

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 95060
PHONE: (415) 904-5260
FAX: (415) 904-5400
WEB: WWW.COASTAL.CA.GOV



F8a

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APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal Number: A-2-SMC-19-0002

Applicant: Carlos Zubieta

Appellants: Committee for Green Foothills and Steven R. King/Jim Scheinberg

Local Decision: San Mateo County Coastal Development Permit Application Number PLN 2016-00444, approved by the San Mateo County Planning Commission on December 12, 2018.

Project Location: Undeveloped 14,320 square-foot blufftop parcel adjacent to Dean Creek located at the end of Arbor Lane (199 Arbor Lane, APN 037-123-430) in the unincorporated Moss Beach area of San Mateo County.

Project Description: Construction of a new 3,338 square-foot, two-story single-family residence with a 468 square-foot attached two car garage and related residential development, removal of two Monterey cypress trees, 368 cubic yards of grading and abandonment of an on-site water well.

Staff Recommendation: Substantial Issue Exists; Approval with Conditions

PROCEDURAL NOTE

The Coastal Commission will not take testimony on the “substantial issue” portion of this recommendation unless at least three commissioners request it. The Commission may

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ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, such testimony is generally, and at the discretion of the Chair, limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will immediately follow, unless it has been postponed, during which the Commission will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

San Mateo County approved a coastal development permit (CDP) for the construction of a new single-family residence and related development on an undeveloped blufftop site in the unincorporated Moss Beach area, just north of Half Moon Bay and just south of Montara. The Appellants contend that the County-approved project raises Local Coastal Program (LCP) conformance issues with respect to coastal hazards because it is not adequately set back from either the coastal bluff or the nearby creek and will require armoring to maintain stability over time, and because its foundation design could adversely affect bluff stability. Staff agrees that the County-approved project raises a substantial LCP issue with regards to coastal hazards.

Specifically, the LCP only allows blufftop development if it is set back sufficiently to assure stability and structural integrity over at least 50 years based on coastal hazards analysis and best available science. In this case, the County analysis did not evaluate the potential effects of sea level rise, and ultimately did not develop evidence-supported setbacks from both the coastal bluff and the creek based on such an analysis. As a result, the approval does not provide at least 50 years of stability as required by the LCP. In addition, although the County's approval prohibited future shoreline armoring as the LCP requires, it also included a foundation using deep piers and tie-backs, which itself constitutes a form of armoring, inconsistent with the LCP. As such, the County's approval raises a substantial LCP conformance issue on these points, and staff recommends that the Commission take jurisdiction over the CDP application for the proposed project.

For the de novo review of that CDP application, the Applicant provided additional coastal hazards information for consideration, including a quantitative slope stability analysis combined with estimates regarding the effects of sea level rise on site stability over time. Based on that analysis, the Applicant concluded that a setback of 71-78 feet from the blufftop edge with a standard foundation would be able to provide for LCP-required site stability. However, staff (including the Coastal Commission's coastal geologist, Dr. Joseph Street) reviewed that information and other relevant documentation and believes that the Applicant's analysis underestimates expected erosion given historic and expected trends, and does not appropriately account for slope stability over time. Accordingly, and after applying more conservative assumptions

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on these points, staff recommends a setback of 95.5-107 feet to provide at least 50 years of stability without armoring and with a standard foundation, as required by the LCP. Staff also recommends additional requirements, including a prohibition against future armoring, triggers for future removal/relocation, and a waiver of liability and assumption of risk.

As conditioned, the project can be found consistent with the applicable policies of the certified LCP and the Coastal Act's access and recreation policies, and staff recommends that the Commission approve a conditioned CDP for the proposed development. The motions and resolutions to implement staff's recommendation are found below on page 5.

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Exhibit 5 – Appellants’ Contentions

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Exhibit 7 – Required Coastal Hazards Setbacks

Exhibit 8 – Applicant’s Supplemental Analysis of Coastal Bluff Retreat

Exhibit 9 – Staff Comment Letters on the Project to San Mateo County

I. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends that the Coastal Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Coastal Commission for de novo hearing and action. To implement this recommendation, staff recommends a **no** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application and adoption of the following resolution and findings. Passage of this motion will result in a finding of no substantial issue, and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion to find substantial issue: I move that the Coastal Commission determine that Appeal Number A-2-SMC-19-0002 raises no substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act, and I recommend a no vote.

Resolution to find substantial issue: The Coastal Commission hereby finds that Appeal Number A-2-SMC-19-0002 presents a substantial issue with respect to the grounds on which the appeals have been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

B. CDP Determination

Staff recommends that the Coastal Commission, after public hearing, **approve** a CDP with conditions for the proposed development. To implement this recommendation, staff recommends a **yes** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion to approve CDP: I move that the Coastal Commission approve Coastal Development Permit Number A-2-SMC-19-0002 pursuant to the staff recommendation, and I recommend a yes vote.

Resolution to approve CDP: The Coastal Commission hereby approves Coastal Development Permit Number A-2-SMC-19-0002 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the San Mateo County certified Local Coastal Program and with the public access and recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Coastal Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Coastal Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Coastal Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Coastal Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Coastal Commission and the Applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Revised Project Plans to the Executive Director for review and written approval. The Plans shall be prepared by a licensed professional or professionals (i.e., geotechnical engineer, surveyor, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a graphic scale. The Plans shall be substantially in conformance with the proposed plans (titled "Arbor Residence" dated July 24, 2017 and dated received in the Coastal Commission's North Central Coast District Office on December 7, 2018; see **Exhibit 2**) except that they shall be modified to meet the following requirements:
 - a. **Setbacks.** All development shall be set back 95.5 feet (on the northern portion of the site) and 107 feet (on the southern portion of the site) from the landward edge of the natural bluff as generally depicted in **Exhibit 7**.
 - b. **Foundation.** The foundation shall be limited to a shallow spread footing foundation system extending no deeper than 2 feet below ground surface, where site preparation can include removal of approximately 6 inches of surface soil,

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and the excavation, treatment and compaction of the upper 5 feet of soil within the area of the allowed building envelope and the surrounding 5 feet.

- c. **Design.** The design and appearance of all development shall use materials and colors with a natural appearance (such as Western red cedar siding, natural wood for the decks and overhangs, and non-reflective roofing) that will blend with the natural elements of the surrounding area. The plans shall clearly identify all measures that will be applied to ensure such design aesthetic is achieved, including with respect to all structures and all other project elements within view of Arbor Lane and other public viewing areas, and all development shall be sited and designed so as to limit its visibility from such areas to the maximum extent possible. All structures shall require articulation to avoid boxiness and large flat planes (including upper floors setback further from lower floors, no overhanging elements, etc.). At a minimum, the plans shall clearly identify all structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.). All development shall be sited and designed to seamlessly blend into the public coastal viewshed as much as possible.
- d. **Windows and Other Surfaces.** All windows shall be non-glare glass and all other surfaces shall be similarly treated to avoid reflecting light, and all windows shall be bird-safe (i.e., windows shall be frosted, partially frosted, or otherwise treated with visually permeable barriers that are designed to prevent bird strikes).
- e. **Lighting.** Exterior lighting shall be wildlife-friendly, shall use lamps that minimize the blue end of the spectrum, and shall be limited to the minimum lighting necessary for pedestrian and vehicular safety purposes. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glare visible from offsite to the maximum extent feasible (including through uses of lowest luminosity possible, directing lighting downward, etc.). The plans shall be submitted with documentation demonstrating compliance with these lighting requirements.
- f. **Permeable Surfaces.** Permeable materials shall be used in lieu of non-permeable treatments for the driveway, outdoor patios, all walkways, and any other exterior hard surfaces. This may include the use of permeable concrete or stone pavers, open-cell concrete blocks, porous pavement, or other pervious material that allows water to drain and percolate into the soil below.
- g. **Utilities.** All utilities shall be installed underground.
- h. **Stormwater and Drainage.** The plans shall clearly identify all stormwater and drainage infrastructure and related water quality measures (e.g., pervious pavements, etc.), with preference given to natural BMPs (e.g., bioswales, vegetated filter strips, etc.). Such infrastructure and water quality measures shall provide that all project area stormwater and drainage is filtered and treated to remove expected pollutants prior to discharge. Infrastructure and water quality measures shall retain runoff from the project onsite to the maximum extent

