation for the proposed project inasmuch as the rock that has moved seaward was never authorized to be present in that location in the first place.

All that said, pursuant to the base CDP the revetment was required to be covered with the excavated sand from the original construction of the structure and planted with vegetation native to the Monterey Bay area, where such screening was required to be maintained to help offset visual impacts. However, due to the dynamic shoreline environment here, including frequent inundation by waves, any sand that may have originally been placed atop the revetment after its construction was washed away and/or native vegetation never took hold, and thus none of the required screening was ever achieved, which was, is, and has been inconsistent with the terms and conditions of the base CDP. Put another way, the mitigations designed by the base CDP to offset the visual impacts of the revetment were never adequately provided, and thus the public's viewshed has suffered for nearly 50 years, representing long-term unmitigated impacts.

In addition, the 14 unpermitted beach access staircases extend above the revetment in ways that adversely affect public views even on top of the view impacts associated with the revetment itself, and have for the many years that they have been present in this location. Further, as they have deteriorated over time, and as the revetment has shifted underneath them in places, their impact on the public view has only grown, as they are perceived as even more unnatural and unattractive within the public's beach view.

To address these visual issue, and to offset the visual impacts associated with this project, as well as to meet the public viewshed mitigation requirements of the base CDP for the first time, two things are required. First, the unpermitted private staircases must be removed, with the exception of one retained private staircase that will be required to be hidden as much as possible within the revetment to avoid public viewing impacts (see **Special Condition 3**). And second, **Special Condition 2** requires the submittal of a Revetment Screening Plan, for Executive Director review and approval, that identifies a range of alternatives that can be employed to ensure that the revetment is screened in a way that emulates and blends in with the natural beach and dune aesthetic as much as feasible (to include covering the revetment with sand and native vegetation, screening the revetment with cascading vegetation, etc.), with an interim goal of screening success within 5 years (i.e., by the end of 2030).

In conclusion, the repair project wouldn't much change the existing visual condition of the site, but that visual condition is made worse by both unpermitted development and the lack of consistency with the screening requirements of the base CDP, all of which points to the need to provide for a renewed emphasis on and commitment to the visual mitigation that was originally required at this site. In short, as conditioned, the project can be found consistent with the Coastal Act's public view provisions cited above.

### 3. Violation

As described earlier, Coastal Act and LCP violations exist at the Potbelly Beach Club, including, but not necessarily limited to, (1) constructing 14 concrete and/or wooden private beach access staircases across the revetment in a number of locations without benefit of a CDP, and (2) lack of required revetment screening inconsistent with the terms and conditions of the base CDP for nearly 50 years.<sup>32</sup>

In order to resolve these violations going forward, the Applicant in this case proposes to remove all but one of the unpermitted private beach access staircases during the course of the proposed rock work, while repairing/replacing and retaining one such staircase (located between the residences at 26 and 28 Potbelly Beach Road) to serve as a shared private beach access staircase. This proposal will improve both the structural reliability of the revetment (in many cases, such concrete staircases served to further contribute to vertical overhanging of revetment rock at this site) as well as visual resource values (as the staircases extend above the revetment in even more unnatural ways, and themselves adversely impact public views).

Finally, and in part in order to address nearly fifty years of condition compliance violations related to a lack of required vegetative screening over the revetment, the Applicant has also agreed to install landscaping intended to help screen the revetment from public views.

To refine and formalize this resolution going forward, **Special Condition 2** requires a revetment screening plan designed to ensure that the revetment shall, at vegetation maturity, be completely screened as seen in beach views with native vegetation (i.e., native to the Monterey Bay area) designed to blend in with the sandy beach and dune environment to the maximum extent feasible, where such screening elements shall be maintained in good condition for as long as any portion of the revetment remains extant. And **Special Condition 3** requires unpermitted staircase removal, including before and after conditions, and this removal must be clearly indicated in the As-Builts plans required by **Special Condition 5**.

