

**COUNTY OF MONTEREY
RIGHT OF ENTRY AND
INDEMNIFICATION AGREEMENT**

This revocable non-exclusive Right of Entry and Indemnification Agreement (“Agreement”) is made by and between the **County of Monterey** (“County”) and **Esperanza Carmel, Commercial, LLC**, (“User”), collectively referred to as the Parties.

This Agreement permits the right to enter the County’s property known as Assessor’s Parcel Number **(APN) 243-262-003, located in the Big Sur area (“Property”)** and as further defined on Exhibit “A” which is attached and incorporated herein, for the purposes set forth below. User upon written notice to the County, may request access to other County owned property or extension of Term below as needed under the scope of this Agreement. This Agreement allows access to the Property only, and does not approve any construction, restoration or other activities. The User is required to provide proof of approved permits from the applicable permitting agency(s) prior to accessing the Property.

Term: **October 2025 through October 2030 (5 Years). User to notify County of date of access and end of term with seven (7) days advance notice.**

Hours: **Monday – Friday, 8:00 am to 5:00 pm**

County Contact: **Department of Public Work (Facilities), Maintenance Manager Ryan Bell, (831) 755-4869, email: bellr@countyofmonterey.gov**

User Contact: **Ryan Aeschliman, Development Director, Esperanza Carmel 831.250.7669, email: ryan.aeschliman@esperanzacarmel.com**

Fee: **\$1,072.00**

Payable: **Payment made payable to the County of Monterey, Attn: PWFP Fiscal Section at 1441 Schilling Place, South Bldg., 2nd Floor, Salinas, CA 93901 within thirty (30) days of non-occupancy.**

1) PURPOSE OF OCCUPATION:

To perform necessary activities related to: all applicable restoration and remediation activities on the Property, stated in the California Coastal Commission Consent Cease and Desist Order (CCC-24-CD-02), **Exhibit “B”**, which is attached and incorporated herein. The User shall restore, or cause the restoration of, the Property to a condition acceptable to the County upon completion of the purpose for entry onto the Property.

2) INDEMNITY:

In consideration and furtherance of the above specified purpose, the User shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys’ fees) occurring or resulting to any and all

persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the User's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "User's performance" includes User's action or inaction and the action or inaction of User's officers, employees, agents, contractors and subcontractors.

3) INSURANCE:

Evidence of Coverage:

User shall have the right to self-insure with respect to any of the insurance requirements required under this Indemnification Agreement, User shall submit a letter of self-insurance signed by a duly authorized representative evidencing that User's self-insurance program is in full force and effect.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The User shall not undertake any activity under this Agreement, nor shall User receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the User.

Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Officer.

Insurance Coverage Requirements: Without limiting User's duty to indemnify, User shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$10,000,000 per occurrence.
- Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- Workers' Compensation Insurance, if User employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

- Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$5,000,000 per claim and \$20,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the User shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date User completes all the work or performs all the services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for User and additional insureds with respect to claims arising from each subcontractor, if any, performing work or services under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the User’s work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the User’s insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, User shall file certificates of insurance with the County’s contract administrator and County’s Contracts/Purchasing Division, showing that the User has in effect the insurance required by this Agreement. The User shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

User shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County’s Contract Administrator and County’s Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify User and User shall have five (5) calendar

days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by User to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

User shall be a licensed, bonded and a properly insured (or permissibly self-insured) contractor, and be responsible for restoring the Property to a condition acceptable to the County upon completion of its purpose for using the Property.

Without relieving User of the foregoing insurance and indemnity obligations, County reserves the right to require User's contractor to execute a license agreement directly with County within twenty (20) days of County and User executing this Agreement. Said license agreement to include but not limited to a reasonable license fee, insurance and indemnification provisions, and restoration performance bonding. User will expressly require its contractors and sub-contractors to comply with the minimum insurance and indemnity provisions and contractually "flow down" requirements, as set forth above.

4) OTHER TERMS

The person executing this Agreement on behalf of the User hereby covenants and warrants that he/she is duly authorized to execute this Agreement.

The County shall have the right to terminate this Agreement for any reason, or for no reason, by providing written notice to the other Party, during any time of the Term of this Agreement.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute a single agreement.

The Parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et. seq. Pursuant to said state and federal law as may be amended from time to time, the Parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF) which may be delivered by mail, EMail, or Facsimile.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

USER

By: _____
Name: _____
Title: Director of Public Works, Facilities and
Parks or Designee
Date: _____

Approved as to Form
Office of the County Counsel
Susan K. Blitch, County Counsel

By: _____
Name: _____
Title: Deputy County Counsel
Date: _____

Esperanza Carmel, Commercial, LLC
User's Name

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management
Susan K. Blitch, County Counsel

By: _____
Name: David Bolton
Title: Risk Manager
Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

- 1) Approval by County Counsel is required
- 2) Review by Risk Management is necessary only if changes are made in Indemnification or Insurance paragraphs.

Exhibit "A"

APN 243-262-003
Big Sur, California



Exhibit “B”

California Coastal Commission Consent Cease and Desist Order (CCC-24-CD-02)

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**CONSENT CEASE AND DESIST ORDER CCC-24-CD-02,
CONSENT RESTORATION ORDER CCC-24-RO-02,
CONSENT ADMINISTRATIVE CIVIL PENALTY CCC-24-AP-02,
AND CONSENT ADMINISTRATIVE CIVIL PENALTY CCC-24-AP3-02**

1.0 CONSENT CEASE AND DESIST ORDER CCC-24-CD-02

Pursuant to its authority under California Public Resource Code ("PRC") Section 30810, the California Coastal Commission ("the Commission") hereby orders and authorizes Esperanza Carmel Commercial, LLC; their successors in interest; heirs; officers; managers; assigns; employees; agents; contractors; and any other persons or entities acting in concert with any of the foregoing (hereinafter referred to as "Respondent") to:

- 1.1 Cease and desist from engaging in any further development, as that term is defined in the Coastal Act (at Public Resources Code ("PRC") Section 30106) and the Monterey County Local Coastal Program ("County LCP") at Title 21, Division 6, Chapter 310 of the Monterey Code of Ordinances, that requires a coastal development permit ("CDP") on any of the properties, identified in Section 4.5 below as "Properties," unless authorized or found to be exempt pursuant to the Coastal Act (PRC Sections 30000-30900) and the County LCP (Monterey County Code of Ordinances 20.170.120) in compliance with all substantive and procedural requirements, which includes development authorized through these Consent Orders, as that phrase is defined in Section 4.1, below.
- 1.2 Remove, pursuant to Section 7.3, below, all physical items and materials that were placed or allowed to come to rest on the Properties as a result of the Unpermitted Development, defined below in Sections 4.10, and as generally shown at Exhibit 1, with the exception of the Public Viewing Area and the Public Parking Area, both of which are required to be improved and maintained for public access pursuant to Section 13 and both of which are approximately shown at Exhibit 9. Removal shall be undertaken according to and consistent with the terms of an approved Removal Plan, as required by section 7.3 below, and pursuant to the terms and conditions of these Consent Orders.
- 1.3 Refrain from undertaking any activity in violation of the Coastal Act or in violation of any Coastal Development Permits ("CDP"s), including, but not limited to, placement of development, such as signs or guards, that deter or interfere with the public's ability to access and use: 1) any public trails located on the adjacent County Property (defined below in Section 4.3), 2) the road across the County Property, 3) state tidelands seaward of and adjacent to the Properties, 4) the public's existing rights on the Rocky Point Property, and 5) any areas included in the Public Access Easement or Public Access Deed Restriction areas described in Section 13, below.
- 1.4 Fully and completely comply with the terms and conditions set forth herein, including the terms and conditions of Consent Cease and Desist Order No. CCC-24-CD-02, Consent Restoration Order No. CCC-24-RO-02, Consent Administrative Civil Penalty No. CCC-

24-AP-02, and Consent Administrative Civil Penalty CCC-24-AP3-02

- 1.5 Comply in a timely manner with the terms and conditions of all other mandatory government approvals or permits for the work required herein that are issued by other government agencies having jurisdiction over that work, consistent with these Consent Orders. These Consent Orders provide Coastal Act authorization for all the work required herein, so long as such development is undertaken in accordance with the terms and conditions of these Consent Orders.

2.0 CONSENT RESTORATION ORDER CCC-24-RO-02

- 2.1 Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Respondent to restore the Properties and any necessary adjacent properties pursuant to the requirements in Section 7.0, below.

3.0 CONSENT ADMINISTRATIVE PENALTY CCC-24-AP-02 AND CONSENT ADMINISTRATIVE PENALTY CCC-24-AP3-02

- 3.1 Pursuant to its authority under PRC Sections 30821 and 30821.3, the Commission hereby orders and Respondent agree to resolve their administrative civil penalties as specified in Section 13.0, below.

4.0 DEFINITIONS COMMON TO THESE CONSENT ORDERS

4.1 Consent Orders

Consent Cease and Desist Order No. CCC-24-CD-02, Consent Restoration Order No. CCC-24-RO-02, Consent Administrative Civil Penalty CCC-24-AP-02, and Consent Administrative Civil Penalty CCC-24-AP3-02 are collectively referred to herein as “the” or “these” Consent Orders.

4.2 Rocky Point Property

A 2.5-acre property owned by Esperanza Carmel Commercial, LLC, located at 36700 Highway 1 in Monterey County and identified as Assessor’s Parcel Number (“APN”) 243-262-004.

4.3 County Property

An 8.9-acre property owned by Monterey County, located adjacent to the Rocky Point Property, identified as APN 243-262-003.

4.4 Adjacent Private Property

A 12.4-acre, privately-owned property located adjacent to the County Property, at 36658 Highway 1 in Monterey County and identified as APN 243-251-025.

4.5 Properties

The County Property, Adjacent Private Property, and Rocky Point Property are collectively referred to herein as the Properties.

4.6 Prop 70 Deed Restriction

The deed restriction recorded by the County of Monterey on the County Property as required by Proposition 70 and County Board of Supervisors Resolution No. 87-151 (Document No. 94-51479, recorded July 19, 1994).

4.7 Water Tank Easement

Tank Lot and Water Line Easements, granted by the County of Monterey to Rocky Point Restaurant, LLC and Jones RP, through an Agreement and Grant of Easement (Document No. 2009-036330, recorded on June 11, 2009).¹

4.8 Sign Easement

A Sign Easement, granted by Barbara B. Hall to Albert P. Moraz and Mary E. Moraz and Jack Currier and Jean Currier, through an Agreement and Grant of Easement (recorded on Reel 59, pages 21-24, on May 23, 1962).

4.9 Restoration Areas

All areas of the Properties that were impacted by the Unpermitted Development, or will be impacted by the removal of certain items of development pursuant to Section 7.3, below, and upon which restoration activities will occur.

4.10 Unpermitted Development

Means all “development” as that term is defined in PRC Section 30106 and Section 21.06.3109 of the Monterey Code of Ordinances, that occurred on the Properties without the authorization required under the Coastal Act, and is approximately shown at Exhibit 1, including, but not necessarily limited to: Unpermitted Development on the County Property, including: 1) a locked gate, signs restricting public access, and cameras; 2) sheds and a trash enclosure, 3) lighting along the driveway, and 4) fencing, mailboxes, rock walls, and other items between the Sign Easement and Highway One; Unpermitted Development on both the County Property and the Rocky Point Property undertaken and maintained by the owner of the Rocky Point Property, including 5) removal of native vegetation in two areas for use as private

¹ According to California Secretary of State records, Jones RP, LLC was terminated on March 14, 2014, and Rocky Point Restaurant, LLC was terminated on February 5, 2014. Esperanza Carmel Commercial, LLC now holds the easement, pursuant to Provision 8 of Document No. 2009-036330, which binds successors in interest to the Rocky Point Property.

parking lots, one to the north that is approximately 4,500 square feet, and one to the southeast that is approximately 10,000 square feet, along with grading and placement of decomposed granite; 6) posting of a guard and restrictive parking and No Trespassing' signs; 7) installation of garden or accessory items, non-native landscaping, and an irrigation system; Unpermitted Development on the Adjacent Private Property, County Property, and Rocky Point Property undertaken and maintained by the owner of the Rocky Point Property, including 8) grading of a trail and installation of metal T-poles, rope, and wood stairs; 9) a water tank and clearing of native vegetation around it; and Unpermitted Development that is limited to the Rocky Point Property, undertaken and maintained by the owner of that property, including 10) installation of an approximately 2,000 square foot lawn and outdoor patio with tables, a fence/wall, and stairs; 11) a new leach field; 12) remodeling of existing buildings, 13) an expansion of restaurant capacity from 120 to 200 diners, 14) paving with asphalt, 15) a building to the northeast of the restaurant building, 16) decks seaward of both the northern part of the restaurant and the residential unit to the north of the restaurant, and 17) placement of planters and woodchips seaward of the restaurant.

4.11 Permitted Development in Violation of Prop 70

Means all "development" as that term is defined in PRC Section 30106 and Section 21.06.3109 of the Monterey Code of Ordinances, that was authorized pursuant to a coastal development permit (Combined Development Permit No. PLN 050296, County Resolution No. 07039) on the County Property, but is in violation of the restrictions of the Prop 70 Deed Restriction, Proposition 70, and County Board of Supervisors Resolution No. 87-151, including: 1) one additional water tank on the hill above the road within the Water Tank Easement, and 2) a large lighted sign advertising "Rocky Point Restaurant" near Highway One but outside of the Sign Easement.