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feasible, including through the use of pervious areas, percolation pits and engineered storm drain systems. Infrastructure and water quality measures shall be sized and designed to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. In extreme storm situations (i.e., greater than the 85th percentile 24-hour runoff event storm) where such runoff cannot be adequately accommodated onsite through the project's stormwater and drainage infrastructure, any excess runoff shall be conveyed inland offsite and to appropriate facilities in a non-erosive manner. All drainage system elements shall be permanently operated and maintained, and the plans shall identify all maintenance parameters for all stormwater and drainage infrastructure and related water quality measures, including based on manufacturers recommendations, which shall be provided. At a minimum, all traps/separators and/or filters shall be inspected to determine if they need to be cleaned out or repaired prior to October 15th each year, prior to April 15th each year, and during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all traps/separators and/or filters must be cleaned prior to the onset of the storm season, no later than October 15th of each year. Debris and other water pollutants removed from filter devices during clean-out shall be contained and disposed of in a proper manner. All inspection, maintenance and clean-out activities shall be documented in an annual report submitted to the Executive Director no later than June 30th of each year. It is the Permittee's responsibility to maintain the drainage system in a structurally sound manner and its approved state.

- i. **Landscaping and Irrigation.** The area shall be landscaped with native and noninvasive plant species consistent with the mix of native species in the project vicinity selected for their ability at maturity to help reduce the perceived massing of the approved project in public views. Such plants shall be drought-tolerant; genetically appropriate for the location (avoiding cultivars), soil, hydrology, and atmospheric conditions; sourced from locally-collected seed (e.g., coastal San Mateo County); and generally be species appropriate to the area. Outside irrigation shall be limited to the initial establishment period, using only drip or microspray systems, and fertilizers shall be prohibited. All such plants shall be kept in good growing condition and shall be replaced as necessary to maintain the approved vegetation over the life of the project, including to maintain some visual softening of the approved development in public views. Regular monitoring and provisions for remedial action (such as replanting as necessary) shall be identified to ensure landscaping success.

All requirements above and all requirements of the approved Revised Project Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Revised Project Plans. Minor adjustments to the above requirements, as well as to the Executive Director-approved Revised Project Plans, which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the

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Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include and provide for the following:
 - a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the extent feasible, in order to have the least impact on public access, public views, and coastal resources, including by using inland areas for staging and storing construction equipment and materials as feasible. Construction, including but not limited to construction activities and materials and equipment storage, is prohibited outside of the defined construction, staging, and storage areas. Special attention shall be given to siting and designing construction areas in order to minimize impacts on the ambiance and aesthetic values of Arbor Lane, including but not limited to public views across the site and along the shoreline.
 - b. **Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separate from public use areas as much as possible (including using unobtrusive temporary fencing or equivalent measures to delineate construction areas), and including verification that equipment operation and equipment and material storage will not, to the maximum extent feasible, significantly degrade public views during construction. The Plan shall limit construction activities to avoid coastal resource impacts as much as possible including lighting of work areas.
 - c. **Construction Timing.** Construction is prohibited during weekends; from the Saturday of Memorial Day through Labor Day inclusive; and during non-daytime hours (i.e., from one-hour after sunset to one-hour before sunrise), unless due to extenuating circumstances the Executive Director authorizes such work. Lighting of the adjacent beach or intertidal area is prohibited.
 - d. **Construction BMPs.** The Construction Plan shall identify the type and location of all erosion control/water quality best management practices (BMPs) that will be implemented during construction to protect coastal water quality, including at a minimum all of the following:
 1. **Runoff Protection.** Silt fences, straw wattles, or equivalent apparatus shall be installed at the perimeter of the construction areas to prevent construction-related runoff and sediment from discharging from the construction areas, entering into storm drains or otherwise offsite or towards the beach and ocean. Special attention shall be given to appropriate filtering and treating of all runoff, and all drainage points, including storm drains, shall be equipped

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with appropriate construction-related containment, filtration, and treatment equipment.

- 2. Equipment BMPs.** Equipment washing, refueling, and servicing shall take place at an appropriate off-site and inland location to help prevent leaks and spills of hazardous materials at the project site, at least 50 feet inland from the bluff edge and preferably on an existing hard surface area (e.g., a road) or an area where collection of materials is facilitated. All construction equipment shall also be inspected and maintained at a similarly sited inland location to prevent leaks and spills of hazardous materials at the project site.
 - 3. Good Housekeeping BMPs.** The construction site shall maintain good construction housekeeping controls and procedures at all times (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the site; etc.).
 - 4. Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday.
- e. Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, as well as the public review requirements applicable to them, prior to commencement of construction.
- f. Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that the construction coordinator's contact information (i.e., address, phone numbers, email, etc.), including, at a minimum, an email address and a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name and contact information (i.e., address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.

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- g. Restoration.** All public access points impacted by construction activities shall be restored to their pre-construction condition or better within 72 hours of completion of construction.
- h. Construction Specifications.** The construction specifications and materials shall include appropriate control provisions that require remediation for any work done inconsistent with the terms and conditions of this CDP.
- i. Notification.** The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with this condition and the approved Construction Plan. Minor adjustments to the above construction requirements as well as to the Executive Director-approved Plan, which do not require a CDP amendment or new CDP (as determined by the Executive Director) may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- 3. Coastal Hazards.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:
 - a. Coastal Hazards.** This site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, wave overtopping, coastal flooding, and their interaction, all of which may be exacerbated by sea level rise.
 - b. Permit Intent.** The intent of this CDP is to allow for the approved project to be constructed and used consistent with the terms and conditions of this CDP for only as long as the development remains safe for occupancy, use, and access, without additional substantive measures beyond ordinary repair or maintenance to protect the development from coastal hazards.
 - c. No Future Shoreline Armoring.** No shoreline armoring, including but not limited to piers or retaining walls, shall be constructed to protect the development approved pursuant to this CDP, including, but not limited to, residential buildings or other development associated with this CDP, in the event that the approved development is threatened with damage or destruction from coastal hazards in the future. Any rights to construct such armoring that may exist under Coastal Act Section 30235 or under any other applicable law are waived, and no portion of the approved development may be considered an "existing" structure for purposes of Section 30235.
 - d. Future Removal/Relocation.** The Permittee shall remove or relocate, in part or in whole, the development authorized by this CDP, including, but not limited to,

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the residential buildings and other development authorized under this CDP, when any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently **unsafe for occupancy or use due to coastal hazards** and that there are no measures that could make the structures suitable for habitation or use without the use of shoreline armoring; or in the event that coastal hazards eliminate access for emergency vehicles, residents, and/or guests to the site due to the degradation and eventual failure of Arbor Lane as a viable roadway. The Permittee acknowledges that San Mateo County may not be required to maintain access and/or utility infrastructure to serve the approved development in such circumstances. Development associated with removal or relocation of the residential buildings or other development authorized by this CDP shall require Executive Director approval of a plan to accommodate same prior to any such activities. In the event that portions of the development fall into the ocean or the beach, or to the ground, before they are removed or relocated, the Permittee shall remove all recoverable debris associated with the development from such areas, and lawfully dispose of the material in an approved disposal site, all subject to Executive Director approval.

