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Filed: 4/2/2025
Action Deadline: 9/29/2025
Staff: Katie Butler - SC
Staff Report: 3/28/2025
Hearing Date: 4/11/2025

STAFF REPORT CDP AMENDMENT

Application Number: 3-23-0014-A1

Applicant: Gary H. Grossman, TRE

Project Location: 121 Indio Drive, Pismo Beach (APN 010-205-002)

CDP Approved Project: The original coastal development permit (CDP) was the follow-up regular CDP for a series of emergency CDPs and authorized a replacement full-bluff armoring structure on the bluff and beach area seaward of the residence and along about 100 linear feet of shoreline.

Proposed Amendment: Changes to several armoring components, including to reduce its overall scope (through elimination of certain yet to be completed components) and to add screening for existing bluff face development; after-the-fact approval of limited work done on the residence landward of the armoring; and changes to several special conditions.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The original CDP was approved in 2023, subject to 16 special conditions, and authorized a replacement full-bluff armoring structure at the site. The Applicant sued the Commission over that decision, and the Commission and the Applicant entered into a settlement agreement to resolve that litigation, where this amendment application is the result of that settlement agreement. The amendment proposes to modify the approved armoring, including to reduce its overall scope and to add screening for existing bluff face development, as well as to authorize some prior residential remodeling work, and to modify several special conditions. Staff believes that the proposed changes do not modify the Commission's original decision in ways that would lead to additional

significant coastal resource impacts or lessen or avoid the intended effect of the original permit. Staff further believes that the proposed changes in many ways are simply refinements to the originally approved CDP and project, where the outcome is essentially the same. As such, staff recommends that the Commission approve the CDP amendment as proposed. Staff notes that although there is a settlement agreement here, the Commission retains its discretion to approve, approve with conditions, or deny the proposed amendment after a public hearing. In any case, the motion and resolution to approve the amended CDP pursuant to the staff recommendation are found on **page 4** below.

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EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – Site Photo

Exhibit 3 – Settlement Agreement

Exhibit 4 – Proposed Amended Special Conditions

Exhibit 5 – Proposed ATF Residential Work Completed in 2005

Exhibit 6 – Proposed In-Bluff Development Screening

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 3-23-0014 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 3-23-0014-A1 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the City of Pismo Beach Local Coastal Program and Chapter 3 of the Coastal Act. Approval of the 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. FINDINGS AND DECLARATIONS

A. Project Location, Background, and Description

1. Project Location

The project site is located on the bluff top and bluff face, at the toe of the bluff, and on the beach seaward of 121 Indio Drive in the Sunset Palisades area of the City of Pismo Beach, which is in the upcoast part of the City's shoreline north of the central downtown area and Pismo Pier. The blufftop portion of the site contains one of the eight residences located on the southernmost block of Indio Drive between the road and the ocean. The blufftop is at an elevation of approximately 40 feet above mean sea level (MSL), and the existing residence on the site is set back about 10 feet from the blufftop edge. The bluff along this block, from the Florin Road cul-de-sac overlook south to South Palisades Park, is mostly reinforced with a mix of shoreline armoring of varying ages and types, although there remain unarmored bluff areas as well. The project site fronts on a narrow beach area that is mostly accessible at low tides, where beach access is provided to the public from a stairway owned by the City of Pismo Beach about 1,000 feet downcoast at South Palisades Park. The parcel is zoned Single-Family Residential (R-1) with a Hazards Overlay Zone in the LCP. See **Exhibit 1** for location maps and **Exhibit 2** for a 2024 photo of the site.

2. Project History

As detailed in the Commission's adopted findings for the underlying CDP to which this amendment is proposed (i.e., CDP 3-23-0014, incorporated herein by reference),¹ the project site has been the subject of multiple past regular and emergency CDPs related to shoreline armoring,² where the underlying CDP in early 2023 authorized a full-bluff, tied back, contoured and camouflaged replacement armoring structure along approximately 100 feet of coastline. Following Commission approval of that project, the Applicant sued the Commission over its decision,³ and the parties subsequently agreed to a settlement of that litigation in early 2025 (see **Exhibit 3**).

3. Amendment Description

The proposed amendment requests changes to the approved project, including to the CDP special conditions, as well as authorization after-the-fact (ATF) for development previously completed on the residence at the site. Specific proposed changes are:

- Eliminating from the project additional armoring augmentation that had not been completed pursuant to ECDPs at the time of the original CDP approval but was being proposed.
- Applying screening to the existing in-bluff patio and stairs (using similar concrete work, camouflaging, and native vegetation) as opposed to its removal.
- Using updated information (on erosion rates and property sales) to re-calculate the required sand supply and related beach/shoreline impact mitigation fee, which would be roughly a half a million dollars through the initial 20-year mitigation period.
- Removing the requirement to survey the mean high tide line every five years.
- Modifying the parameters for what types of future armoring repair and/or maintenance is covered by this CDP (and does not require separate CDPs in the future), including by tying such provisions to the 20-year initial term associated with mitigation, where the Executive Director can suspend such provisions during that period if there are changed circumstances.
- Providing refinements related to what does and does not constitute residential redevelopment related to future major structural component work.
- Providing ATF authorization for work completed on the residence in 2005 without a CDP (see **Exhibit 5**), and augmenting the mitigation fee identified above by

¹ See <https://documents.coastal.ca.gov/reports/2023/2/F18a/F18a-2-2023-report.pdf>.