5.0 ENTITIES AND PERSONS SUBJECT TO THIS CEASE AND DESIST ORDER, RESTORATION ORDER, AND ADMINISTRATIVE PENALTY ACTION

The parties subject to these Consent Orders are Esperanza Carmel Commercial LLC; their successors in interest; heirs; officers; managers; assigns; employees; agents; contractors; lessees; and any other persons or entities acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Consent Orders and shall undertake the work required herein according to the terms of these Consent Orders. Respondent shall provide notice to all successors, assigns, lessees, and potential purchasers of the Rocky Point Property of any remaining obligations and restrictions under these Consent Orders.

6.0 NATURE OF ORDERS AND OF CONSENT

6.1 These Consent Orders represent a mutual agreement and settlement between Respondent and the Commission to, among other things, resolve this matter in the most efficient way and to avoid the cost and uncertainty of contested administrative proceedings and potential litigation related to the Unpermitted Development and the Permitted Development in Violation of Prop 70, as those terms are defined above.

Respondent does not acknowledge any wrongdoing with respect to the allegations regarding the above, and these Consent Orders shall not be construed or suggest or imply any such wrongdoing with respect to those allegations. Nonetheless, Respondent agrees for the purposes of this settlement that the jurisdictional requirements for issuance and enforcement of these Consent Orders have been met and agrees to not contest the issuance or enforcement of these Consent Orders. Through the execution of these Consent Orders, Respondent agrees to comply with the terms and conditions of these Consent Orders. These Consent Orders order and authorize the removal, restoration, mitigation, and public access improvement activities, among other activities, required to restore the Properties to their pre-violation condition and to address temporal losses of habitat and public access caused by the Unpermitted Development. Nothing in these Consent Orders guarantees or conveys any right to undertake development on the Properties other than the work expressly authorized herein. Any development subject to Coastal Act requirements that is not specifically authorized herein requires authorization or determination of exemption under the Coastal Act.

- 6.2 Respondent further agrees to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors, and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.

7.0 RESTORATION PLAN

These Consent Orders require the preparation and implementation of a Temporary Erosion Control Plan, Removal Plan, Invasive Plant Control Plan, Remedial Grading Plan, Revegetation Plan, Mitigation Plan, and Monitoring Plan (hereinafter collectively referred to as "the Restoration Plan"). The Restoration Plan shall set forth the measures that Respondent shall undertake to install temporary erosion control measures, remove the physical items of Unpermitted Development, remove invasive plants, conduct remedial grading, revegetate the Restoration Area, mitigate for the temporal and permanent losses of habitat and other resources affected by the Unpermitted Development, and monitor the restoration to ensure the success of restoration activities.

7.1 General Provisions

- 7.1.1 Within 90 days of effective date of these Consent Orders, Respondent shall submit the Restoration Plan for the review and written approval of the Commission's Executive Director ("Executive Director").
- 7.1.2 The Restoration Plan, and any reports prepared pursuant to the Restoration Plan or these Consent Orders, shall be prepared by a qualified restoration ecologist(s), and/or resource specialist(s), and/or engineer(s) ("Specialist"). Within 30 days of the effective date of these Consent Orders, Respondent shall submit the qualifications of the proposed Specialist(s) for the Executive Director's review and approval. The qualifications shall include a description of the proposed Specialist's educational

background, training, and experience relevant to the preparation and implementation of the Restoration Plan described herein. To meet the requirements to be a qualified Specialist specifically for the restoration component of the Restoration Plan, the Specialist must have experience successfully completing restoration projects of a similar scale and scope involving restoration of coastal areas of Monterey County (preferably within the region covered by the Big Sur Coast segment of the Monterey County Local Coastal Program ("LCP")). If the Executive Director determines that the qualifications of Respondent's proposed specialist(s) are not adequate to plan for and conduct such restoration work, he/she shall notify Respondent and, within 10 days of such notification, Respondent shall submit a proposal for a different Specialist for the Executive Director's review and approval.

- 7.1.3 The Restoration Plan shall include a survey map from a licensed surveyor with input from the Specialist, drawn to scale, that shows the specific parameters, location, and extent of each of the following, as applicable: 1) all property boundaries; 2) the physical items placed or allowed to come to rest on the Properties as a result of Unpermitted Development and Permitted Development in Violation of Prop 70 that are to be removed under Section 7.3; 3) the Restoration Areas; 4) the areas where native vegetation removal occurred; 5) the areas where erosion control measures will be installed pursuant to Section 7.2.6; 6) the areas where remedial grading measures will be undertaken pursuant to Section 7.5; 7) the areas of existing non-native and/or invasive plants that shall be removed pursuant to Section 7.4 (delineate and label individual species and include a full list of such species); 8) the areas where native vegetation will be planted pursuant to Sections 7.6 (delineate and label individual species and include a full list of such species); 9) the location(s) of mitigation to be undertaken pursuant to Section 7.7; and 10) the specific locations and directions from which photographs will be taken for the annual monitoring reports pursuant to Section 7.8.
- 7.1.4 Each component of the Restoration Plan shall include a narrative report, specific to that component, describing the restoration activities to take place, the procedures to be used, and identification of the parties who will be conducting the restoration activities.
- 7.1.5 The Restoration Plan shall include a schedule/timeline of activities, with deadlines pursuant to these Consent Orders.
- 7.1.6 The Restoration Plan shall state that prior to the initiation of any activities required under these Consent Orders, including removal and restoration activities, the boundaries of the Restoration Areas, as well as any onsite mitigation areas, shall be physically delineated in the field, using temporary non-plastic measures such as fencing or colored wooden stakes. The Restoration Plan shall state further that all delineation materials shall be removed when no longer needed and verification of such removal shall be provided in the relevant completion or monitoring report that corresponds to the reporting period during which the removal occurred.
- 7.1.7 The Restoration Plan shall include a detailed description of all equipment to be used.

Hand tools shall be used wherever possible. It is understood by the parties that mechanized equipment will likely be used to complete the activities required to implement the Restoration Plan. The Restoration Plan shall state that mechanized equipment shall not impact resources protected under the Coastal Act and the Monterey County LCP, including, but not limited to: public access, geological stability, beach or bluff erosion, integrity of landforms, water quality, and the existing native vegetation. For any mechanized equipment proposed, the Restoration Plan shall provide for:

- 7.1.7.1 Limitations on the hours of operations for all equipment and a contingency plan that addresses, at a minimum: 1) potential impacts from equipment use, including disturbance of areas where revegetation and/or mitigation will occur and the responses thereto; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and the responses thereto; and 3) any potential water quality impacts.
- 7.1.7.2 Designated areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of materials. All stockpiles and construction materials shall be covered, enclosed on all sides, located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wind or runoff erosion and dispersion. All stockpiles, construction materials, and demolition debris shall be enclosed on all sides, covered during rain events, and not stored in contact with the soil, and shall be located a minimum of 100 feet from the bluff and other sensitive habitat.
- 7.1.7.3 Designated and confined areas for maintaining and washing machinery and equipment shall be specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. The discharge of hazardous materials into any receiving waters is prohibited.
- 7.1.8 All work shall be conducted outside of the avian breeding season (February 1 to August 31) unless recommended by the Specialist and approved by the Executive Director. For any work approved to occur during the avian breeding season (i.e., February 1 to August 31), the following requirements shall apply:
 - 7.1.8.1 Surveys will be completed by a qualified wildlife biologist with experience in observing reproductive and nesting behavior to identify displays of nesting behavior and/or active nests (i.e., as occupied by eggs or nestlings) in the proposed Restoration and Mitigation Areas. The following shall apply to these surveys:
 - 7.1.8.1.1 A survey shall be conducted within 72 hours prior to the initiation of the restoration work. If Respondent wishes to conduct any additional surveys prior to the initiation of the restoration work, these surveys shall commence no more than

30 days prior to the initiation of restoration work.

- 7.1.8.1.2 Additional surveys shall be conducted weekly for the entirety of the project unless the Executive Director approves an alternative frequency.
- 7.1.8.1.3 Surveys shall include the project work area and extend 300 feet beyond to locate any active non-raptor nests, and 500 feet to locate any active raptor nests.
- 7.1.8.1.4 If active nests are located, clearly marked no-disturbance buffers of 300 feet shall be established for non-raptor species and 500 feet for raptors, unless evidence is provided to demonstrate to the Executive Director's satisfaction that a different distance is appropriate. A qualified biologist shall determine when a nest has fully fledged or is no longer in use, at which point its no-disturbance buffer can be removed. Additional surveys and protections may be required for Black Swifts along the bluff and for raptors in the eucalyptus grove. Specifically, if the presence of Black Swifts is observed, even if nests are not, buffers will still be required. Additionally, if raptor nests are located in the eucalyptus grove, further studies to determine if the nests are active will be required.
- 7.1.8.1.5 Maps identifying the location of any active nests detected shall be provided, and at a minimum, indicate the date of survey, nest stage (e.g., eggs, nestlings, etc.), and illustrate the buffered areas.
- 7.1.9 Any birds that begin nesting within an active work area or the designated survey area amid restoration activities may be assumed to be habituated to work-related noise and disturbance levels. No prescribed buffers are required to be established around active nests in these cases; however, further encroachment shall be avoided, the nests shall continue to be monitored by the biologist, and if the nesting birds begin to show distress associated with construction activities, the qualified biologist shall reestablish the prescribed no-disturbance buffers.
- 7.1.10 If under any circumstances either construction staff or the biologist observe signs of distress (e.g., parents flush from the nest and do not readily return as activities continue, anxious warning calls, etc.), work shall be stopped immediately, and the biologist shall consult with the Executive Director to determine necessary modifications to activities. Activities will resume only after the biologist is satisfied that the modifications are sufficient to avoid continued disturbance to the nests.
- 7.1.11 A survey report of the initial survey shall be provided to the Executive Director prior to the initiation of any work and shall include: all survey results and associated maps; along with a brief narrative describing the survey methods and observations of the species' tolerances to noise and visual disturbance cues. Survey reports shall also be provided to the Executive Director within 5 days of each survey conducted over the life of the project.

- 7.1.12 All work to be performed under these Consent Orders shall be done in compliance with all applicable laws and these Consent Orders do not obviate Respondent's need to obtain any and all government approvals necessary for any development ordered and authorized herein.
- 7.1.13 Prior to commencement of work under the approved Restoration Plan, Respondent shall submit to the Executive Director written evidence that all necessary approvals have been obtained. If an agency requires a change to the Restoration Plan as submitted and/or approved, Respondent shall submit proposed revisions for the Executive Director's review and approval under Section 19.0.
- 7.1.14 Any future modifications to the Restoration Plan must be approved by the Executive Director. Respondent shall obtain Executive Director approval prior to undertaking work in accordance with a proposed modification.
- 7.1.15 The Restoration Plan shall be subject to the following deadlines:
 - 7.1.15.1 Within 30 days of the effective date of this Consent Order, Respondent shall submit the qualifications of the proposed Specialist(s) for the Executive Director's review and approval.
 - 7.1.15.2 Within 90 days the effective date of this Consent Order, Respondent shall submit the Restoration Plan for the review and written approval of the Commission's Executive Director.
 - 7.1.15.3 Within 15 days of the approval of the Restoration Plan by the Executive Director and any other required approvals consistent with 7.1.13, Respondent shall commence implementation of the Restoration Plan.
 - 7.1.15.4 Respondent shall implement each phase of the Restoration Plan according to the deadlines set forth below.
 - 7.1.15.5 Within 15 days of the completion of the work described in each phase of the Restoration Plan, Respondent shall submit a written report, prepared by the Specialist(s), for the review and approval of the Executive Director, documenting all restoration work performed pursuant to the specific plan. This report shall include a summary of dates on which work was performed and photographs taken from pre-designated locations (as identified on the map submitted pursuant to Section 7.1.3) documenting implementation of the respective components of the Restoration Plan.
 - 7.1.15.6 Within 15 days of the completion of the Revegetation Plan, Respondent shall complete the implementation of the entire Restoration Plan consistent with the approved schedule and shall complete all restoration activities with the exception

of the long-term monitoring activities as described in Section 7.8, below.

7.2 Temporary Erosion Control Plan

- 7.2.1 Respondent shall submit, as part of the Restoration Plan, a Temporary Erosion Control Plan, prepared by a qualified Specialist approved pursuant to Section 7.1.2, to stabilize the soil and prevent erosion, to address ground disturbance during any restoration activities, and to stabilize the soil and prevent erosion during the establishment of any vegetation planted pursuant to Section 7.6, below.
- 7.2.2 The Temporary Erosion Control Plan shall include: 1) a narrative report describing all temporary run-off and erosion control measures to be used during and after remedial grading, removal, and restoration activities; 2) identify and delineate on the site or grading plan required pursuant to Section 7.5 the location of all temporary erosion control measures; and 3) specify that the remedial grading, removal work, and installation of erosion control features shall take place only during the dry season (June 15 through October 31). If recommended by the Specialist, this period may be extended for a limited period of time pursuant to Section 20.0 below.
- 7.2.3 The Temporary Erosion Control Plan shall indicate that all erosion control measures are required to be installed and fully functional in the Restoration Area prior to, or concurrent with, the initial removal activities required by these Consent Orders and maintained at all times of the year throughout the removal, remedial grading, revegetation, and monitoring process, to minimize erosion across the site, and consistent with the deadlines established herein for the removal of the temporary erosion control measures.
- 7.2.4 All temporary construction related erosion control materials shall be comprised of biodegradable materials, including the material used to encase fiber rolls and other erosion control devices. To minimize wildlife entanglement and plastic debris pollution, the use of temporary rolled erosion and sediment control products with plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers used in fiber rolls, erosion control blankets, and mulch control netting) is prohibited. Any erosion-control associated netting shall be made of natural fibers and constructed in a loose-weave design with movable joints between the horizontal and vertical twines.
- 7.2.5 The erosion control measures shall remain in place and be maintained at all times of the year until the plantings have become established, or in the case of erosion control measures for winter rainstorms, until such time period established by the approved Restoration Plan, and then all such measures shall be removed and properly disposed of by Respondent. Verification of such removal shall be provided in the monitoring or completion report for the monitoring report period during which the removal occurred.
- 7.2.6 The Temporary Erosion Control Plan shall include the following deadlines:

- 7.2.6.1 Within 15 days of the approval of the Restoration Plan by the Executive Director and any other required approvals consistent with 7.1.13, Respondent shall commence the implementation of the Temporary Erosion Control Plan.
- 7.2.6.2 Within 15 days of commencing installation activities under the Temporary Erosion Control Plan, Respondent shall conclude installation.
- 7.2.6.3 Within 15 days of the completion of the installation of erosion control measures under the Temporary Erosion Control Plan, Respondent shall submit evidence for the Executive Director's review and approval in the form of a narrative report as described in 7.8.5 below. The Temporary Erosion Control Plan Report shall also show the devices installed, the type of devices installed, and document their impact, if any.