- e. **Assume Risks.** The Permittee: assumes the risks to the Permittee and the properties that are the subject of this CDP of injury and damage from such hazards in connection with this permitted development; unconditionally waives any claim of damage or liability against the Coastal Commission, its officers, agents, and employees for injury or damage from such hazards; indemnifies and holds harmless the Coastal Commission, its officers, agents, and employees with respect to the Coastal Commission's approval of the CDP against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and accepts full responsibility for any adverse effects to property caused by the permitted project.
4. **Real Estate Disclosure.** Disclosure documents related to any future marketing and/or sale of the property and its improvements, including but not limited to marketing materials, sales contracts and similar documents, shall notify potential buyers of the terms and conditions of this CDP, including explicitly the coastal hazard requirements of **Special Condition 3**. A copy of this CDP shall be provided in all real estate disclosures.
5. **Future Permitting.** All future proposed development at this site shall be subject to Coastal Commission review and approval. Any potential CDP exemptions provided in Coastal Act Sections 30610(b) and 30610(d) (and Title 14 California Code of Regulations Sections 13253(b)(6) and 13252(a)-(b)) shall not apply to the development governed by CDP A-2-SMC-19-0002. Accordingly, any future repair, maintenance, and/or improvements to the development authorized by this CDP shall require an amendment to CDP A-2-SMC-19-0002 or shall require an additional CDP.
6. **Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that

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the landowners have executed and recorded against the parcels governed by this CDP a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; (2) imposing the terms and conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of all of the parcels governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the subject property so long as either this CDP or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

The Coastal Commission finds and declares as follows:

A. PROJECT LOCATION AND BACKGROUND

Site Location and Context

The project is proposed on an undeveloped 14,320 square-foot blufftop parcel located at 199 Arbor Lane, adjacent to Fitzgerald Marine Reserve Protected Area and about 3 miles north of Pillar Point Harbor, in the unincorporated Moss Beach area of San Mateo County, just north of the City of Half Moon Bay and just south of Montara. The subject property is zoned One-Family Residential District (R-1) combined with the “S-17” District (that applies to the Midcoast community) (R-1/S-17) and is surrounded by single-family residential development with the same zoning to the north, south and east. A narrow portion of the adjacent parcel to the north lies between the subject property and the blufftop edge, which is approximately 30 feet from the western property boundary and approximately 50 feet above the beach. Dean Creek, an intermittent creek, borders the parcel to the south with the top of the creek bank extending onto the southwest corner of the parcel by approximately 50 feet. A grove of mature Monterey cypress trees is located along the steep upland slope of the creek canyon along the southern edge of the property, and two additional cypress trees are located in the middle of the parcel on the eastern side.

The subject property is covered by three easements. The first easement is a 10-foot wide public utility easement in favor of the County that runs adjacent to the property line fronting Arbor Lane that allows for public utilities in this area, but doesn't otherwise affect the proposed project. The second is a scenic easement that was applied as a part of the original subdivision of this area in 1972, and this easement runs along the southern portion of the property. No development is allowed in this area, and all development must be set back at least 20 feet from the easement's edge. The third easement is a scenic easement that was required by the Coastal Commission as a part of a prior lot line adjustment and that affects several properties, including this one. This last easement partially occupies the northwestern 33 feet of the property, and no

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development is allowed in this area. See site location map in **Exhibit 1**, site area photos in **Exhibit 3**, and the restricted easement areas in page 2 of **Exhibit 1**.

B. PROJECT DESCRIPTION

The County-approved project would allow for the construction of a new 3,338 square-foot, two-story single-family residence with a 468 square-foot attached two-car garage on the property, where such development would be located on the northeast end of the property with a 20-foot setback from the top of the creek bank and 77-foot setback from the blufftop edge at the closest points. The residence would include four bedrooms, four and a half bathrooms, an office nook, two covered porches, and a second level balcony, and it would incorporate materials and colors intended to provide as natural an appearance as possible (e.g., Western red cedar siding, natural wood for the decks and overhangs, and non-reflective roofing finished with a layer of granite). The project allows either a standard shallow spread footing foundation or a drilled pier and tie-back foundation, where the design would be finalized through the County building permit process. Finally, the project includes removal of two Monterey cypress trees (27-inch and 36-inch DBH), some 378 cubic yards of grading (186 cubic yards of cut and 192 cubic yards of fill), and abandonment of a water well located in the northeastern portion of the property (water and wastewater services would be provided by Montara Water and Sanitary District). See **Exhibit 4** for the County's approval and **Exhibit 2** for proposed project plans.

C. SAN MATEO COUNTY APPROVAL

As part of the County and the Coastal Commission's ongoing local development review coordination process, Coastal Commission staff sent comments to the County regarding the proposed project when it was being considered locally, expressing concerns regarding the need to appropriately plan for and address coastal hazards affecting the site, including because the LCP requires appropriate setbacks so the development will be safe from hazards without reliance on shoreline armoring. In addition, the comment letters raised concerns with regard to impacts to visual resources in the area, adequate buffers from streams and/or sensitive habitats, and the provision of public access (see July 24, 2017 and May 22, 2018 letters in **Exhibit 9**). To address these concerns related to hazards, the County approval required a deed restriction on the property prohibiting future armoring, and on December 12, 2018, the County Planning Commission approved County CDP PLN 2016-00444 for the proposed development.

Notice of the County's Planning Commission final action on the County CDP was received in the Coastal Commission's North Central Coast District Office on January 4, 2019 (**Exhibit 4**). The Coastal Commission's ten-working day appeal period for this action began on January 7, 2019 and concluded at 5 p.m. on January 18, 2019. Two valid appeals were received during that time, one from Committee for Green Foothills and a second from Steven R. King and Jim Scheinberg (see appeal documents in **Exhibit 5**). Subsequently, the Applicant waived applicable deadline requirements in order to allow time for additional discussions with Commission staff prior to the preparation of a staff report and recommendation.

D. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Coastal Commission. This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of the beach, and within 300 feet of the top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Coastal Commission to hear an appeal unless the Coastal Commission determines that the appeal contentions do not show that the County's action raises substantial issues of conformity with the LCP, and/or with Coastal Act public access policies for development between the sea and the first public road paralleling the sea. In other words, the Coastal Act requires the Coastal Commission to presume that a substantial issue exists, unless the Coastal Commission decides to take public testimony and vote on the question of substantial issue. Since staff is recommending substantial issue on the subject project, unless three or more Commissioners object to that recommendation, it is presumed that the appeal raises a substantial issue and the Coastal Commission may proceed to its de novo review at the same or subsequent meeting.

If the Coastal Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will be allowed to testify to address whether the appeal raises a substantial issue with some restrictions. The only persons qualified to testify before the Coastal Commission on the substantial issue question are the applicant, appellants, persons who previously made their views known to the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Coastal Commission will proceed to the de novo portion of the appeal hearing and review the merits of the proposed project. Any person may testify during the de novo CDP determination stage of an appeal. Under Section 30604(b), if the Coastal Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Coastal Commission must find that the proposed development is in conformity with the certified LCP. In addition, if a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, like this one,

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Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act.

E. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the County-approved project raises LCP conformance issues with respect to coastal hazards, shoreline armoring, and biological resources. Specifically, the Appellants contend the approved development is inconsistent with the policies of the certified LCP because it: 1) is not adequately setback from the coastal bluff and nearby creek ravine to assure stability and structural integrity for at least 50 years accounting for erosion, slope stability and acceleration of both factors due to sea level rise and increased precipitation, requiring the need for future shoreline protection; 2) did not properly evaluate potential impacts from foundation design alternatives which could affect bluff stability, bluff retreat, as well as future removal and restoration; and 3) does not meet the LCP required setbacks for perennial streams. See **Exhibit 5** for the complete appeal documents.