² See, for example, the original underlying CDP as well as CDP A-3-PSB-02-016 and emergency CDPs (ECDPs) G-3-20-0025, G-3-21-0023, and G-3-21-0035.

³ *Gary H. Grossman, Trustee of the Gary H. Grossman Trust v. California Coastal Commission* (San Luis Obispo Superior Court Case No. 23CV-0194), originally filed on April 10, 2023.

\$75,000.⁴

See **Exhibit 3** for the settlement agreement and **Exhibit 4** for the proposed modified special conditions.

B. Standard of Review⁵

The proposed amendment requests changes to the project as was approved by the Commission under CDP 3-23-0014 with the Coastal Act as the standard of review and the City of Pismo Beach certified Local Coastal Program (LCP) providing non-binding guidance, and thus that same standard of review applies to changes to that project and terms and conditions thereto. In addition, the proposed amendment requests after-the-fact approval of limited work done on the residence landward of the armoring where the City of Pismo Beach LCP applies and thus is the standard of review for this part of the proposal.

C. CDP Amendment Analysis

The Commission's approval of CDP 3-23-0014 in February 2023 included both authorization of shoreline armoring work completed under three separate ECDPs as well as additional armoring that had not yet been constructed. In total, the approved armoring (both previously constructed under the ECDPs as well as proposed at that time) covered an area of bluff approximately 40 feet high, up to 27 feet deep into the bluff (in sea caves near the base of the bluff), and almost 100 feet long to protect a single-family residence found to be an existing structure and in danger from erosion. The Commission applied the Coastal Act Section 30235 'override' to allow for approval despite the project being inconsistent with a number of Coastal Act coastal resource protection provisions and imposed a number of terms and conditions to avoid coastal resource impacts and to mitigate for those that were unavoidable. This analysis does not attempt to – nor does it need to – reevaluate that prior CDP decision. Rather, this analysis is focused on the changes proposed.

In terms of the armoring itself, the amendment proposes changes that equate to a reduction in the project extent with the elimination of the armoring that had not yet been completed when the Commission originally approved the CDP. This reduction in the scope of armoring development does not raise any new Coastal Act consistency issues, and in fact would amount to a slight reduction in the project's overall impacts to coastal resources described in the original Commission findings for CDP 3-23-0014.

As to the existing in-bluff patio and stairs, which were required to be removed in the original decision, the Applicant instead proposes that these features be camouflaged in

⁴ It is the Applicant's position that this work is and was exempt from CDP requirements, and it is Commission staff's position that this work required a CDP. As a means of resolving this dispute, the Applicant has added a request for ATF approval of the work to this amendment application and is augmenting the mitigation fee based on the understanding that, if the amendment is approved and the Applicant satisfies all terms and conditions, the Commission will consider the enforcement matter closed and resolved.

⁵ See previously referenced adopted Commission findings for the original CDP for applicable citations and provisions.

a way that they cannot be seen from the public beach below (see **Exhibit 6**). Given that the outcome between the two is roughly the same in as much as the view is protected in both cases, this aspect of the proposal does not raise any significant new Coastal Act concerns.

With respect to the proposed changes to the required sand supply and related beach/shoreline impact mitigation fee, two things are noted. First, although that fee was calculated by the Commission to be \$1,287,905 in its original action, and it is proposed to be \$548,170 in this amendment, the reduction is not a random result of a compromise; rather, it is the outcome of applying updated erosion rates (i.e., a rate of 1-foot per year) and property sales (i.e., a rate of \$319/square-foot) to the same methodology that was applied originally. Second, in place of measuring the initial 20-year mitigation period from 2023 when the Commission took its original CDP action, it is being measured from 2020 when the armoring was first installed pursuant to the ECDPs. Put another way, it is still an initial 20-year period, but it is applied from a different start date. The result is that the mitigation ‘runs out’ earlier, in 2040 as opposed to 2043, and thus the requirement to reexamine mitigation, including the potential need for more mitigation for subsequent mitigation periods, occurs earlier. When these two factors are put together, and using the exact same mitigation methodology,⁶ the calculated fee is the \$548,170 that is proposed. Even though this is a reduction in the fee compared to the original fee, and some might argue that that reduction reduces coastal resource protection, the reality is that an objective analysis of the appropriate factors as applied to the Commission’s methodology leads to a different fee amount. Put another way, this is not a reduction in coastal resource protection, rather it is a correction and refinement of the impact assessment. As a result, this change does not raise any significant new Coastal Act concerns either.