7.3 Removal Plan

- 7.3.1 Respondent shall submit, as part of the Restoration Plan, a Removal Plan, prepared by a qualified Specialist approved pursuant to Section 7.1.2. The Removal Plan shall include a description of the location, identity, and proposed plan for the removal of all physical items resulting from Unpermitted Development to be removed from the Properties, including, but not limited to, the items specifically identified in Sections 4.10, with the exception of those items required to be provided to the public as part of the Public Amenities Plan and Public Access Deed Restriction in section 13, including the Public Viewing Area and the Public Parking Area.
- 7.3.2 Respondent shall describe in detail the sequence of work, including whether work will be undertaken and/or completed in distinguished sections of the Properties at a time and how the sections will be divided and separated from the rest of the Restoration Areas while work is in progress. The Removal Plan shall clearly specify when removal activities shall be undertaken and how long each stage of removal work is expected to last.
- 7.3.3 The Removal Plan shall identify the location of the disposal site(s) for the disposal of all materials removed from the Properties and all waste generated during restoration activities pursuant to this Consent Order. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.
- 7.3.4 The Removal Plan shall indicate that removal activities shall not disturb areas outside of the Restoration Area.
- 7.3.5 Measures for the restoration of any area disturbed by the removal activities shall be included within the Revegetation Plan, including any further removal, temporary erosion

control, regrading, and/or revegetation measures that are required to address the additional disturbance.

7.3.6 The Removal Plan shall identify all mechanized equipment that could be used in any phase of the removal and clearly describe how it will be used.

7.3.7 The Removal Plan shall include the following deadlines:

7.3.7.1 Within 15 days of the completion of the implementation of the Temporary Erosion Control Plan, Respondent shall initiate removal of the physical items related to the Unpermitted Development, with the exception of removal of the unpermitted building northeast of the restaurant, including that unpermitted building's unpermitted attached deck. Respondent shall not remove that building unless and until Respondent has received Coastal Act authorization to replace it with a unit of employee housing on the Rocky Point Property.

7.3.7.2 Within 60 days of commencing the implementation of the Removal Plan, all removal activities shall be completed.

7.3.7.3 Within 15 days of the completion of the removal of all unpermitted items, Respondent shall submit evidence, for the Executive Director's review and approval, in the form of a narrative report as described in 7.8.5 below, showing that the removal has been completed pursuant to the approved Restoration Plan.

7.4 Invasive Plant Control Plan

7.4.1 The Invasive Plant Control Plan shall establish the standards to remove, control and reduce the presence of non-native plant species within the Restoration and Mitigation Areas for the duration of the Restoration Plan. This plan shall be designed to reach, by the conclusion of the monitoring period identified in Section 7.8, and maintain past the end of the monitoring period, non-native and invasive plant coverage that is consistent with the performance standards identified in Section 7.6.3. Respondent shall commence implementation of the Invasive Plant Control Plan prior to any grading operations on the Properties. The Invasive Plant Control Plan shall include:

7.4.1.1 Measures to remove non-native and invasive species outside the Restoration Area and Mitigation Area if the Specialist or the Executive Director determines that such invasive species could impact, supplant, or limit the success of the native plantings within the Restoration and Mitigation Areas. These non-native and invasive plants include those species listed as Moderate to High risk by the California Invasive Plant Council.

7.4.1.2 Measures to control non-native and invasive species, including but not limited to fallowing, mulching, mowing multiple times per year, grow and kill cycles, and solarization.

- 7.4.1.3 Periodic planting of native species, consistent with the approved plant list.
- 7.4.1.4 Description of an adaptive management approach that responds to potential adverse conditions as they occur, and which could include experimentation to ascertain barriers to project success.
- 7.4.2 The Invasive Plant Control Plan shall include the following deadlines:
 - 7.4.2.1 Within 15 days of the completion of the of the implementation of the removal plan, Respondent shall commence removing invasive and non-native vegetation under the Invasive Plant Control Plan.
 - 7.4.2.2 Within 60 days of commencing the implementation of the Invasive Plant Control Plan, Respondent shall complete the initial removal of invasive and non-native vegetation from the Restoration and Mitigation Areas.
 - 7.4.2.3 Respondent shall repeat the removal of invasive and non-native vegetation according to the Invasive Plant Control Plan throughout the implementation of the Restoration Plan and the Monitoring Plan as required to meet the performance standards identified in Section 7.6.3. Removal of invasive and non-native vegetation according to the Invasive Plant Control Plan shall occur prior to any grading that shall occur pursuant to this Consent Order.
 - 7.4.2.4 Within 15 days of the completion of the initial removal of invasive and non-native vegetation from the Restoration and Mitigation Areas, Respondent shall submit evidence, for the Executive Director's review and approval, in the form of a narrative report as described in 7.8.5 below, showing that the removal of invasive and non-native vegetation has been completed pursuant to the approved Restoration Plan.

7.5 Remedial Grading Plan

- 7.5.1 The Restoration Plan shall include a Remedial Grading Plan prepared by a qualified Specialist approved pursuant to Section 7.1.2 above, that will describe all measures necessary to return the Restoration Areas to the original, pre-violation topography.
- 7.5.2 The Remedial Grading Plan shall include a narrative description that demonstrates how the proposed remedial grading will restore the Restoration Areas to the pre-violation topography. If fill materials are to be used, the narrative shall discuss which fill materials will be used, how much of each type of material will be used, and the differences and similarities between the fill materials and existing materials located in the corresponding portions of the Restoration Areas.
- 7.5.3 If historic data or topographical maps are not available for this location, Respondent

shall propose an approximation of the topography which existed in the area prior to the Unpermitted Development based on undisturbed slopes in the area, for the review and approval of the Executive Director. If an approximation is used, the Specialist shall submit in writing that the proposed approximation is the most accurate depiction of what the topography looked like prior to the occurrence of the Unpermitted Development. If it is determined by the Specialist that a different topography will result in a more successful restoration and will benefit coastal resources, the Specialist may propose a different topography to meet these goals.

7.5.4 The Remedial Grading Plan shall include sections showing original and finished grades, and a quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate, as accurately as possible, the pre-violation topography and the current, unpermitted topography. The Remedial Grading Plan shall demonstrate how the proposed remedial grading will restore impacted areas to their original, pre-violation topography. The Remedial Grading Plan shall identify the source and date for all of the data used to produce this information.

7.5.5 The Remedial Grading Plan shall state that remedial grading activities undertaken pursuant to the Restoration Plan shall not disturb areas outside of the Restoration Areas. Prior to initiation of any activities resulting in physical alteration of the Properties, the disturbance boundary shall be physically delineated in the field using temporary measures identified in Section 7.1.6, above.

7.5.6 The Remedial Grading Plan shall include the following deadlines:

7.5.6.1 Within 15 days of completing the initial removal of invasive and non-native vegetation under the Invasive Plant Control Plan, Respondent shall begin implementation of the Remedial Grading Plan.

7.5.6.2 Within 45 days of commencing implementation of the remedial grading activities, Respondent shall complete implementation of the Remedial Grading Plan.

7.5.6.3 Within 15 days of the completion of the implementation of the Remedial Grading Plan Respondent shall submit evidence, for the Executive Director's review and approval, in the form of a narrative report as described in 7.8.5, below, showing that the remedial grading has been completed pursuant to the approved Restoration Plan.

7.6 Revegetation Plan

7.6.1 The Restoration Plan shall include a Revegetation Plan prepared by a qualified Specialist, approved pursuant to Section 7.1.2 above, that will describe the measures necessary to revegetate the Restoration Areas, as approximately shown in Exhibit 3, and the Mitigation Areas, as approximately shown in Exhibit 4, such that these areas have a similar plant density, total cover and species composition as that typical of

undisturbed habitat in the surrounding area and based on the reference site(s), pursuant to Section 7.6.3.

7.6.2 The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the Restoration Area. The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence, as necessary. The Revegetation Plan shall demonstrate that the Restoration Area will be revegetated using plant species endemic to and appropriate for the location of the Properties.

7.6.3 The Revegetation Plan shall identify the natural habitat types that are the model for the restoration and describe the desired relative abundance of particular species in each vegetation layer. This section shall explicitly lay out the restoration goals and objectives for the restoration based on that model. The Revegetation Plan shall be based on one or more reference sites specific to the habitat type upon which the Unpermitted Development occurred. The reference sites shall be used as models for the restoration. The reference sites shall be areas not disturbed by development and may be located on-site or, if suitable sites do not exist on the Properties, as close as possible to the Restoration Areas, so long as the habitat type is the same as that on the Properties. The Revegetation Plan shall include a detailed description of the reference sites, including rationale for selection, location, soil type, and plant species compositions, distributions, and densities. The reference sites shall be located as close as possible to the Restoration Areas, shall be reasonably similar in all relevant respects, and shall provide the standard for measuring success of the restoration under these Consent Orders.

7.6.3.1 The Revegetation Plan shall explicitly state the restoration goals and objectives for revegetation based upon the characteristics of the reference sites and upon information from scientific literature. Based on these goals, the Revegetation Plan shall identify the species that are to be planted (plant "palette") and provide a rationale for and description of the size and number of container plants, seed mix, the rate and method of seed application, and the method of planting. The Revegetation Plan shall indicate that plant propagules and seeds must come from local, native stock of Monterey County. If plants, cuttings, or seeds are obtained from a nursery, the nursery must certify that they are of local origin (this section of Big Sur coast) and are not cultivars. The Revegetation Plan shall provide specifications for preparation of nursery stock. Technical details of planting methods (e.g., spacing, mycorrhizal inoculation, etc.) shall be included. Respondent shall not employ non-native plant species, which could supplant native plant species in the Restoration Area.

7.6.3.2 The Revegetation Plan shall contain performance standards based upon the approved reference sites. The performance standards shall identify that 'x' native species appropriate to the habitat should be present, each with at least 'y' percent cover or with a density of at least 'z' individuals per square meter. The

Revegetation Plan shall include a description of what constitutes restoration success, in sufficient detail to enable an independent specialist to duplicate it.

- 7.6.3.3 The Revegetation Plan shall include a map showing 1) the type, size, and location of all plant materials that will be planted; 2) the location of all non-native and/or invasive plants to be removed; 3) the topography of all other landscape features on the site; and 4) photograph locations, consistent with Section 7.1.3 that will provide reliable photographic evidence for annual monitoring reports, as described in Section 7.8 below.
- 7.6.4 The Revegetation Plan shall include a schedule for installation of plants, removal of non-native plants, and completion of revegetation on the Properties. The Specialist shall recommend removal of non-natives outside the Restoration Areas if he/she determines that such non-natives could impact or limit the success of the native plantings within the Restoration Areas.
- 7.6.4.1 The revegetation schedule shall include specific time periods and deadlines, including identifiable interim goals for planting, other revegetation activities, and additional non-native species removal work spread out over the time period established in this section.
- 7.6.4.2 Respondent is responsible for ensuring the ongoing survival of the plantings, shall undertake measures necessary to ensure the success of such plantings, and shall replace any dead or dying plants with native plants approved through this Revegetation Plan.
- 7.6.4.3 The Revegetation Plan shall specify that non-native vegetation removal shall occur year-round, including on a monthly basis during the rainy season (November through April) for the duration of the restoration project.
- 7.6.5 The Revegetation Plan shall describe the proposed use of artificial inputs, such as irrigation, fertilizer, or herbicides, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed in the Restoration Areas. Temporary above ground irrigation to provide for the establishment of plantings is allowed for a maximum of three (3) years or until the revegetation has become established, whichever comes first. If, after the three (3) year time limit, the vegetation planted pursuant to the Revegetation Plan has not become established, the Executive Director may, upon receipt of a written request from Respondent, allow for the continued use of the temporary irrigation system. The written request shall describe the need for and duration of the proposed extension.
- 7.6.6 The Revegetation Plan shall include the following deadlines:
- 7.6.6.1 Within 15 days of completing implementation of the Remedial Grading Plan,

Respondent shall begin implementation of the Revegetation Plan. The schedule/timeline of activities in the Restoration Plan shall be in accordance with the deadlines in these Consent Orders and shall be in accordance with the ideal planting seasons.

- 7.6.6.2 Within 60 days of commencing implementation of activities under the Revegetation Plan, Respondent shall complete implementation of all planting activities under the Revegetation Plan.
- 7.6.6.3 Within 15 days of the completion of all revegetation activities, Respondent shall submit evidence, for the Executive Director's review and approval, in the form of a narrative report as described in Section 7.8.5, below, demonstrating that the revegetation has been completed pursuant to these Consent Orders and the approved Restoration Plan.
- 7.6.6.4 If the Specialist recommends planting to occur at a certain time of year beyond deadlines set forth herein to benefit from natural rainfall and avoid the need to plant during the drier summer months, the Executive Director may, at the written request of Respondent, extend the deadlines as set forth in Section 19.0 of these Consent Orders in order to achieve optimal growth of the vegetation.