F. SUBSTANTIAL ISSUE DETERMINATION

Substantial Issue Background

The Coastal Act requires that the Coastal Commission hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. In doing so, Section 13115(c) of the Coastal Commission regulations provides that the Coastal Commission may consider the following five factors when determining if a local action raises a significant issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, rather than those of regional or statewide significance. The Coastal Commission may, but need not, assign a particular weight to any particular factor, and can make substantial issue determinations for reasons other than these five factors as well. Even where the Coastal Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's CDP decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Coastal Commission finds that the County's approval of the project raises a substantial LCP conformance issue.

Substantial Issue Analysis

Coastal Hazards

The Appellants contend that the County's approval did not adequately analyze the coastal hazards associated with the project site and, as such, did not provide adequate setbacks to assure the approved project was safe from hazards for its economic life in

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accordance with LCP requirements. Specifically, the Appellants raise concerns regarding the lack of adequate analysis and risk assessment in establishing an adequate setback from the near-vertical bluffs to the west of the property and the steep bank of the Dean Creek ravine to the south. With respect to the blufftop setback, the Appellants argue that the reported measurements used to calculate the proposed setback are inaccurate as they incorrectly measure the bluff setback and do not consider episodic erosional events associated with the 2016/17 winter storms which further resulted in retreat of the bluff. The Appellants contend that the shortest distance from the top of the bluff to the proposed residence is at the northwest corner of the property (72 feet) and not on the western side (78 feet) as measured by the Applicant. The Appellants further contend that bluff losses from the 2016/2017 winter storms (six feet lost on the south end of the bluff and 11 feet from the north end) were not updated in the site plan survey provided by the Applicant. According to the Appellants, this would further reduce the proposed bluff setback at its shortest point from 72 feet to 61 feet, reducing the Applicant's estimated timeframe over which the development would be safe.¹ Further, the Appellants raise concerns that the County-required bluff setback did not account for increased erosion over time as a result of sea level rise over the life of the development, or the episodic nature of bluff retreat which could potentially render the proposed project unsafe to occupy well before normal bluff retreat would reach the structure.

Additionally, with respect to the creek ravine setback, the Appellants contend that historic and potential future streambank retreat at Dean Creek ravine should be more carefully analyzed to determine the appropriate setback for the economic life of the project without the possibility of armoring. Specifically, they assert that the Applicant's 2016 geotechnical report did not properly calculate future bluff retreat of the creek area since it did not analyze historic surveys to determine historic erosion of the creek bank. The Appellants highlight that the top-of-bank of Dean Creek ravine at the site has retreated about 30 feet over 110 years (or an average annualized rate of 0.27 feet (or 3.27 inches) per year) and with a similar level of erosion would render the approved 18-foot creek setback inadequate, placing the top-of-bank within 10 feet of the house in 30 years. Further, the Appellants note inconsistencies regarding the location of the top-of-bank of the ravine and that the nearest setback from the proposed development is 18 feet as opposed to 25 feet. The Appellants also note the County-approved project allows for removal of two large Monterey cypress trees in close proximity to the creek bank, which may further destabilize the banks of Dean Creek. Lastly, the Appellants contend that rainfall intensity of individual storm events is projected to increase with climate change, and therefore this should be analyzed as well in terms of its potential to increase erosion of the creek bank of Dean Creek.

¹ The Applicant provided a range of estimated annual retreat rates, from 0.78 feet per year to 1.25 per year. The Applicant's actual estimated setback was 77-feet from the bluff edge versus the 78-feet referred to by the Appellant. Based on the 77-foot proposed setback, the Applicant estimated that the development would be safe for 62 to 99 years at that setback distance. If the setback were actually 61 feet at the northern end as asserted by the Appellants, then this estimate would be reduced to between 49 and 78 years.

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LCP Policy 9.8(a) requires that development on bluffs be allowed only if designed and set back adequately to assure stability and structural integrity for the expected economic life span of the development (which the LCP measures as at least 50 years). Additionally, LCP Policy 9.8(b) requires the submittal of a site stability evaluation report to demonstrate the area of stability that considers: 1) historic, current and foreseeable erosion; 2) bluff geometry and site topography; 3) geologic conditions; 4) evidence of past or potential landslide conditions; 5) wave and tidal action, including effects of marine erosion on bluffs; 6) ground and surface water conditions and variations; 7) potential effects of seismic forces resulting from a maximum credible earthquake; 8) effects of the proposed development including siting and design of structures, septic system, landscaping, drainage and grading, and impacts of construction activity on the stability of the site and adjacent area; 9) any other factors that may affect slope stability; and 10) potential erodibility of the site and mitigating measures to be used. See the CDP Determination portion of this report for the full text of the referenced policies.

The County determined that, as conditioned, the proposed project was designed and set back to assure the stability and structural integrity for the expected economic life span of the development, would not create, nor contribute significantly to, erosion problems or geologic instability of the project site or surrounding area, and would not require additional shoreline protection. The County based this determination on the analysis conducted by the Applicant's geotechnical consultants who evaluated the soil and geologic conditions at the project site to provide geotechnical recommendations and design criteria pertaining to the proposed building's foundations, site grading, retaining walls, drainage and other items that relate to soil and geologic conditions.² The Applicant's analysis concluded that the coastal bluff in question has been impacted by bluff erosion at a historical average annualized rate of up to 1.25 feet per year based on estimates of others,³ but also could be considered a lower rate (0.78 feet per year) based on updated aerial photograph analysis. Applying both rates, the Applicant identified that the narrowest setback (i.e., 77 feet) would mean that the blufftop edge would reach the proposed residence in approximately 62-99 years.

With respect to slope stability and geologic and/or storm-induced episodic erosion events, the Applicant's analysis included a qualitative evaluation of ocean bluff seismic stability and concluded that earthquake-caused instability would be similar in scope to the periodic, primarily winter wave, undercut failures and would likely replace or occur at the location of an imminent undercutting failure. Thus, seismic bluff failure was incorporated into, as opposed to being additive to, the long-term bluff retreat, and no additional setback for slope stability to protect against geologic or storm-induced episodic erosion was provided. Specific to the setback from Dean Creek, the Applicant's analysis compared 1997 and 2016 site surveys and found that there was negligible, minor slope retreat, which, based on the general slope appearance in the historical

² Michelucci & Associates, Inc. Geotechnical and Geologic Investigation, dated July 6, 2016.

³ As estimated in "Living with the California Coast" (Griggs, Gary and Lauret Savoy, editors, 1985, Duke University Press, Durham, North Carolina) based on air photo analysis between 1866 and 1971.

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aerial photographs, is applicable to a longer period of time. Thus, they found the bank was relatively stable and their proposed creek setback adequate.

With respect to sea level rise, the Applicant's consultant acknowledged that sea level rise was not factored into the bluff retreat calculation and did not identify any reliable discussion or proposed calculations to apply to the project site, but did attempt to capture such affects by multiplying the 0.78 foot per year annual retreat rate by 25% (to 0.98 feet per year). With these revised numbers, the Applicant's report concluded, and the County relied on the assertion, that the blufftop edge would still not reach the closest point of the proposed residence for 78 years⁴. With regard to sea level rise impacts on erosion from the Dean Creek side, the County relied on the Applicant's conclusions, which reasoned that sea level rise may aggravate erosion of the creek channel entry location, which could lower the creek channel base, but that that would have negligible impacts to the adjacent channel wall and the top of the creek channel. Therefore, the County concluded that the project was designed and set back to assure stability and structural integrity for the economic life span of the development, would neither create nor contribute significantly to erosion problems or geologic instability of the project site or surrounding area, and would not require additional shoreline protection.