Thus, the Coastal Act and LCP violations attributable to the unpermitted staircases, and the lack of required vegetative screening, will be resolved moving forward if (1) this CDP amendment application is approved pursuant to the staff recommendation, (2) the amended CDP is issued, and (3) the Applicant undertakes the authorized development in compliance with the amended CDP's terms and conditions

Although development has taken place without CDP authorization prior to submission of this CDP amendment application, the Commission's consideration of this CDP amendment application has been based solely upon measuring consistency of the proposed project against the applicable Coastal Act provisions. Commission review and action on this CDP amendment application does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of

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<sup>32</sup> The 1987 and 1989 revetment work occurred without proper CDP authorization (see footnote 6), and the Applicant in this case is proposing to recognize that work under the subject CDP authorization.

any development undertaken on the subject site without a CDP, or of any other development, except as otherwise expressed herein.

#### **4. Other**

##### ***Public Rights***

The project area includes land that may be public (e.g., at a minimum, the toe of the revetment may be located on State Lands). The Commission here does not intend its action to waive any public rights that may exist on the affected properties, and thus, the CDP amendment is so conditioned, and requires the Applicant to agree and acknowledge same, including by requiring that the Applicant not use the CDP, as amended, as evidence of a waiver of any public rights that may exist on the properties now or in the future (see **Special Condition 11**).

##### ***Disclosure***

The amended CDP includes important required terms and conditions, including ensuring the completed project is monitored over time for problems. To ensure that the terms and conditions of approval are clear to the Applicant as well as any future owners, this approval requires that the amended 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 9 and 10**).

##### ***Indemnification***

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP application in the event that the Commission's action is challenged by a party other than the Permittee. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 14** requiring reimbursement for any costs and attorney fees that the Commission incurs in connection with the defense of any action brought by a party other than the Permittee challenging the approval or issuance of this amended CDP, or challenging any other aspect of its implementation, including with respect to condition compliance efforts.

##### ***Other Agency Approvals***

The California State Lands Commission (SLC) is responsible for determining the landward location and extent of the State's sovereign fee ownership of public trust lands, has jurisdiction and management authority over public trust lands, and has review authority over public trust lands legislatively granted in trust to local governments. A portion of the proposed project may be located on public trust lands administered by SLC, necessitating SLC review.

In addition, the project may require authorization from several other entities, including the U.S. Army Corps of Engineers, Monterey Bay National Marine Sanctuary, Central Coast Regional Water Quality Control Board, Santa Cruz County Community Infrastructure and Development Department, and the California Department of Park and Recreation.

To ensure that the Applicant has sufficient legal property interests in the site to carry out the project consistent with the terms and conditions of the CDP amendment, and to ensure that the proposed project is authorized by all applicable agencies, **Special Condition 8** requires the Applicant to submit written evidence of these other agencies authorizations of the project (as conditioned and approved by this CDP amendment) or evidence that such authorizations are not required, and for any construction activities that may occur on properties (and/or on easements or similar legally defined areas) not owned by the Applicant, including but not limited to construction that requires equipment access on and/or across such other properties, **Special Condition 4** requires the evidence of review, approval and consent from such property owners allowing such activities to 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 amendment, including as it affects such properties.

### ***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 CDP amendments or new CDPs (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 13**).

### ***Future Development***

The project site presents complicated coastal resource issues, and is the site of past CDPs as well as this CDP amendment, 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 12** 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, as amended, 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.

## **5. 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. Santa Cruz County, acting as the lead CEQA agency, categorically exempted the proposed project from the provisions of CEQA (pursuant to Section 15301 of the CEQA regulations applicable to existing facilities).

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. Substantive File Documents<sup>33</sup>**

- Commission CDP File P-78-595

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

- California Department of Parks and Recreation
- California State Lands Commission
- Monterey Bay National Marine Sanctuary
- Santa Cruz County Community Development and Infrastructure Department

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<sup>33</sup> These files are available for review in the Commission's Central Coast District office.