7.7 Mitigation Plan

- 7.7.1 Within 90 days of the effective date of these Consent Orders, Respondent shall submit, for review and approval of the Executive Director, a Mitigation Plan prepared by a qualified Specialist, approved pursuant to Section 7.1.2 above, that will describe the measures necessary to mitigate for the permanent and temporal loss of native habitat in the Restoration Areas on the Properties. The Mitigation Plan shall be prepared and implemented consistent with all the terms of the Restoration Plan.
- 7.7.2 The Mitigation Plan shall contain a map overlain with the dimensions of the Restoration Areas and the dimensions of each area where mitigation activities will occur ("the Mitigation Areas." Respondent shall additionally provide the aerial extent of each element calculated in square footage, as approximately shown at Exhibit 4.
- 7.7.3 Mitigation shall include the following, as approximately shown on Exhibit 4: 1) restoration of the area seaward of the restaurant on the Rocky Point Property and the County Property as shown on Exhibit 10, as well as removal of all invasive Monterey Cypress in that area; 2) removal of permitted lighting along the bluffs; and 3) removal of wire on the bluff trail below the restaurant.

The Mitigation Plan shall also include an Invasives Removal Element, as approximately shown at Exhibit 10, which shall include 4) removal of all Pride of Madera (Echium) and Geranium throughout the Rocky Point property; 5) removal of Eucalyptus trees along the driveway on County property and on the Adjacent Private Property, as

approximately shown on Exhibit 4, after obtaining permission from the County per Section 16.0 of these Consent Orders; 6) removal of all invasive plants within 8 feet of both sides of the road on the County property; and 7) removal of all invasive plants in the area of the unpermitted stairway following removal of the stairway; 8) removal of all invasive plants in the area of the unpermitted decks at the northwest of the restaurant following their removal; and 9) removal of all invasive plants in the area of the woodchips and planters seaward of the restaurant building following their removal.

7.7.4 The Mitigation Plan shall indicate that mitigation activities carried out shall be consistent with the requirements of the Restoration Plan, including, but not limited to, requirements for the protection of avian species; the type, composition, and location of planting; and monitoring, with the exception of the Invasives Removal Element described below.

7.7.5 The Invasives Removal Element shall be consistent with the requirements of the Restoration Plan, however, only initial revegetation immediately following invasives removal is required, and monitoring shall only be required in order to ensure that the invasive plants do not grow back during the five year period.

7.7.6 The Mitigation Plan shall include the following deadlines:

7.7.6.1 Within 30 days of the effective date of these Consent Orders, Respondent shall submit the qualifications of the proposed Specialist(s) for the Executive Director's review and approval.

7.7.6.2 Within 90 days of the effective date of this Consent Order, Respondent shall submit, for review and approval of the Executive Director, the Mitigation Plan, including the methods for conducting the habitat survey of the eucalyptus and Monterey cypress trees. Respondent shall also submit their proposed methods for recommending which Monterey cypress trees may be too close to the bluff edge to safely remove.

7.7.6.3 Within 15 days of the approval of the Mitigation Plan by the Executive Director and any other required approvals consistent with 7.1.13, Respondent shall commence implementation of the Mitigation Plan.

7.7.6.4 Respondent shall complete the mitigation activities in compliance with the deadlines of the Restoration Plan, above, and shall complete implementation of the Mitigation Plan no later than completing the implementation of the Restoration Plan.

7.7.6.5 Within 15 days of the completion of the implementation of the Mitigation Plan Respondent shall submit evidence, for the Executive Director's review and approval, in the form of a narrative report as described in 7.8.5, below, showing that the mitigation activities have been completed pursuant to the approved Restoration Plan.

7.8 Monitoring Plan

- 7.8.1 The Restoration Plan shall include a Monitoring Plan prepared by a qualified Specialist, approved pursuant to Section 7.1.2 above, that will provide for monitoring the Restoration Area and Mitigation Area over a period of, at a minimum, 5 years from the completion and full implementation of the Restoration Plan to ensure successful restoration and mitigation.
- 7.8.2 The Monitoring Plan shall describe the monitoring and maintenance methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the Restoration Area and Mitigation Area.
- 7.8.3 The Monitoring Plan shall include a site survey showing the Restoration Area and Mitigation Area, the areas of revegetation, and specific photo points that will be used for the annual reports and site visits described below.
- 7.8.4 The Monitoring Plan shall specify that the Specialist shall conduct at least 4 site visits annually for the duration of the monitoring period for the purpose of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native species eradication; trash and debris removal; and the health and abundance of original and/or replacement plantings planted pursuant to these Consent Orders and consistent with the Revegetation Plan. It is Respondent's obligation to ensure a successful restoration that will meet the established success criteria, which may necessitate more site visits than required herein.
- 7.8.5 Respondent shall submit no later than December 31 of the first year of monitoring and subsequently on an annual basis and during the same one-month period of each year for at least 5 years from the completion of the revegetation phase of the Restoration Plan, for the review and approval of the Executive Director, a monitoring report prepared by the Specialist that evaluates compliance with the approved Restoration Plan. These reports shall also include photographs taken during the periodic site inspections from the same pre-designated locations as identified on the site plan submitted pursuant to Section 7.1.3, demonstrating the success of the restoration. The locations from which the photographs are taken shall not change over the course of the monitoring period unless recommended changes are approved by the Executive Director, pursuant to Section 20.0 of these Consent Orders.
- 7.8.6 If periodic inspections or the monitoring reports indicate that the restoration project or a portion thereof is not in conformance with the Restoration Plan or these Consent Orders, or has failed to meet the goals and/or performance standards specified in the Restoration Plan, Respondent shall submit a revised or supplemental Restoration Plan ("Revised Restoration Plan") for review and approval by the Executive Director.
- 7.8.7 The Revised Restoration Plan shall be prepared by the Specialist, approved by the

Executive Director, and shall specify measures to correct those restoration activities that have failed or are not in conformance with the original, approved Restoration Plan. The Executive Director will then determine whether the Revised Restoration Plan must be processed as a modification of these Consent Orders, a new Restoration Order, or a CDP. After the Revised Restoration Plan has been approved, these measures, and any subsequent measures necessary to carry out the original, approved Restoration Plan, shall be undertaken by Respondent as required by the Executive Director until the goals of the original, approved Restoration Plan have been met. Following Respondent's full implementation of the Revised Restoration Plan, the duration of the monitoring period shall be extended for a period of time equal to that during which the project remained out of compliance, but in no case less than two annual reporting periods.

7.8.8 At the end of the five-year monitoring period (or other duration, if the monitoring period is extended pursuant to Section 7.8.6), Respondent shall submit, for the review and approval of the Executive Director, a final detailed report prepared by the Specialist that documents the successful implementation of the Restoration Plan. If the Executive Director determines from this final report that the restoration has in part, or in whole, been unsuccessful, based on the requirements of the approved Restoration Plan, Respondent shall submit a Revised Restoration Plan, in accordance with the requirements of Section 7.8.6, and the monitoring program shall be revised accordingly.

7.8.9 The Monitoring Plan shall include the following deadlines:

- 7.8.9.1 Within 90 days of the effective date of these Consent Orders, Respondent shall submit, for review and approval of the Executive Director, the Monitoring Plan.
- 7.8.9.2 The monitoring period shall begin immediately upon the full implementation of the Restoration and Mitigation Plans and shall extend for a period of, at a minimum, 5 years.
- 7.8.9.3 Respondent shall submit no later than December 31 of the first year of monitoring and subsequently on an annual basis and during the same one-month period of each year for at least 5 years from the completion of the revegetation phase of the Restoration Plan, for the review and approval of the Executive Director, a monitoring report.
- 7.8.9.4 At the end of the five-year monitoring period (or other duration, if the monitoring period is extended pursuant to Section 7.8.6), Respondent shall submit, for the review and approval of the Executive Director, a final detailed report prepared by the Specialist that documents the successful implementation of the Restoration Plan.

ADDITIONAL PROVISIONS COMMON TO BOTH ORDERS

8.0 SUBMITTAL OF DOCUMENTS

All documents and funds submitted to the Commission pursuant to these Consent Orders shall be sent to:

With a copy sent to:

California Coastal Commission
Attn: Rob Modellmog
455 Market Street, Suite 300
San Francisco, CA 94105
Robert.Modellmog@coastal.ca.gov

California Coastal Commission
Attn: Ellie Oliver
725 Front Street, Suite 300
Santa Cruz, CA 95060
Ellie.Oliver@coastal.ca.gov

9.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled “Staff Report: Recommendations and Findings for Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Civil Penalties.” The Commission has authorized the activities required in these Consent Orders and has determined them to be consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act if carried out in compliance with the terms of these Consent Orders.

10.0 EFFECTIVE DATE AND TERMS OF THESE CONSENT ORDERS

The effective date of these Consent Orders is the date the Commission votes to approve these Consent Orders. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

11.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of these Coastal Act violations pursuant to PRC Sections 30810 and 30811, and jurisdiction to issue administrative civil penalties under PRC Sections 30821 and 30821.3. In light of the desire to settle these matters, Respondent agrees not to, and shall not, contest the Commission’s jurisdiction to issue or enforce these Consent Orders at a public hearing or any other proceeding by or before the Commission or any other governmental agency, any administrative tribunal, or any court of law.

12.0 RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the parties to resolve these matters in settlement, Respondent have not submitted a “Statement of Defense” form as provided for in Sections 13181 and 13191 of Title 14 of the California Code of Regulations (“14 CCR”) and have agreed not to contest the legal and factual bases for, the terms of, or the issuance of these Consent Orders, including the

allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist and Restoration Order and Administrative Penalty Action Proceedings dated November 17, 2019, as well as in the Amended Notice of Intent to Commence Amended Notice of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Penalty Proceedings dated November 8, 2022. Specifically, Respondent has agreed not to, and shall not, seek a stay pursuant to PRC Section 30803(b) nor contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding by or before the Commission or any other governmental agency, any administrative tribunal, or any court of law.

13.0 SETTLEMENT/COMPLIANCE OBLIGATION

In light of the intent of the parties to resolve these matters in settlement, which includes settlement of financial liability pursuant to PRC sections 30821 and 30821.3, Respondent has agreed to, and the Commission hereby orders Respondent to, submit and implement Public Amenities for the Rocky Point Property, and to record vertical and lateral Public Access Easements on the Rocky Point Property, a Deed Restriction, and a Conservation Easement, and to submit and implement a Prop 70 Compliance Plan and a Vehicular Entrance Safety Plan.

13.1 Public Amenities Plan

Within 60 days of issuance of these Consent Orders, Respondent shall submit, for the review and approval of the Executive Director, a proposed Public Amenities Plan ("Amenities Plan"). The Amenities Plan shall provide the means for and ensure the continued availability of public access to, on, and across the Rocky Point Property and the County Property, so that the general public may access and use the current public access resources and the new amenities described in the Amenities Plan and as approximately shown in Exhibits 5, 6, and 7. Respondent shall also provide and maintain all public amenities required by this Amenities Plan. The Amenities Plan shall include the following: 1) Public Restroom Element, 2) Public Parking Element, 3) Electric Vehicle Charger Element, 4) Trail Consolidation Element, 5) Public Viewing Area Element, 6) Sign Element, 7) Employee Training Element, and 8) Plastics Reduction Element. It is the sole responsibility of Respondent to design and, upon approval by the Executive Director and/or necessary approvals through a CDP, successfully implement and maintain the Amenities Plan. The Amenities Plan shall include full public access to and across the road on the County Property from Highway One to the Rocky Point Property and to and across the parking lot so that the public may use the designated public parking spaces, the public restroom, the public viewing area, and the trails, all described below.

13.2 Restroom Element

- 13.2.1 As part of the Amenities Plan, Respondent shall submit a Restroom Plan for the provision of a public restroom facility on the Rocky Point Property, with a

minimum of four restroom stalls and two wash stations. A trailer facility would be acceptable. At least two of the stalls must meet the accessibility standards of the Americans with Disabilities Act ("ADA").

- 13.2.2 Within 2 years, Respondent shall propose to replace the restrooms required above with a permanent restroom facility. If such a restroom facility is proposed to be located within a larger building, the restrooms shall have doors that allow for direct entrance to the restrooms from outside, such that the public does not have to walk into and through other indoor areas before finding the public restrooms. If the restroom is proposed to be located in a standalone building, it shall comply with the viewshed policies of the Monterey County LCP. Respondent shall submit the proposal to the Executive Director for their approval.
- 13.2.3 The Restroom Plan shall include a schedule and standards for the maintenance and cleaning of the restroom to ensure health and safety. At a minimum, the restroom facility shall be cleaned at the same frequency as the restroom facilities in the restaurant, ensuring that the restrooms and wash stations are fully stocked with appropriate sanitation products.
- 13.2.4 Implementation of the Restroom Plan shall comply with the deadlines set forth in Section 13.10, below.

13.3 Public Parking Element

- 13.3.1 After Respondent removes the unpermitted asphalt and other impermeable paving materials in the lower area that is currently used for parking and which includes the area of the Lateral Public Access Easement and the southern portion of the Vertical Public Access Easement, Respondent shall replace it with permeable pavement such as decomposed granite. Respondent shall also improve other areas of the Lateral Public Access Easement for parking, including with permeable pavement. The area required to be reserved for exclusive public parking use, as approximately shown at Exhibit 9. Respondent shall also stripe portions of the Lateral Public Access Easement so as to provide public parking spaces.
- 13.3.2 The Public Parking Plan shall also include a provision that until the Public Parking Element is implemented, the public may use all parking spaces in the current parking lot.
- 13.3.4 Respondent shall provide at least 24 total public parking spaces for exclusive use by the public. At least 4 general public parking spaces shall be located immediately adjacent to the public restroom. At least two of these spaces immediately adjacent to the public restroom shall be ADA accessible public parking spaces and two shall be short-term 30-minute public parking.