As discussed above, LCP Policy 9.8 only allows blufftop development if it is adequality set back to assure stability and structural integrity over at least 50 years, and where such setbacks are developed by site specific analysis and best available science. Coastal Commission staff, including the Coastal Commission's coastal geologist, Dr. Joseph Street, evaluated the Applicant's reports as described above, which the County relied on to make its determination, and found these reports and their analysis inconsistent with the requirements of LCP Policy 9.8(b) on a number of accounts. First, while the Applicant's report provides a rather thorough evaluation of historic erosion rates at the site using available resources (e.g., aerial photos, surveys, historic maps, etc.), the erosion rates referenced range widely, from about 0.2 feet per year to 1.25 feet per year, and the report did not sufficiently evaluate the potential acceleration effect that sea level rise could have on the average erosion rate over the life of the development, which affects foreseeable bluff erosion. Second, the geotechnical investigation did not evaluate how future sea level rise would affect wave uprush and tidal action and their resultant effect on the frequency and severity of episodic erosion events. Additionally, because a quantitative slope stability analysis was not provided, it is not possible to determine whether the building could be safe under future geologic conditions, especially when the bluff edge inevitably changes position. And the report assumes that the residence would be safe even when the blufftop has eroded right to its edge, when in reality the residence would likely be unsafe before it was directly undermined. Lastly, the figure depicting the proposed setback relied on the position of the blufftop edge prior to more recent erosion events.

Regarding Dean Creek, Dr. Street found that the Applicant's report did not provide a complete analysis of erosion threats along the southern portion of the site. Notably, the

⁴ If the closest setback distance is closer to 72 feet as identified by the Appellants, that setback would actually be eliminated in 73 years based on erosion at a rate of 0.98 feet/year.

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report concludes that long-term edge retreat along the creek canyon is negligible, but also states that the amount of vegetation present makes aerial photograph analysis more or less impossible. Thus, no quantitative stability analysis is provided for slope stability conclusions regarding the proposed building's location and design stability over the life of the structure, which is inconsistent with LCP Policy 9.8. Specifically, additional analysis is needed which addresses slope stability factor of safety and, at the very least, assumes some plausible maximum edge retreat rate, and accounts for impacts from sea level rise.

In short, the setbacks identified are not adequately supported by facts and evidence, and would appear by all counts to underestimate the degree of threat at this location, and to lead to setbacks that are not LCP consistent. Thus, the County's approval raises a substantial LCP conformance issue with respect to safe coastal hazards setbacks.

Shoreline Armoring

As noted above, the Appellants contend that the Applicant has not provided an adequate analysis to determine if the proposed development has been adequately set back to ensure stability and structural integrity for the life of the project and, therefore, may necessitate shoreline armoring in the future to protect the proposed residence from geologic hazards. While the Appellants recognize that the County included a condition of approval that requires a deed restriction acknowledging the special conditions prohibition on future shoreline armoring, they contend that the condition should also specifically state that this restriction applies to the bluff/streambank along the south side of the parcel from the mouth of Dean Creek to the eastern property line. With future sea level rise and the potential for increased intensity of storm events, the Appellants argue that this may accelerate streambank erosion and that, if the residence becomes unsafe to occupy due to bluff retreat at the mouth of the creek and further upstream, the owner could apply for a CDP amendment to allow for armoring on this section of the bluff. Additionally, the Appellants argue that there is no discussion of impacts of the foundation design alternatives (spread footing versus drilled piers) on bluff stability, future bluff retreat, removal of development, and site restoration, since the analysis has been deferred to the building permit stage.

The County conditions of approval require a deed restriction to be recorded on the subject property prior to the final building inspection that memorializes the condition's prohibition of construction of any shoreline protective devices for the purpose of protecting the development approved in this project, including, but not limited to, the approved building and associated foundation and all future development on this property, in the event that these structures are threatened with imminent damage or destruction from coastal hazards, including, but not limited to, episodic and long-term shoreline retreat and coastal erosion and bluff and geologic instability, which the County reasoned achieved consistency with the requirements of LCP Policy 9.8. As previously stated, LCP Policy 9.8 requires that new development be designed to be safe from hazards without the use of bluff protection work. LCP Policy 9.7 defines a coastal bluff or cliff as a scarp or steep face of rock, decomposed rock, sediment or soil resulting from erosion, faulting, folding or excavation of the land mass and exceeding 10 feet in height, which would apply to both the bluff adjacent to the ocean as well as the steep

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cliff ravine adjacent to Dean Creek. Additionally, pursuant to the LCP Policy 9.8(d), new structures that would require the need for bluff protection works are prohibited. See the CDP Determination portion of this report for the full text of the referenced policies.

Consistent with LCP Policy 9.8(d), the County condition of approval prohibits shoreline protection on the coastal bluff side, however, it failed to address protection from the creek side. While LCP Policy 9.8(d) speaks directly to bluff protection, the Dean Creek ravine can also be considered a coastal bluff pursuant to both the LCP and the definition of coastal bluff under the Coastal Act⁵ (from which the LCP derives its authority), and, thus, failure to specify that shoreline protection along the creek ravine would also be inconsistent with the requirements of LCP Policy 9.8(d).

In terms of the foundation, the County conditionally approved the project to require that a finalized foundation design be submitted at the building permit stage. Alternative foundation designs recommended for the proposed project consisted of a shallow spread footing foundation system and a drilled pier alternative, noted by the Applicant's consultant as the preferred option. Specifically, the Applicant's consultant concluded that in order to fortify the foundation and make it resistant to bluff retreat, consideration should be given to constructing deep drilled piers along the edge of the structure closest to the bluffs and utilizing the slab and more conventional interior and perimeter piers as "tie backs" in the landward areas of the structure. The use of deep drilled piers and tie backs to protect new development from bluff retreat would be considered shoreline protection inconsistent with LCP Policy 9.8(d).

Therefore, the County's approval which could allow armoring on the creek side of the development and incorporate shoreline armoring in the form of deep drilled piers and tie-backs, raises a substantial LCP conformance issue with respect to the fact that the LCP prohibits armoring for new development such as this.

Stream Designation

The Appellants contend that the County incorrectly designated Dean Creek as an intermittent stream and, as a result, did not apply the proper stream setbacks, inconsistent with LCP sensitive habitat policies. Specifically, they contend that Dean Creek is shown as a perennial stream on the USGS 7.5 minute series topographic maps (from 1993), contrary to the County staff report's description of the creek as an intermittent stream, necessitating a larger setback of 50 feet from the predictable high water point pursuant to LCP requirements.

⁵ California Code of Regulations Section 13577(h) defines coastal bluff as: (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2). 30603 (a)(1) and (a)(2) includes areas within 300 feet of the inland extent of any beach and areas within 100 feet of a stream, which the development is located within.

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LCP Policy 7.11(b) states that where no riparian vegetation exists along both sides of riparian corridors, buffer zones should be extended 50 feet from the predictable high-water point for perennial streams and 30 feet from the midpoint of intermittent streams. While the Appellants assert that Dean Creek is a perennial stream, there is adequate evidence in the record, including a biological report submitted by the Applicant stating that Dean Creek is classified as an intermittent stream based on USGS 2015 maps⁶ and the 2016 USGS maps showing Dean Creek as an intermittent creek, to suggest that the County's determination is correct. Therefore, the project as proposed meets the LCP's minimum 30-foot setback from the midpoint of Dean Creek imposed for creek resource reasons (as distinct from the conclusions above regarding hazards), making it consistent with LCP Policy 7.11(b). As such, the County's approval does not raise a substantial LCP conformance issue with respect to stream designation.