The original CDP included the requirement for periodic mean high tide line surveys in consultation with the State Lands Commission as part of the overall monitoring requirements (in Special Condition 5). Such surveys can be an important part of monitoring over time, including to help understand the location of the mean high tide line at a property, and the Commission often imposes such a requirement in armoring projects, and did originally in this case. That said, the shoreline at this location is less a wide sandy beach and more a mix of sand and rock where mean high tide line variations (e.g., between summer and winter beach conditions) are likely much smaller. As a result, the value of the surveys for monitoring purposes is lower in a case like this. Given the cost and difficulty of the surveys, including the potential difficulty of compelling a third party, here the State Lands Commission, to participate in required condition compliance, the benefit does not appear to outweigh the costs in this case. While that is not to say that another case with another context might very well need mean high tide line surveys in order to properly evaluate its impacts over time, it is to say that it is not critical for monitoring in this case. And in fact, irrespective of whether there are regular surveys compelled as a part of monitoring or more infrequent surveys over time for other reasons, neither change the location of mean high tide line in relation

⁶ All of which has been verified by the Commission’s Coastal Engineer, Jeremy Smith.

to this project. In this context, this change does not raise any significant new Coastal Act concerns either.

In terms of the proposed changes to the parameters for what types of future armoring repair and/or maintenance would be allowed to be covered by this CDP (and not require separate CDPs in the future), these changes are best understood as refinements (in Special Condition 6). For example, the original condition identified an every five-year reevaluation during the time that the armoring was still authorized, where the maintenance provision could be paused if there were changed circumstances. The proposed version indicates that the monitoring is allowed during the 20-year initial term associated with mitigation, where the Executive Director can suspend such provisions during that period if there are changed circumstances on an every 5-year basis. In other words, essentially the same provision, but implemented slightly differently. The repair and/or maintenance changes do not raise any significant new Coastal Act concerns either.

The original approval authorized the armoring until the residence was no longer present, no longer required armoring, or was “redeveloped” (meaning altered to such an extent that the resulting structure constitutes a new, replacement structure), where any of those conditions would require that the armoring be removed and the affected area restored (see Special Conditions 7). Such a special condition is fairly typical for the Commission, and it is intended to allow the armoring, and its attendant coastal resource impacts, only for as long as the residence justifies the Section 30235 override described above. Put another way, if the residence is changed to such a degree that it is no longer an ‘existing structure’ as that term is understood under Section 30235,⁷ then that residence becomes a replacement structure that must be evaluated against all of the applicable Coastal Act and/or LCP provisions as if a new proposal.⁸ This kind of a special condition places a premium on clearly understanding the nature of the changes that have occurred to the residence over time. Here, as described in the original approval, past residential development at this site was not enough to tip the scales to the extent that the home needed to be considered redeveloped, but it was close, with limited space for future improvements that would remain under the 50% redevelopment threshold. To be clear for future implementation of the CDP, those percentages were written into the applicable condition (in Special Condition 7). The proposed amendment does not modify those percentages, but it does provide additional specificity as to what it would take to exceed the 50% threshold. The additional specificity proposed is similar to language included in other special conditions of this type that the Commission has imposed on other armoring projects, and it does not raise any new Coastal Act concerns; in fact, it actually provides better clarity for all parties moving forward.

The amendment also requests after-the-fact authorization for the work completed on the residence in 2005 that did not receive a CDP at the time. That work included areas of roof and wall replacements, and a small (70 square-foot) addition (see **Exhibit 5**), all of which informed and were reflected in the redevelopment percentages identified above.

⁷ Where an existing structure is one that was legally constructed prior to January 1, 1977, and has not been “redeveloped” since.

⁸ See original adopted findings for more information on this point.

As indicated above, it is the Applicant's position that this work is and was exempt from CDP requirements, and it is Commission staff's position that this work required a CDP. As a means of resolving this dispute, the Applicant has added this request for ATF approval of the work to this amendment application and is augmenting the mitigation fee by \$75,000 (see Special Condition 4) based on the understanding that, if those things are done, the Commission will consider the enforcement matter closed and resolved. Thus, that work is now before the Commission for deliberation in this proposed amendment. The work did not, by itself, result in any significant coastal resource impacts. Rather the work is primarily relevant in relation to the extent to which it may have contributed towards redevelopment. Thus, the Commission will consider the enforcement matter closed and resolved if the Applicant implements the CDP consistent with all of its terms and conditions.

Finally, the amendment proposes various other minor and clarifying modifications to the special conditions, including some changes as minor as re-numbering, that do not substantively change the Commission's original approval or raise Coastal Act consistency issues. These include changes to almost all of the special conditions with the exception of Special Conditions 2, 3, 8, and 9.

In sum, the proposed changes do not significantly alter the Commission's original approval of CDP 3-23-0014, do not raise any significant coastal resource concerns, and can be found consistent with the Coastal Act and the LCP.

D. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has analyzed the relevant coastal resource issues with the proposal and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. 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).

3. APPENDICES

A. Appendix A – Substantive File Documents⁹

- CDP File 3-23-0014

B. Appendix B – Staff Contact with Agencies and Groups

- City of Pismo Beach Community Development Department

⁹ These documents are available for review in the Commission's Central Coast District office.