- 13.3.4 Implementation of the Public Parking Plan shall comply with the deadlines set forth in Section 13.10, below.

13.4 Electric Vehicle Charger Element

- 13.4.1 As part of the Amenities Plan, Respondent shall submit an Electric Vehicle Charger Plan that provides for at least 8 (eight) Level 2 Electronic Vehicle (EV) charging stations (including all necessary infrastructure and hook-ups) for exclusive use by the public. The Amenities Plan shall demonstrate that all charging spaces shall include a sign adjacent to it stating that use of the charger and associated parking space is limited to the time required to charge the vehicle. Respondent may also propose to limit the time allowed per vehicle to a shorter time than required to charge the vehicle, but for no shorter than one hour. EV chargers shall not show video or audio advertisements that can be seen or heard from the public viewing area or trails described below.
- 13.4.2 The EV Charger Plan shall describe, in detail, Respondent's proposed timeline for obtaining all necessary infrastructure upgrades to provide all eight public Level 2 EV Chargers. If necessary, Respondent may propose to stagger the implementation schedule for the full amount of chargers until such time as Respondent has obtained the infrastructure necessary for all eight Level 2 chargers.
- 13.4.3 The EV Charger Plan shall include a detailed report prepared by an electrical engineer. The electrical engineer shall be approved by the Executive Director prior to submitting their report. The electrical engineer's report shall provide a full analysis and narrative discussion of the existing electrical infrastructure on the Rocky Point Property and the County Property.

13.5 Trail Consolidation Element

- 13.5.1 As part of the Amenities Plan, Respondent shall submit a Trail Consolidation Plan for the two existing blufftop trails that traverse over the Rocky Point Property and the County Property, which are both approximately shown in Exhibit 7 to these Consent Orders. The purposes of the plan shall be to clearly demarcate the location of the trails so as to protect native vegetation on either side of the trails and to lessen erosion caused by the trails.
- 13.5.2 These measures shall include: adding a low fence made of poles and ropes, split-rail, or another low-profile, open fence design of no more than three feet high that are no more than two feet in width from each other, removing rocks from the trail, and adding erosion control measures to the trail, such as creating steps in the trail through the use of natural materials, installing water bars, or creating other drainage features.

13.5.3 These measures shall also include installing at least twelve signs, which shall be at least one foot wide, and that are positioned low to the ground near the trail and state "Please Stay on the Trail- Restoration in Progress" or something similar.

13.5.4 Implementation of the Trail Consolidation Plan shall comply with the deadlines set forth in Section 13.10, below.

13.6 Public Viewing Area Element

13.6.1 As part of the Amenities Plan, Respondent shall submit a Public Viewing Area Plan that shall provide for the unpermitted patio area, that was used as additional seating for the restaurant but is now included in the Lateral Public Access Easement as approximately shown at Exhibit 5, and also approximately shown more specifically at Exhibit 9, to be converted into a public viewing area for exclusive public use. This area shall contain at least 5 benches, at least 10 picnic tables, and 3 interpretive signs for the public to enjoy. The benches and tables shall consist of materials, color, and design that are not similar to those of the restaurant tables and chairs in order to make the clear distinction between the restaurant area outside of the Lateral Public Access Easement and the public viewing area. The interpretive signs shall be prepared by a specialist with experience creating interpretive signs that is proposed by Respondent and approved by the Executive Director. The interpretive signs shall be placed in a conspicuous location, visible to both children and adults, and shall minimize impacts to public views of the ocean. The signs shall comply with the requirements of Section 13.7, below. Additionally, the unpermitted stairway between the currently permitted lower concrete deck and the currently unpermitted patio area shall be removed, so as to separate and delineate the private and public areas.

13.6.2 The public viewing area shall comply with the accessibility standards outlined in the Americans with Disabilities Act.

13.6.3 Restaurant services, such as setting tables, taking orders, or delivering food or drinks, are specifically prohibited from occurring in the Public Viewing Area, and such prohibition shall be stated in the Public Viewing Area Plan.

13.6.4 Implementation of the Public Viewing Area Plan shall comply with the deadlines set forth in Section 13.10, below.

13.7 Sign Element

13.7.1 As part of the Amenities Plan, Respondent shall submit a Sign Plan that contains written and graphic plans for all public access related signs and all interpretive signs. Any text included in the signs shall be in, at a minimum, both English and Spanish. For each sign included in the Sign Plan, Respondent shall include a

description of the size of all signs, all additional languages used in the sign text, and the specific text and content of each sign. All signs proposed shall be made of metal and at least 3 x 2 feet. In addition, any other signs located on the Rocky Point Property or within any of the easements across neighboring properties that are owned by Respondent, such as the driveway access easement or the sign easement located on the County Property, shall also be included within the Sign Element to ensure that such signs and the graphics of those signs do not deter or preclude public use of public areas. If it is determined by the Executive Director that any existing signs have the effect of deterring public access to public areas, Respondent shall revise the Sign Plan, accordingly, remove the existing sign(s), and replace them consistent with the approved Sign Plan. Respondent shall not post signs restricting or limiting public access in any way, including 'Private Property' or 'No Trespassing' signs, at or adjacent to the entrance of the restaurant, including at the entrance to and along the driveway on the County Property, or near any employee housing on the Rocky Point Property.

13.7.2 New Public Access Signs

The Sign Plan shall include the design, installation, and maintenance of the new public access signs as listed below. The signs shall meet the specifications below and shall be submitted for the review and approval of the Executive Director. All signs shall be designed to be a consistent size, shape, material, and color with similar signs on public land on the Big Sur Coast, such as those in the region's many state parks. Respondent's sign obligations on County Property are subject to the receipt of any required approvals of Monterey County and Respondent shall make all reasonable efforts necessary to obtain required approvals for these signs by the County. The Sign Plan shall depict the following:

- 13.7.2.1 A sign within the sign easement near Highway 1. Respondent shall seek approval from Monterey County to place this sign. The sign shall state "Restrooms and Trails Open to the Public. Free Public Parking Available." Respondent shall also include a brown 'Coastal Access' sign with the standard graphic of feet and an arrow.
- 13.7.2.2 A sign at the western end of the driveway at the entrance to the parking lot stating that public parking is available, with an arrow pointing to it.
- 13.7.2.3 A sign on each door of the public restrooms stating that the restroom is for public use.
- 13.7.2.4 A sign at the public restroom showing a map of the Rocky Point Property and the County Property and highlighting the location of the public parking spaces, the public viewing area, and the public trails. This sign shall also include an interpretive guide to the proximate natural landforms and features of this segment of the Big Sur Coast.

- 13.7.2.5 A sign at the southern and the northern entrances to the trails stating that they are available for public use.
- 13.7.2.6 A sign at the southwest corner of the parking lot pointing to the entrance of the public viewing area and stating that it is for public use.
- 13.7.2.7 Each bench and picnic table shall have an engraved plaque on it stating that it is for public use.
- 13.7.2.8 Within the public parking area, a small sign shall be posted next to each public parking spot explaining that the spot is open to the public.

13.7.3 New Interpretive Signs

In addition to the above requirements, the Sign Plan shall include at least three new interpretive signs placed within the Public Viewing Area, all created by the interpretive sign specialist approved by the Executive Director. The interpretive signs shall include color photos and graphics and each sign shall measure 3' by 5'. Each interpretive sign shall be located in conspicuous locations visible to both adults and children and shall be placed to minimize the impact to public views of the ocean. The interpretive signs shall provide educational information regarding the area through photographs, diagrams, and text. Each sign shall be unique in design and shall address the following themes:

- 13.7.3.1 A sign explaining what unique vegetation, habitat, and species exist on and around the Rocky Point Property, including the Smith's Blue Butterfly and the Black Swift.
- 13.7.3.2 A sign explaining the rocky intertidal and coastal/marine habitat in the area.
- 13.7.3.3 A sign explaining the history of the area as used by Native Americans.
- 13.7.4 Implementation of the Sign Plan shall comply with the deadlines set forth in Section 13.10, below.

13.8 Employee Training Element

- 13.8.1 As part of the Amenities Plan, Respondent shall submit an Employee Training Plan that shall include a biannual public amenities training seminar for all employees who interact with the public. The seminar shall instruct the employees on how to inform the members of the public of their rights to use the public amenities listed in and required by these Consent Orders, and Respondent shall provide this training to employees into perpetuity. Each year Respondent shall submit a report to the Executive Director for review and approval by December

31 of each year, verifying that the seminar was conducted, listing the titles and number of employees that attended the training, and including the agenda of the seminar. Additionally, each new employee shall be individually instructed upon hiring on the public access amenities required in these Consent Orders, and such individual instruction shall be included in the report for the corresponding reporting period.

13.8.2 Implementation of the Employee Training Plan shall comply with the deadlines set forth in Section 13.10, below.

13.8.3 All employees, including any persons working to provide valet services, whether directly employed by the owner of the Rocky Point Property or not, shall be instructed that no employees may park within the Lateral Public Access Easement, as approximately shown on Exhibit 5, and no vehicles owned or leased by paying guests may be valet parked within the Lateral Public Access Easement.

13.9 Plastics Reduction Element

13.9.1 As part of the Amenities Plan, Respondent shall submit a Plastics Reduction Plan to reduce waste and single-use plastics foodware onsite and for takeout orders for the restaurant or other business into perpetuity. This Plan shall conform with the ReThink Disposable Program (RTDP), Surfrider's Ocean Friendly restaurants (OFR), or a substantially similar program. Respondent shall be responsible for the fees needed to participate in any such program. The success criteria for the Plastics Reduction Plan shall include, at a minimum, the following measures: only reusable foodware is used for onsite dining; straws made out of paper, metal, glass, or naturally occurring materials such as bamboo are only provided upon request; no plastic straws shall be used; no expanded polystyrene is used; no plastic bags are used for takeout or to-go orders; single-use utensils, straws, condiments, and other accessory items are provided only upon request, and shall be made of paper, metal, glass, or naturally occurring materials such as bamboo; beverages are not sold in plastic bottles; and proper recycling practices are followed.

13.9.2 Each year for five years following implementation, Respondent shall submit a report to the Executive Director for review and approval by December 31 of each year, verifying that the success criteria, listed above, have been met.

13.9.3 Implementation of the Plastics Reduction Plan shall comply with the deadlines set forth in Section 13.10, below.

13.10 Public Amenities Plan Deadlines

13.10.1 Within 10 days of the effective date of these Consent Orders, Respondent shall

submit, for review and approval of the Executive Director, the credentials of the specialist(s) who shall prepare the Public Amenities Plan.

- 13.10.2 Within 90 days of the effective date of these Consent Orders, Respondent shall submit, for review and approval of the Executive Director, the Public Amenities Plan.
- 13.10.3 Respondent shall complete all work required in the Public Amenities Plan within 180 days of commencing work.
- 13.10.4 Within 15 days of completion of the implementation of the Public Amenities Plan, Respondent shall submit evidence, for the Executive Director's review and approval, in the form of a narrative report as described in 7.8.5, showing that the activities have been completed pursuant to the approved Public Amenities Plan.

13.11 Public Access Easements

- 13.11.1 Respondent hereby agrees to execute and record an irrevocable offer to dedicate ("OTD") a lateral Public Access Easement over the Lateral OTD Area, defined below, in form and content approved by the Executive Director, for the purpose of protecting the public access and recreation values present on the Rocky Point Property.
- 13.11.2 The Lateral OTD Area shall extend across the area as approximately shown at Exhibit 5, and shall include the public parking spaces, the public viewing area, and the public access bluff top trail.
- 13.11.3 The lateral Public Access Easement shall state that the public has the right to access and use the trails, parking spaces, and public viewing area contained within the Lateral OTD Area. No seawall or similar structure shall be used to keep the blufftop public access trail in place, or to keep the public viewing area or public parking spaces in place, and the existence of said public access amenities shall not be used to justify a seawall or similar structure.
- 13.11.4 Respondent hereby also agrees to execute and record an irrevocable offer to dedicate a vertical Public Access Easement over the Vertical OTD Area, as approximately shown in Exhibit 6, in form and content approved by the Executive Director, for the purpose of protecting the public access and recreation values present on the Rocky Point Property.
- 13.11.5 The Vertical OTD Area shall extend over all sections of the driveway and parking lot on the Rocky Point Property as approximately shown on Exhibit 6. The easement shall state that the public has the right to access and pass over the driveway and parking lot, to access the trails and viewpoint, and to use the designated public parking spaces.