Substantial Issue Conclusion

When considering a project that has been appealed to it, the Coastal Commission must first determine whether the local government's decision on the project raises a substantial issue of LCP conformity, such that the Coastal Commission should assert jurisdiction over the CDP application 'de novo' (i.e., completely reviewing the project for LCP consistency) for such development. At this stage, the Coastal Commission has the discretion to find that the project does or does not raise a substantial issue of LCP conformance. Section 13115(c) of the Coastal Commission regulations provides that the Coastal Commission may consider the following five factors when determining if a local action raises a significant issue: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to any particular factor, and can make substantial issue determinations for reasons other than these five factors as well.

In this case, the five factors, considered together, strongly support a conclusion that the County's approval of the proposed project raises a substantial issue of LCP conformance. As currently proposed, the County's decision lacks adequate analysis of the coastal hazards associated with the project and the project site and, as such, lacks adequate factual support regarding the proper siting and long-term safety and stability of the project with respect to these potential hazards in light of LCP requirements for safe setbacks. Further, the development would potentially rely on a drilled pier foundation design that acts as shoreline armoring for its safety and may require further armoring in the future despite the prohibition applied by the County, which could significantly affect coastal resources and would be inconsistent with the LCP regarding such armoring. In addition, the lack of proper analysis for coastal hazards, including with respect to future sea level rise and slope stability and the potential reliance on shoreline

⁶ Kopitov Environmental LLC Biological Resources Assessment, dated May 9, 2015.

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armoring, could adversely affect future interpretations of the County's LCP and the intent of the Coastal Act more broadly.

In conclusion, the County-approved project raises substantial issues regarding coastal hazards and shoreline armoring. Therefore, the Coastal Commission finds that the appeal raises a substantial issue with respect to the County-approved project's conformity with the policies of the certified LCP and takes jurisdiction over the CDP application for the proposed project.

G. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this CDP determination is the San Mateo County certified LCP and, because it is located between the first public road and the sea, the public access and recreation policies of Chapter 3 of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference.

Coastal Hazards

Applicable LCP Provisions

The County LCP defines coastal bluffs or cliffs and establishes several requirements for development on coastal bluff ops, including required studies and design and setback provisions that assure stability and structural integrity for the expected economic life span of the development and at least 50 years. Further, LCP policies require that the development will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area. Finally, the LCP prohibits development that would require shoreline armoring. The relevant LCP policies state:

LUP Policy 9.7: Definition of Coastal Bluff or Cliff

Define coastal bluff or cliff as a scarp or steep face of rock, decomposed rock, sediment or soil resulting from erosion, faulting, folding or excavation of the land mass and exceeding 10 feet in height.

LUP Policy 9.8: Regulation of Development on Coastal Bluff Tops

- a. *Permit bluff and cliff top development only if design and setback provisions are adequate to assure stability and structural integrity for the expected economic life span of the development (at least 50 years) and if the development (including storm runoff, foot traffic, grading, irrigation, and septic tanks) will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area.*
- b. *Require the submittal of a site stability evaluation report for an area of stability demonstration prepared by a soils engineer or a certified engineering geologist, as appropriate, acting within their areas of expertise, based on an on-site evaluation. The report shall consider:*
 - (1) *Historic, current and foreseeable cliff erosion, including investigation of recorded land surveys and tax assessment records in addition to the use of historic maps and photographs where available, and possible changes in shore configuration and transport.*

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- (2) *Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site and the proposed development.*
 - (3) *Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features such as bedding, joints, and faults.*
 - (4) *Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity.*
 - (5) *Wave and tidal action, including effects of marine erosion on sea cliffs.*
 - (6) *Ground and surface water conditions and variations, including hydrologic changes caused by the development (e.g., introduction of sewage effluent and irrigation water to the groundwater system; alterations in surface drainage).*
 - (7) *Potential effects of seismic forces resulting from a maximum credible earthquake.*
 - (8) *Effects of the proposed development including siting and design of structures, septic system, landscaping, drainage, and grading, and impacts of construction activity on the stability of the site and adjacent area.*
 - (9) *Any other factors that may affect slope stability.*
 - (10) *Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design).*
- c. *The area of demonstration of stability includes the base, face, and top of all bluffs and cliffs. The extent of the bluff top considered should include the area between the face of the bluff and a line described on the bluff top by the intersection of a plane inclined at a 20° angle from the horizontal passing through the toe of the bluff or cliff, or 50 feet inland from the edge of the cliff or bluff, whichever is greater.*
- d. *Prohibit land divisions or new structures that would require the need for bluff protection work.*

Analysis

The LCP requires new development on coastal cliff and blufftops in San Mateo County to minimize risks to life and property while ensuring stability and structural integrity without contributing significantly to erosion, geologic instability, or destruction of the site or surrounding area for the expected economic life span of the development (and at least 50 years). The LCP requires the submittal of a site stability evaluation demonstrating an area of stability considering a number of factors, and, specifically as it relates to this appeal, the analysis must evaluate historic, current and foreseeable cliff erosion, wave and tidal action, including effects of marine erosion on sea cliffs, and any

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other factors that may affect slope stability. Lastly, the LCP prohibits new development that would require the need for shoreline armoring.

To better assess the geotechnical stability of the site and the proposed project, and the adequacy of the proposed blufftop edge setback consistent with LCP requirements, after the appeal to the Coastal Commission, the Applicant provided a supplemental geotechnical analysis prepared by GeoSoils, Inc. (GSI)⁷ on July 31, 2019 that included 1) a slope stability analysis applying both static and seismic factors of safety (of 1.3 and 1.5 respectively) to develop setbacks for the proposed residence; 2) an average estimate of historic bluff retreat of 0.78 feet per year; 3) an analysis of sea level rise using the medium-high risk aversion scenario (which equated to 3.6 feet of sea level rise over next 50 years); and 4) a predicted future rate of retreat of 1.72 feet per year using the "SCAPE" equation method, all of which were deficient or missing from the original geotechnical analysis of the project relied upon by the County in their action. To account for the possible added effects from 3.6 feet of sea level rise over the design life of the project (i.e., measured at 50 years to address the LCP's minimum 50-year setback requirement), the GSI report assumed that sea level rise would increase the bluff retreat rate by 1/3 (33% increase) of the hypothetically calculated future retreat rate during the first 37 years (an acceleration factor of $m=0.33$). The report also recommended use of a 1.3 factor of safety (FOS) for understanding the necessary slope stability setback in the future, despite the fact that a 1.5 FOS is the industry standard for new development, and despite the fact that the Commission generally requires use of a 1.5 FOS.

The GSI report concluded that, based on the new predicted erosion and slope stability analyses, the proposed residential structure would be setback far enough to accommodate a FOS setback greater than or equal to the FOS 1.3 setback line (approximately 8 feet on the northern portion of the site increasing to 15 feet on the southern portion of the site) plus the setback for bluff retreat (63 feet) for 50 years considering sea level rise for a total setback of 71-78 feet, and, overall, should provide sufficient protection from coastal bluff retreat for the proposed residential structure over 50 years. It also stated that since site soils are considered erosive, proper control of surface drainage is considered essential in minimizing the adverse effects of erosion on the coastal bluff and should be evaluated by a licensed civil engineer. Further, it concluded that the proposed project would not directly or indirectly cause, promote, or encourage bluff erosion or failure, either on the site or the adjacent properties.

The Commission's coastal geologist, Dr. Joseph Street, reviewed the GSI report discussed above and conducted additional analyses of the recommended blufftop edge setback, generally following the approach taken by GeoSoils in its July 31, 2019 assessment but with a few key differences. First, Dr. Street noted that the report used a less conservative acceleration factor for future bluff retreat of $m = 0.33$ versus $m = 0.5$, citing the presence of a small sand and gravel beach which may provide some

⁷ "Third-Party Coastal Bluff Retreat and Slope Stability Evaluation at the Proposed New Residence, 199 Arbor Lane, Moss Beach, San Mateo County, California 94038, Assessor's Parcel Number (APN) 037-123-430, " W.O. 7653-A-SC, dated July 31, 2019, by GeoSoils, Inc.