- 13.11.6 The OTD easements shall run with the land in favor of the People of the State of California, binding successors and assignees of Respondent. The offer of dedication shall be irrevocable for a period of 21 years, such a period running from the date of recording.
- 13.11.7 The recorded documents shall reflect that no development shall occur within the OTD Areas except as otherwise set forth in the conditions of the OTD. In the lateral Public Access Easement, this shall only include a trail, the public viewing area, public parking spaces, and restoration. In the vertical Public Access Easement, this shall only include a roadway and restoration. the OTD shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) that the Executive Director determines may affect the interest being offered and shall run with the land, binding all successors and assigns.
- 13.11.8 Within two years of the effective date of these Consent Orders, Respondent shall provide Commission staff with information customarily requested by the Commission to help in the review and approval of the form of the OTD, including a formal metes and bounds legal description and a corresponding graphic depiction of the Rocky Point Property prepared and stamped by a licensed surveyor. Additionally, within 30 days of the effective date of the Consent Orders, Respondent shall also provide a current Preliminary Title Report issued by a licensed title insurance company. Further, within 30 days of such notice from the Executive Director, Respondent shall provide an updated version of the Preliminary Title Report within 30 days of such notice. Commission staff will then provide the proposed document for the OTD.
- 13.11.9 Respondent shall execute and record the above OTDs within 60 days of receiving the proposed documents for the OTDs from Commission staff.
- 13.11.10 Within five days of recording the OTDs, Respondent shall submit to the Executive Director a certified copy of the recorded OTDs.
- 13.11.11 From the date of issuance of these Consent Orders, Respondent shall treat the OTD Areas as if the OTDs had been accepted, and Respondent shall comply with all conditions of the OTD documents from the effective date of these Consent Orders.
- 13.12 Public Access Deed Restriction**
- 13.12.1 Respondent shall record a Public Access Deed Restriction against title to the Rocky Point Property, in form and content approved by the Executive Director. The purpose of the Deed Restriction shall be to preserve the public's exclusive use and enjoyment of the public amenities listed in Section 13. As such, the

Deed Restriction shall include the following language:

- 13.12.2 The owner of the Rocky Point Property must operate and maintain the Rocky Point Property consistent with the Public Amenities Plan, required by Section 13 of CCC-02-24-02, and approved by the Executive Director pursuant to their terms and conditions. The public amenities that must be improved and maintained on the property include the public restroom, the public parking area within the Lateral Public Access Easement, eight public electric vehicle chargers, the above-required measures to consolidate the public trails, the public viewing area, public access signs, employee training on the public amenities, and a plastics reduction program.
- 13.12.3 Failure to operate and maintain the Rocky Point Property consistent with the Consent Orders and approved Public Amenities Plan will constitute a violation of the Consent Orders and Coastal Act and is enforceable as such, and will subject the owner of the Rocky Point Property to stipulated penalties pursuant to Section 14 of these Consent Orders.
- 13.12.4 This Deed Restriction may not be altered or removed without the approval of the Executive Director of the California Coastal Commission.
- 13.12.5 The owner of the Rocky Point Property shall not prevent the public from accessing and using the road and trails on the County Property.
- 13.12.6 Within 60 days of the effective date of these Consent Orders, Respondent shall provide Commission staff with information customarily requested by the Commission to help in the review and approval of the form of the Deed Restriction, including a formal metes and bounds legal description and a corresponding graphic depiction of the Rocky Point Property prepared and stamped by a licensed surveyor. Additionally, upon notice by the Executive Director, Respondent shall also provide a current Preliminary Title Report issued by a licensed title insurance company within 30 days of such notice from the Executive Director. Commission staff will then provide the proposed document for the Deed Restriction.
- 13.12.7 Within 60 days of receiving the proposed text for the Deed Restriction from Commission staff, Respondent shall record the Deed Restriction on the Rocky Point Property.
- 13.12.8 Within 5 days of recording the Deed Restriction, Respondent shall submit to the Executive Director a certified copy of the recorded Deed Restriction.
- 13.13 Conservation Easement**
- 13.13.1 Respondent hereby agrees to execute and record an irrevocable offer to

dedicate an Open Space and Habitat Conservation Easement (“the Conservation OTD”) over the Conservation Easement area, defined below and approximately shown in Exhibit 8, in form and content approved by the Executive Director, for the purpose of protecting the habitat values and views present on the Rocky Point Property.

- 13.13.2 The Conservation OTD Area shall include the blufftop of the Rocky Point Property and shall extend from the mean high tide line up to the Public Viewing Area, and from a point six feet inland of the northwest corner of the Public Viewing Area to the point directly across the Rocky Point Property where the parcel boundary turns to the north, all as approximately shown at Exhibit 8.
- 13.13.3 The Conservation OTD shall restrict all development in the area other than that necessary to maintain the public trail there, and that necessary to restore the area with native plants. No seawall or similar structure shall be built within the Conservation Easement.
- 13.13.4 The Conservation OTD shall run with the land in favor of the People of the State of California, binding successors and assignees of Respondent. The offer of dedication shall be irrevocable for a period of 21 years, such a period running from the date of recording.
- 13.13.5 The recorded documents shall reflect that no development shall occur within the Conservation OTD Areas except as otherwise set forth in the conditions of the OTD. The Conservation OTD shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) that the Executive Director determines may affect the interest being offered and shall run with the land, binding all successors and assigns.
- 13.13.6 Within two years of the effective date of these Consent Orders, Respondent shall provide Commission staff with information customarily requested by the Commission to help in the review and approval of the form of the Conservation OTD, including a formal metes and bounds legal description and a corresponding graphic depiction of the Rocky Point Property prepared and stamped by a licensed surveyor. Additionally, upon notice by the Executive Director, Respondent shall also provide a current Preliminary Title Report issued by a licensed title insurance company within 30 days of such notice from the Executive Director. Commission staff will then provide the proposed document for the OTD.
- 13.13.7 Respondent shall execute and record the above Conservation OTD within 60 days of receiving the proposed documents for the OTD from Commission staff.
- 13.13.8 Within five days of recording the Conservation OTD, Respondent shall submit to the Executive Director a certified copy of the recorded OTD.

13.13.9 From the date of issuance of these Consent Orders, Respondent shall treat the Conservation OTD Area as if the OTD has been accepted, and Respondent shall comply with all conditions of the OTD documents from the effective date of these Consent Orders.

13.14 Prop 70 Compliance Plan

13.14.1 Respondent shall submit and implement a plan to remedy the Permitted Development in Violation of Prop 70. The Prop 70 Compliance Plan shall follow the same standards as the Invasives Removal Element of the Mitigation Plan at Section 7.

13.14.2 The Prop 70 Compliance Plan shall include removing the second water tank from the Water Tank easement. Respondent may elect to also remove the remaining water tank and water line via the same plan. Respondent shall also move the lighted sign advertising "Rocky Point Restaurant" on the County Property adjacent Highway One into a new location within the Sign Easement.

13.15 Vehicular Entrance Safety Plan

13.15.1 Respondent shall propose how to ensure that vehicles do not easily roll off the road on the County property near where it meets Highway One, such as through the construction of a small curb or other barrier that minimizes impacts on coastal views, while maximizing public safety.

13.15.2 Respondent shall obtain County approval for, and shall install, a sign near where the road on the County Property meets Highway One that demarcates the road with a name for wayfinding purposes. Respondent shall propose potential names that do not include the phrase 'Rocky Point' due to the potential for confusion with a similar coastal road that is already named that in Marin County. In addition and in order to avoid the appearance of the road being private, whatever name the Executive Director approves shall not share any words with any future business on the Rocky Point Property.

13.15.3 Respondent shall also install, or at a minimum pay for the installation of, two brown 'Coastal Access' signs with the standard graphic of feet and an arrow, one each on either side of Highway One, so that the public can more easily find the entrance to the road on the County Property.

14.0 STIPULATED PENALTIES

Respondent's strict compliance with these Consent Orders is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained herein, unless the Executive Director grants an extension under Section 20.0, will constitute a violation

of these Consent Orders and shall result in Respondent being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondent shall pay stipulated penalties within 10 days of receipt of written demand by the Executive Director, regardless of whether Respondent subsequently comply. If Respondent violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to PRC Sections 30820, 30821, 30821.3, 30821.6, and 30822, as a result of the lack of compliance with these Consent Orders.

15.0 SETTLEMENT OF CLAIMS

The Commission and Respondent agree that these Consent Orders settle the Commission's monetary claims for relief from Respondent for the violations of the Coastal Act specifically enumerated in Section 4.10, above, occurring prior to the date of these Consent Orders, specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, 30821, 30821.3, and 30822, provided that the Restoration Plan discussed in Section 7.0 and Settlement/Compliance Obligation of Section 13.0 are fully implemented and the obligations of these Consent Orders are fully satisfied, and with the exception that, if Respondent fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations on the Properties beyond those that are the subject of the violations of the Coastal Act enumerated in Section 4.10.

16.0 SITE ACCESS

16.1 Respondent shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under these Consent Orders with access to the Rocky Point Property. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff and other relevant agency staff may enter and move freely about the following areas of the Rocky Point Property: (1) any areas on which the violations are located, (2) any areas where work is to be performed pursuant to these Consent Orders or pursuant to any plans adopted pursuant to these Consent Orders, (3) any areas necessary in order to view the areas where work is being performed pursuant to the requirements of these Consent Orders, (4) any areas where evidence of compliance with these Consent Orders may lie for purposes including but not limited to, inspecting records, logs and contracts relating to the Properties; and overseeing, inspecting, documenting, and reviewing the progress of Respondent in carrying out the terms of these Consent Orders.

16.1.1 Respondent shall notify and coordinate with the owners of the County Property and Adjacent Private Property regarding restoration, mitigation, and trail improvement activities, including work schedule, and shall provide to the

Executive Director, at least 15 days prior to the start date specified in the approved Restoration Plan, written confirmation from the owners of said properties that: 1) Respondent and other parties, including Commission staff, have permission to access and perform restoration, mitigation, and trail improvement work on any portion of said properties onto which Restoration Areas extend, and 2) they will not impede Respondent from undertaking the activities required by these Consent Orders.

- 16.1.2 If at any point prior to Respondent's completion of the obligations set forth in these Consent Orders, Respondent are denied permission to access or perform restoration, mitigation, or trail improvement work on any part of the County Property or the Adjacent Private Property, Respondent' obligations under these Consent Orders shall remain in effect. In such a situation, Respondent shall:
 - 16.1.2.1 Refrain from accessing or performing work on said properties and notify the Executive Director immediately.
 - 16.1.2.2 Utilize all reasonable efforts in a timely fashion to re-secure permission to access and complete restoration activities on said properties.
 - 16.1.2.3 Continue to promptly complete restoration activities in all other Restoration Areas, in accordance with the deadlines prescribed in these Consent Orders.

17.0 GOVERNMENT LIABILITY

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondent or their agents in carrying out activities pursuant to these Consent Orders.

18.0 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land, binding Respondent, including successors in interest, heirs, and assigns of Respondent, as well as future owners of the Properties. Respondent agrees that they shall provide notice to all successors in interest, heirs, assigns, and potential purchasers of the Rocky Point Property of any remaining obligations under these Consent Orders. These Consent Orders bind the parties listed in Section 5.0, and Respondent is responsible for the work required by these Consent Orders. These Consent Orders constitute both administrative orders issued to Respondent and a contractual obligation between Respondent and the Commission, and therefore shall remain in effect and binding upon Respondent until all terms are fulfilled, regardless of whether Respondent owns or lives on the Rocky Point Property.

19.0 REVISION OF DELIVERABLES

The Executive Director may require revisions to deliverables under these Consent Orders, and Respondent shall revise any such deliverable consistent with the Executive Director's specifications and resubmit them for review and written approval by the Executive Director by the deadline established by the modification request from the Executive Director.

20.0 MODIFICATION OF DEADLINES

Prior to the expiration of any of the deadlines established by these Consent Orders, Respondent may request from the Executive Director an extension of any such unexpired deadline. Such a request shall be made in writing ten (10) days in advance of the deadline and directed to the Executive Director, care of Rob Moddelmog, at both the address for the Commission's San Francisco office identified in Section 8.0 and the electronic mail address. The Executive Director may grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondent has diligently worked to comply with their obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond their control. A violation of deadlines established pursuant to these Consent Orders will result in stipulated penalties, as provided for in Section 13 above.

21.0 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void, or unenforceable, such illegality or unenforceability shall not invalidate the whole, but these Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

22.0 MODIFICATION OR AMENDMENT OF THESE CONSENT ORDERS

Except as provided in Section 19.0 of these Consent Orders, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondent, Respondent agrees not to modify these Consent Orders indirectly by seeking a permit or an amendment to an existing permit that would purport to authorize: (i) any activity that is inconsistent with the terms and intent of these Consent Orders or (ii) any forbearance from any obligation under these Consent Orders.

23.0 GOVERNMENT JURISDICTION

These Consent Orders shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California.

24.0 NO LIMITATION OF AUTHORITY

24.1 Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of

the Coastal Act (PRC Sections 30800 to 30824), including the authority to require and enforce compliance with these Consent Orders and the authority to take enforcement action for Coastal Act violations beyond those that are specified in Section 4.10 of these Consent Orders.

- 24.2 Correspondingly, Respondent has entered into these Consent Orders and waived their right to contest the factual and legal bases for issuance of these Consent Orders, and the enforcement thereof according to its terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

25.0 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

26.0 CERTIFICATION OF AUTHORITY

The person who signs this document on behalf of Respondent attests that he or she has the legal authority to bind Respondent and represents that the aforementioned party owns the Rocky Point Property.

27.0 CERTIFICATION OF REVIEW

Respondent acknowledges, represents, and declares that they have carefully read these Consent Orders, know the content and execute the same voluntarily and without duress or pressure. Respondent and their respective counsel have reviewed these Consent Orders, and the rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting party will not be employed in the interpretation of these Consent Orders. Respondent understands that their consent is final and stipulate to issuance of these Consent Orders by the Commission.

IT IS SO STIPULATED AND AGREED
On Behalf of Respondent:

Signature: _____

05/17/2024

Date

Name: Patrice Pastor

Title: President

Executed in Morro Bay, CA on behalf of the California Coastal Commission:

A handwritten signature in black ink, appearing to read 'Kate U', written over a horizontal line.

Dr. Kate Huckelbridge
Executive Director
California Coastal Commission

6/14/24

Date

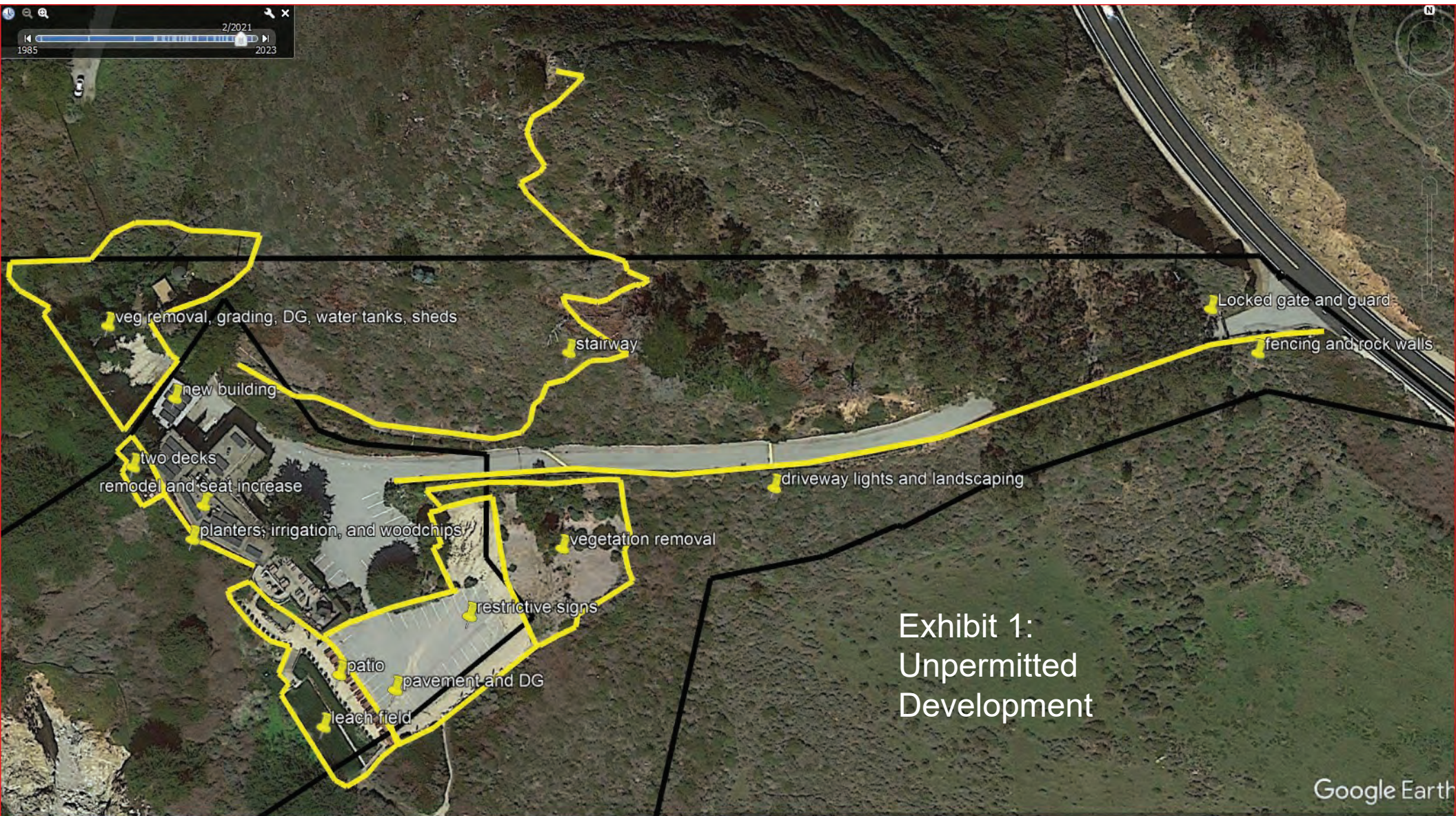


Exhibit 1:
Unpermitted
Development

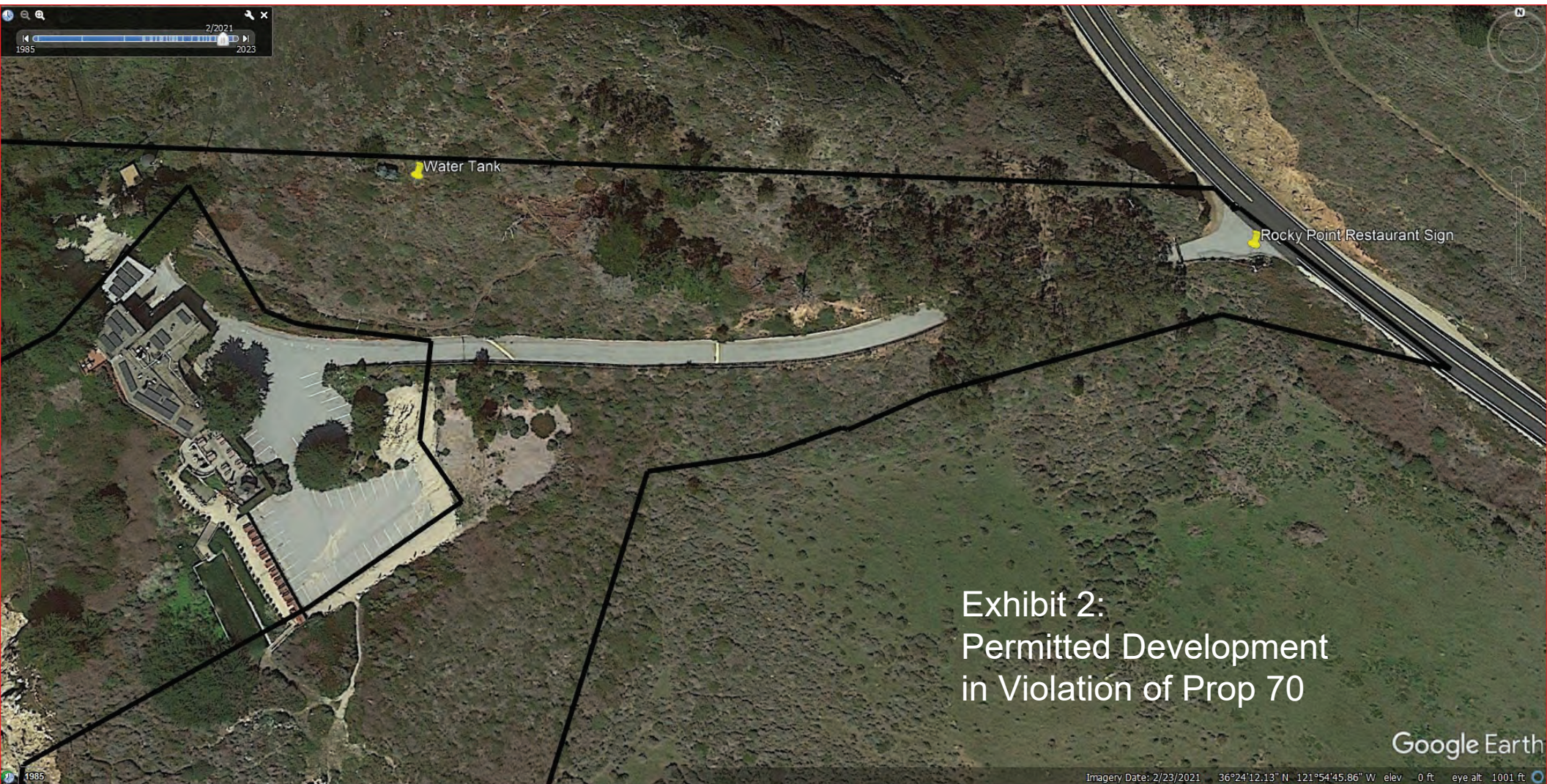


Exhibit 2:
Permitted Development
in Violation of Prop 70

Exhibit 3:
Restoration
Areas

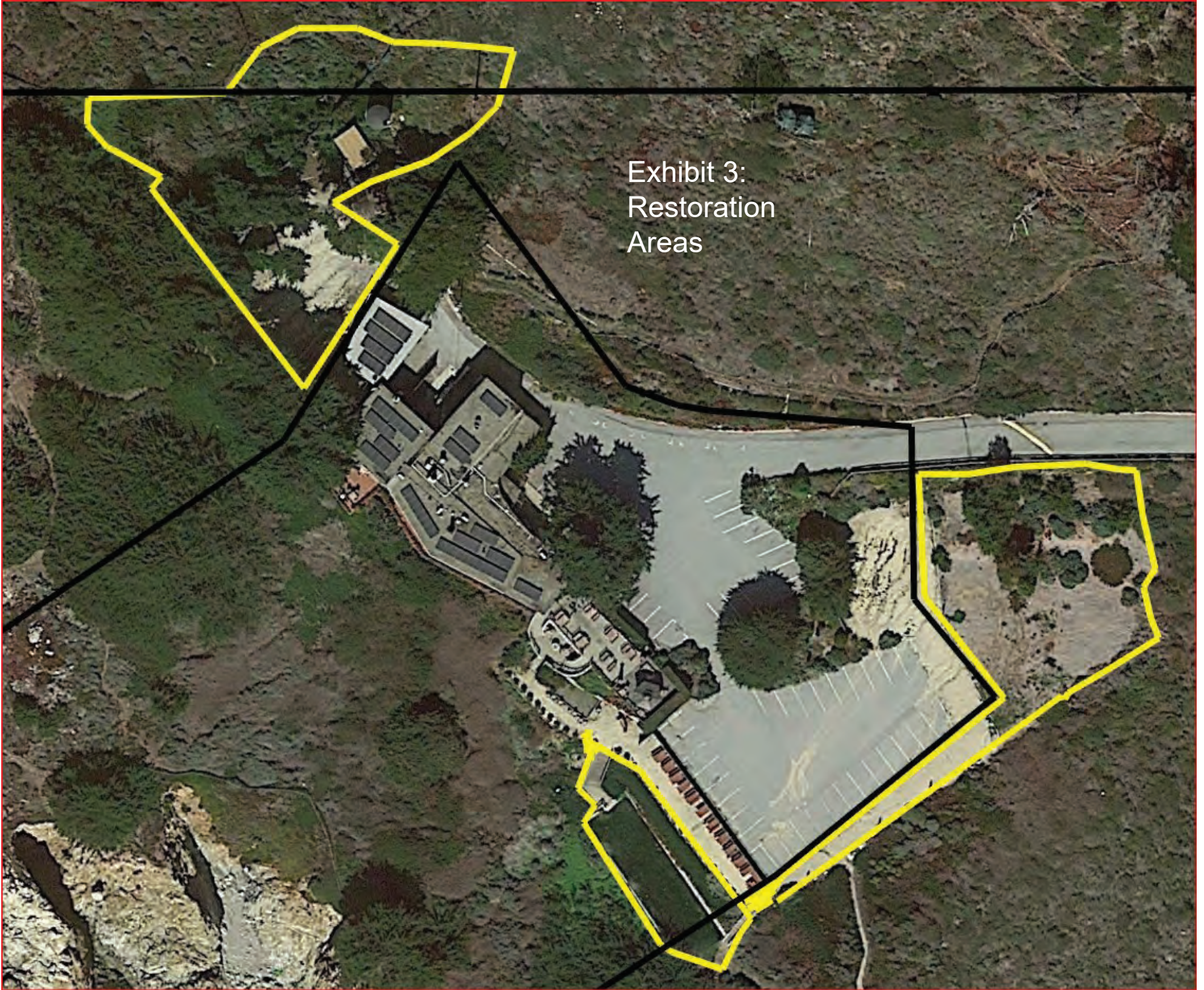
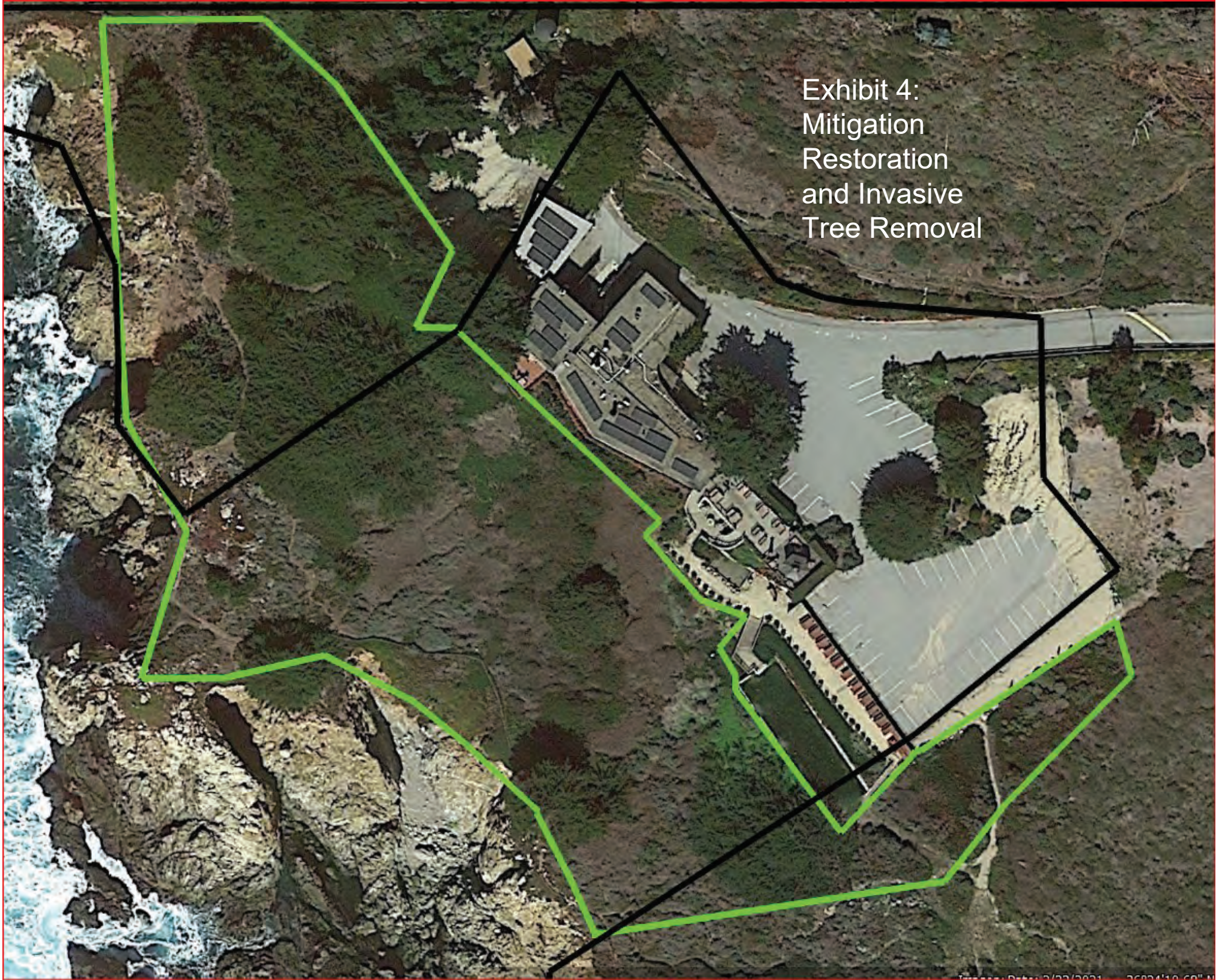