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protection from wave attack at the toe of the bluff. While the value of $m = 0.33$ is speculative, Dr. Street believes the value is reasonable in this instance as long as permitting conditions are included to account for additional uncertainty. Second, based on Dr. Street's assessment, the highest site-specific estimate of erosion of 0.96 feet per year is a more appropriate historic erosion rate for use in determining the geologic setback than the 0.78 feet per year applied by the Applicant's consultant. This retreat rate spans the full historical observation period (1866-2016) available at the site and also captures the full range of bluff retreat that was actually observed on site. Lastly, Dr. Street recommended use of 0.0066 feet/year for the historic rate of sea level rise and 0.092 feet per year for the future rate of sea level rise, resulting in a future retreat rate of 2.31 feet per year in the year 2069, which would capture an approximately 50 year design life.

With the adjustments discussed above, Dr. Street concluded that the new erosion setback should be increased to approximately 82 feet⁸ inland and paralleling the bluff edge. Adding in the GSI-predicted slope stability setback with a 1.5 factor of safety (13.5 feet on the northern portion of the site increasing to 25 feet on the southern portion of the site),⁹ Dr. Street recommends a final development setback ranging from 95.5 feet to the north to 107 feet at the south (see **Exhibit 6**) at the same points referenced above which includes setbacks for both slope stability and long-term erosion. Thus, **Special Condition 1** requires revised final project plans showing all development is behind the bluff hazard setback line shown on **Exhibit 7**.

Dr. Street also looked at the potential for additional setback requirements to account for short term episodic bluff retreat; he noted the magnitude of past episodic events that have been documented and verified are similar to slope stability setbacks, and, as such, the above referenced slope stability setbacks will adequately account for the larger episodic bluff retreat events. Further, with regard to the Applicant's slope stability analysis of the creek ravine and the recommended setback, the analysis found the slope to be globally stable, with minimum factors of safety of 1.87 (static) and 1.21 (pseudostatic). Dr. Street reviewed the new supplementary analysis and also observed the conditions of the site and found no significant erosion or instability on the stream bank, and while much of the slope was obscured by vegetation, such presence of a large amount of mature vegetation is a strong indicator that this slope has not suffered significant erosion or landsliding in many years. Thus, the 20-foot setback from the creek is adequate to account for potential hazards consistent with LCP requirements.

⁸ Determined based on the SCAPE Equation ($R_2 = R_1 (S_2 / S_1)^m$) accounting for the future bluff retreat rate (R_2) as a function of the historical bluff retreat rate (R_1), historical SLR rate (S_1), and future SLR rate (S_2), and a value of m which describes a "damped" cliff retreat response to increased rates of SLR, for a 50-year projection. In this case $R_1 = 0.96$ feet per year $S_1 = 0.0066$ feet/year and $S_2 = 0.092$ feet per year, and $m = 0.33$.

⁹ It is not appropriate to use the 1.3 FOS as proposed by the Applicant, including because a 1.5 FOS is the industry standard for new development, and is the FOS typically relied upon by the Commission for siting new development in relation to slope stability. Further, a 1.5 FOS offers a greater margin of error against unknowns and provides a greater buffer against changing environmental conditions.

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As further required by **Special Condition 1**, and as proposed by the Applicant, the project has been modified to include only a standard shallow spread footing foundation system that will extend no deeper than 2 feet below ground surface, and may include site preparation activities to strip the upper 6 inches of surface soil, and to excavate, treat and compact the upper 5 feet of soil from the building footprint and 5 feet beyond. As such, the project will not use any foundational elements such as deep piers and tie-backs that function as shoreline armoring, assuring consistency with LCP policies that prohibit it.

While the analytical assumptions discussed above, including estimates of future sea level rise and the resultant erosion rates, are acceptable to use in this case, it is important to note that the actual erosion rate could be greater. Additionally, the Coastal Commission typically plans for a longer time horizon than the 50-year economic life span that the County's LCP uses. In other words, the facts do not demonstrate with certainty that the site will be stable and safe for development over 50 years, rather, the Coastal Commission has evaluated the evidence, and it suggests that 50 years will be the estimated upper limit of the time frame within which development would not be threatened by coastal hazards. It is also possible that it could be longer or shorter than that given the uncertainties built into the analysis, which is the reality of developing along an eroding shoreline subject to coastal hazards, including in terms of the effects of sea level rise, and the Applicant must accept and internalize that such a risk is acceptable. Given these uncertainties and the risks inherent to developing in areas like this, the project is conditioned to require waiver of liability, assumption of risk, and removal/relocation triggers tied to criteria that will define when it is no longer appropriate to maintain the project at this location, in light of coastal hazards. Thus, in order to acknowledge these uncertainties, the Applicant is required to waive liability, assume the risks associated with this type of development, agree to removal requirements once the development becomes threatened, and agree that shoreline armoring specifically to protect this development is prohibited (see **Special Condition 3**).

The project as modified and conditioned can be found consistent with the County's LCP standards regarding coastal hazards.

Public Views and Community Character

Applicable LCP Provisions

The LCP requires that new development apply the Design Review (DR) Zoning District to urban areas of the Coastal Zone, particularly the design standards contained in Section 6565.20 of the Implementation Plan and provides special design guidelines for specific communities, including Moss Beach, to protect views to and along the ocean. The LCP also requires setbacks for bluff top development to protect scenic views from the shoreline and requires that new development not substantially block coastal views to or along the shoreline from public viewpoints. The relevant LCP policies state:

LUP Policy 8.4: Cliffs and Bluffs. ...

- b. Setback bluff top development and landscaping from the bluff edge (i.e., decks, patios, structures, trees, shrubs, etc.) sufficiently far to ensure it is not*

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visually obtrusive when viewed from the shoreline except in highly developed areas where adjoining development is nearer the bluff edge, or in special cases where a public facility is required to serve the public safety, health, and welfare.

LUP Policy 8.12: General Regulations

- a. *Apply the Design Review (DR) Zoning District to urban areas of the Coastal Zone*
 - (1) *For one- and two-family developments in the Midcoast, apply the design standards contained in Section 6565.20.*
 - (2) *For all other development, apply the design standards contained in Section 6565.17 and the design criteria set forth in the Community Design Manual.*
- b. *Locate and design new development and landscaping so that ocean views are not blocked from public viewing points such as public roads and publicly owned lands.*

LUP Policy 8.13: Special Design Guidelines for Coastal Communities

- a. *Montara-Moss Beach-El Granada-Miramar*
 - (1) *Design structures that fit the topography of the site and do not require extensive cutting, grading, or filling for construction.*
 - (2) *Employ the use of natural materials and colors that blend with the vegetative cover of the site.*
 - (3) *Use pitched roofs that are surfaced with non-reflective materials except for the employment of solar energy devices. The limited use of flat roofs may be allowed, if necessary, to reduce view impacts or to accommodate varying architectural styles that are compatible with the character of the surrounding area.*
 - (4) *Design structures that are in scale with the character of their setting and blend rather than dominate or distract from the overall view of the urban landscape.*
 - (5) *To the extent feasible, design development to minimize the blocking of views to or along the ocean shoreline from Highway 1 and other public viewpoints between Highway 1 and the sea. Public viewpoints include coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches. This provision shall not apply in areas west of Denniston Creek zoned either Coastside Commercial Recreation or Waterfront. ...*

LUP Policy 8.15: Coastal Views. *Prevent development (including buildings, structures, fences, unnatural obstructions, signs, and landscaping) from substantially blocking views to or along the shoreline from coastal roads,*

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roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches.

Analysis

Pursuant to LCP Policy 8.12, new development in the Midcoast must apply design review standards defined in the Design Review Zoning District, which are then reviewed and approved by the Coastside Design Review Committee (CDRC). These standards encourage new single-family homes to have their own individual character while ensuring that they are complementary with neighboring houses, the neighborhood character of each Midcoast community, and the surrounding natural setting. Additionally, LCP Policy 8.13(a) establishes special design review guidelines for coastal communities, including Moss Beach, namely that structures are to be designed to fit the topography of the site, employ the use of natural materials and colors that blend with the vegetative cover, reduce visual impacts to or along the ocean shoreline, and be in scale with the character of the surrounding area. Lastly, LCP polices require that new development protect scenic views from the shoreline and not substantially block coastal views to or along the shoreline from public viewpoints.

The proposed project will use materials and colors with a natural appearance such as Western red cedar siding, natural wood for the decks and overhangs, and non-reflective flat roofing finished with a layer of granite designed to help blend with the vegetative cover of the site and surrounding area, minimize visual impacts and fit the character of the area. Further, the project was found to be in compliance with the design review standards for one-family and residential development in the Midcoast by the Coastside Design Review Committee (CDRC) at their regular meetings on July 13, 2017 and November 9, 2017 where the CDRC recommended approval of the project. These proposed design features are required to be implemented through **Special Condition 1** which requires submittal of revised final plans that are consistent with the design requirements imposed by the CDRC. The project does include a flat roof, but these are explicitly allowed by LCP Policy 8.13.a.3 to accommodate varying architectural styles that are compatible with the character of the surrounding area.

In terms of public views, as previously noted there are two scenic easements that cross the property, one of which requires a 20-foot setback from it (see **page 2 of Exhibit 1**). And the LCP identifies the Arbor Way Viewpoint adjacent to this site as a shoreline destination (in LCP Table 10.6 – Site Specific Recommendations for Shoreline Destinations), and specifically calls for improving the utility of the scenic easement at the end of Arbor Way. Here, no development would infringe into these scenic easements and required buffer areas. In addition, with the setbacks applied as discussed above, the residential development will be adequately set back from then blufftop edge far enough that it won't impact public views from the end of Arbor Lane towards the ocean, and will not significantly adversely impact the overall shoreline viewshed otherwise. Lastly, public views to the shoreline will be protected during construction as required by **Special Condition 2**.

In sum, the project as conditioned can be found consistent with the applicable LCP public view and community character policies.

Public Access and Recreation

Applicable LCP and Coastal Act Provisions

The LCP requires some provision for shoreline access as a condition of granting development permits for any public or private development between the sea and the nearest road. The relevant LCP provisions state:

LUP Policy 10.1: Permit Conditions for Shoreline Access. *Require some provision for shoreline access as a condition of granting development permits for any public or private development permits (except as exempted by Policy 10.2) between the sea and the nearest road. The type of provision, the location of the access and the amount and type of improvements required shall be consistent with the policies of this component.*

LUP Policy 10.3: Definition of Shoreline Access. *Define shoreline access as the provision of access for the general public from a public road to and along the shoreline. Classify shoreline access into two types: vertical and lateral. ...*

b. Define lateral access as a strip of land running along the shoreline, parallel to the water and immediately inland from the mean high tide line. Lateral access may include a beach, where contact with the water's edge is possible, or a bluff, where only visual access is afforded. Refer to lateral access areas as shoreline destinations.

LUP Policy 10.4: Designation of Shoreline Access. *Designate vertical (trails) and lateral (shoreline destinations) access as areas to which the policies of this component apply. Such areas include, but are not limited to, those listed in the Assessment of Access Trails and Shoreline Destinations (Table 10.6).*

LUP Policy 10.17: Lateral Access (Shoreline Destinations) with Coastal Bluffs. ...

b. Because of scenic or recreational value, provide a pathway with a right-of-way at least 25 feet in width, which allows feasible unobstructed public access along the top of the bluff when no public access will be provided to the area between the mean high tide line and the base of the bluff because of safety and/or other considerations, and/or when the Site Specific Recommendations for Shoreline Destinations (Table 10.6) requires one.

In addition, the Coastal Act's public access and recreation provisions are also applicable, including:

Section 30210. *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211. *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

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Section 30212. *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. ...*

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

Section 30220. *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221. *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Analysis

Although located adjacent to the shoreline and the blufftop edge, the proposed development does not lead to any sort of significant impacts to public access and recreation. As is, the public can use all of Arbor Lane and can come to the end of the street to enjoy a panoramic ocean and shoreline view. While a bench or more developed overlook would be a great addition to the Arbor Lane viewing area, the project does not result in the type of public access impacts that create a nexus to require same. Further, a public access easement of 20 feet within the scenic easement on the vacant parcel to the north was required by the Coastal Commission as a part of a prior lot line adjustment. Lastly, public access to the shoreline will be protected during construction as required by **Special Condition 2**. As a result, the project as conditioned meets the public access requirements of the LCP, and the public access and recreation policies of the Coastal Act.

H. OTHER

Disclosure

This CDP includes important terms and conditions reflecting the set of facts as they apply to this approval, including the required conditions of approval. In order to ensure that the terms and conditions of this approval are clear to these Applicants as well as any future owners, this approval requires that the CDP terms and conditions be recorded as covenants, conditions, and restrictions against the use and enjoyment of the property, and for them to be explicitly disclosed in all real estate transactions (see **Special Conditions 4 and 6**).

Future Permitting

The Coastal Commission herein fully expects to review any future proposed development at and/or directly related to this project and/or project area, including to ensure continued compliance with the terms and conditions of this CDP through such future proposals, but also to ensure that any such future proposed development can be understood in terms of the same. Thus, any and all future proposed development at and/or directly related to this project, this project area, and/or this CDP shall require a new CDP or a CDP amendment that is processed through the Coastal Commission, unless the Executive Director determines a CDP or CDP amendment is not legally required (see **Special Condition 5**). Further, the Commission herein explicitly requires any improvement, repair, or maintenance that might otherwise be exempt in other cases from CDP requirements to require a CDP or CDP amendment in this case.

CDP Determination Conclusion – Approval with Conditions

As conditioned, the Coastal Commission concludes that approval of the development adequately addresses coastal hazards, public access, and community character. Accordingly, the Coastal Commission finds that the project, as conditioned, is consistent with the certified San Mateo County LCP and the public access and recreation policies of the Coastal Act.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The County, acting as the lead CEQA agency, adopted an Initial Study and Mitigated Negative Declaration, and found that there was no substantial evidence that the project, if subject to the mitigation measures contained in the Mitigated Negative Declaration, would have a significant effect on the environment. The County included in their approval the mitigation measures contained in the Mitigated Negative Declaration as conditions of approval. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA. The preceding findings in this report have discussed the relevant coastal resource issues with the proposal, and the CDP terms and conditions identify appropriate mitigations to avoid and/or lessen any potential for adverse impacts to said resources. Further, all public comments received to date have been addressed in the preceding findings, which are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, the proposed project will not result

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in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

Appendix A – Substantive File Documents

- GeoSoils, Inc. Third Party Coastal Bluff Retreat and Slope Stability Evaluation – July 31, 2019
- GeoSoils, Inc. Response to California Coastal Commission Review of Third-Party Bluff Retreat and Slope Stability Analysis – January 6, 2020
- GeoSoils, Inc. Supplemental Analysis of Coastal Bluff Retreat, Proposed New Residence, 199 Arbor Lane, Moss Beach, San Mateo County, CA – April 28, 2020
- ESA. Arbor Lane Coastal Bluff Erosion Review and Study – May 27, 2020

Appendix B – Staff Contacts with Agencies and Groups

- Applicant (Carlos Zubieta)
- Appellants (Committee for Green Foothills, Stephen R. King and Jim Scheinberg)
- San Mateo County Department of Planning and Building