Exhibit 4:
Mitigation
Restoration
and Invasive
Tree Removal



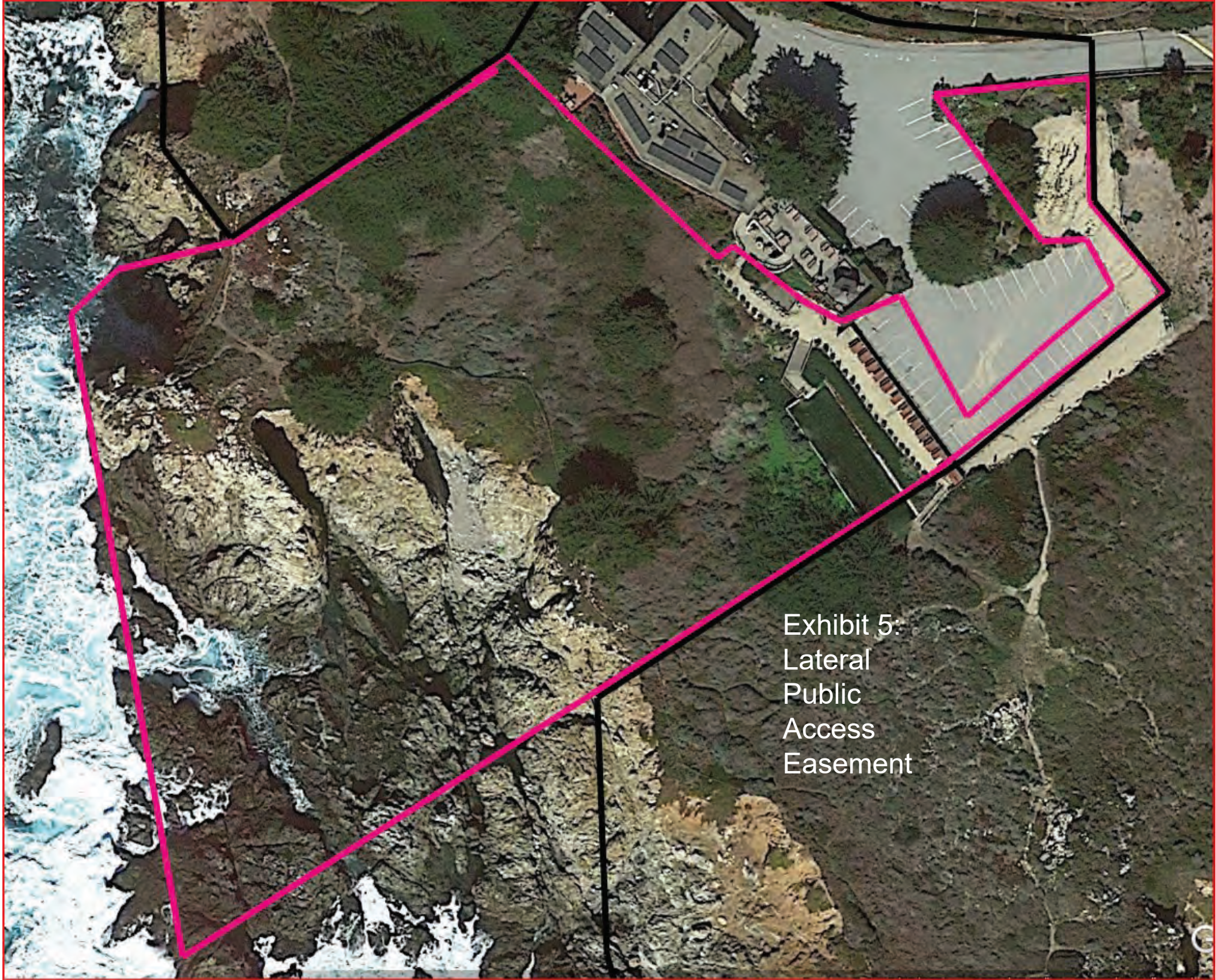


Exhibit 5:
Lateral
Public
Access
Easement



Exhibit 6:
Vertical Public
Access Easement

Exhibit 7:
Trail Consolidation
Plan



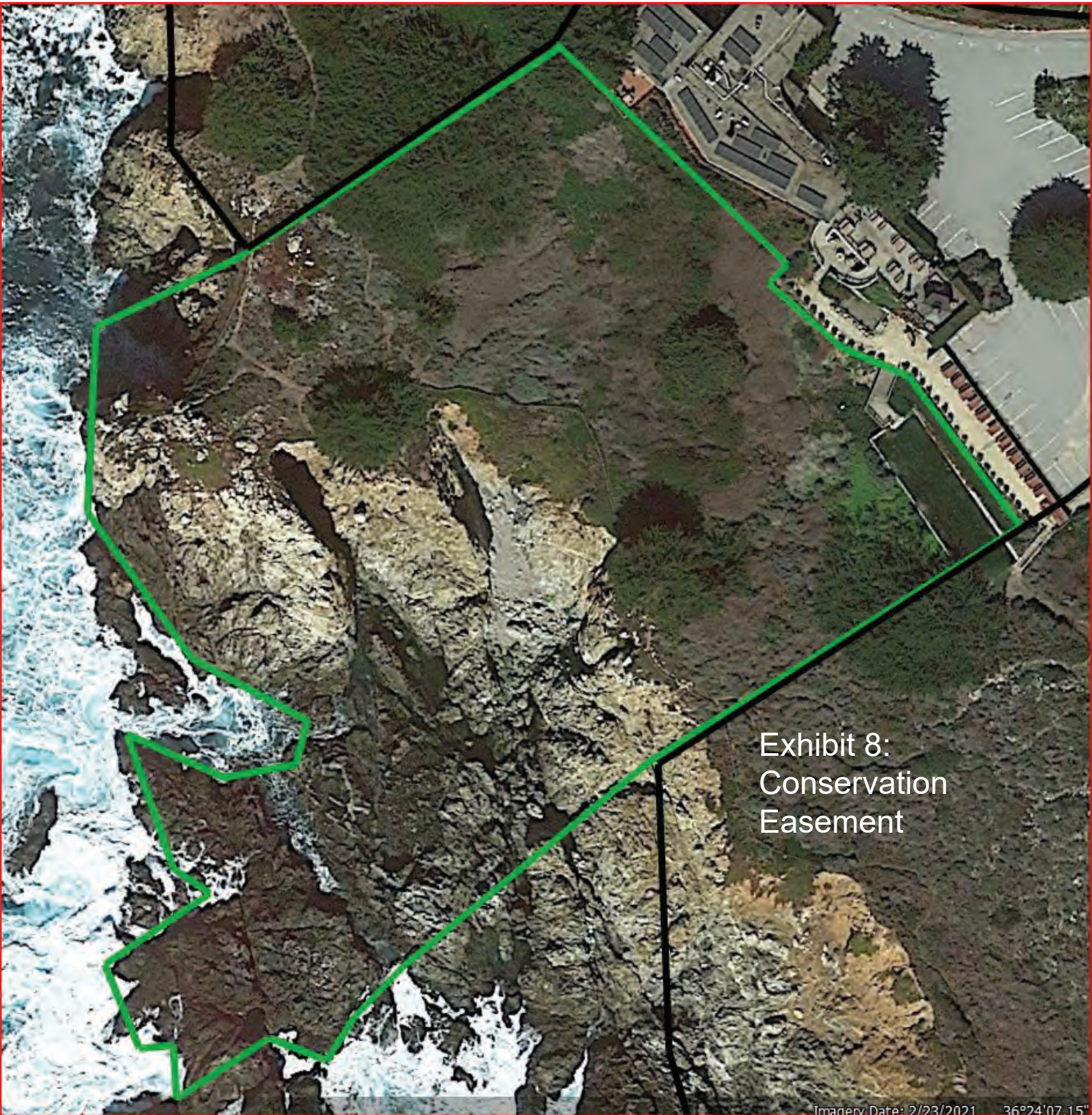
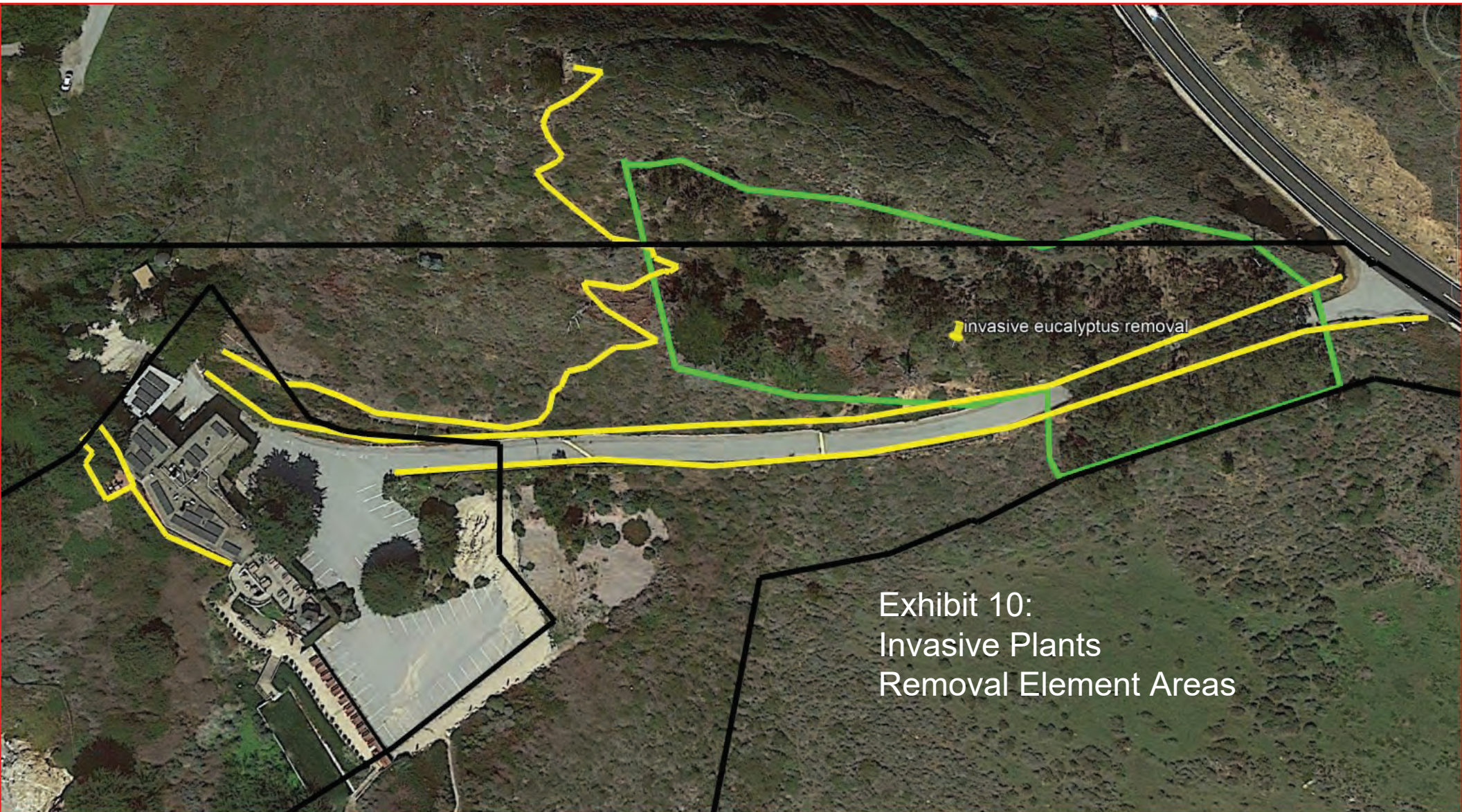


Exhibit 8:
Conservation
Easement

Exhibit 9:
Public Viewing Area
(Yellow)
and
Public Parking Area
(Blue)





invasive eucalyptus removal

Exhibit 10:
Invasive Plants
Removal Element Areas