

CALIFORNIA COASTAL COMMISSION

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Appeal Filed: 12/6/19
 49th Day: 2/19/20
 Staff: M. Kubran - V
 Staff Report: 1/30/20
 Hearing Date: 2/13/20



STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

APPEAL NO.: A-4-STB-19-0214

APPLICANT: Cosmoledo Trust

APPELLANTS: Commissioner Wilson and Commissioner Brownsey

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Coastal Development Permit (No. 17CDH-00000-00014) approved with conditions by the Planning Commission on November 7, 2019

PROJECT LOCATION: 711 Sand Point Road, Santa Barbara County (APN 005-460-046)

PROJECT DESCRIPTION: Demolition of a 2,634 sq. ft. residence, a 384 sq. ft. attached carport, and 794 sq. ft. wood deck. Construction of a 10,086 sq. ft. residence (including a 2,403 sq. ft. basement garage constructed at grade level), pool, retaining walls, hardscaping, landscaping, and grading consisting of 470 cu. yds. of cut and 850 cu. yds. of fill.

STAFF RECOMMENDATION: Substantial Issue Exists

MOTION & RESOLUTION: Pages 6-7

NOTE: The Commission will not take public testimony during this “substantial issue” phase of the appeal hearing unless at least three commissioners request it. The Commission may 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, testimony is generally and at the discretion of the Chair limited to 3 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, it will schedule the de novo phase of the hearing for a future meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed. The **motion** and **resolution** for a “no substantial issue” finding (for which a “no” vote is recommended) are found on **pages 6-7**.

The standard of review for this phase of the appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project’s conformity with the policies contained in the certified County of Santa Barbara Local Coastal Program (LCP) and/or the public access policies of the Coastal Act. Here, the appellants contend that the approved project is not consistent with the policies and provisions of Santa Barbara County’s certified LCP and the Coastal Act regarding coastal hazards, the provision of public access, and the protection of environmentally sensitive habitat areas and biological productivity and quality of wetlands. Those policies and provisions include Land Use Plan (LUP) Policies 3-12, 3-14, 7-3, 9-2, 9-9, and 9-14, Coastal Zoning Ordinance (CZO) Sections 35-97.3, 35-97.8, and 35-97.9.4, and Coastal Act Sections 30210, 30211, 30212, 30231, 30240, and 30253. The LCP incorporates all Chapter 3 Coastal Act provisions as guiding policies.

On November 7, 2019, Santa Barbara County approved a coastal development permit for the demolition of a 2,634 sq. ft. residence, a 384 sq. ft. attached carport, and 794 sq. ft. of wooden decking, and the construction of a new 10,086 sq. ft. single family dwelling (including a 2,403 sq. ft. “basement” garage constructed at grade level), a pool, retaining walls, hardscaping, landscaping, and grading consisting of 470 cu. yds. of cut and 850 cu. yds. of fill. The subject project is located on a beachfront property at 711 Sand Point Road in the Carpinteria area of Santa Barbara County, which is located on a sand spit between the ocean and a tidally-influenced salt marsh ([Exhibits 1 and 2](#)).

The County’s certified LCP and Section 30253 of the Coastal Act require new development to minimize risks from hazards, not create or contribute significantly to erosion, be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions, and also require that areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space. LUP Policy 9-2 and CZO Sections 35-97.3 and 35-97.8 require coastal dune habitats to be preserved and protected because of their statewide significance, and prohibit disturbance or destruction of any dune vegetation unless no feasible alternative exists. Coastal Act Section 30231 and LUP Policy 9-14 require the biological productivity and quality of wetlands to be maintained, and LUP Policy 9-9 requires a 100-foot wide minimum buffer from wetlands. Additionally, Coastal Act Sections 30210, 30211, and 30212 serve to maximize public access to the shoreline, and LUP Policy 7-3 states that granting of lateral easements to allow for public access along the shoreline shall be mandatory for all new development between the first public road and the ocean.

The approved residence is significantly larger, occupies a greater footprint and lineal width of the property, and extends further seaward than the existing residence on the property. The larger footprint of the approved residence encroaches onto coastal dune habitat, and is sited closer to the salt marsh north of the project site than the existing residence ([Exhibit 3](#)). Due to its location, the project site is extremely vulnerable to coastal hazards and flooding, and the coastal hazard analysis prepared for the subject development has shown that the approved project is expected to be subject to substantial wave action, shoreline erosion, and flooding over its expected life.

Despite this, the County approved the subject development without requiring the analysis of design or siting alternatives that would minimize risks from hazards and impacts to coastal resources. Additionally, the County failed to address the project's consistency with LUP Policy 7-3 and, instead, determined that the project would not interfere with public beach access. Given the degree of risk posed by existing and projected coastal hazards in this highly vulnerable area, the County's approval in this case has not demonstrated that the project design would minimize hazards from the identified sea level rise scenarios for as long as possible without relying on existing or new protective structures and while avoiding or minimizing impacts to coastal resources and public access.

The applicant provided a letter to the Commission that was received on January 23, 2020 ([Exhibit 8](#)). The letter does not raise any additional issues with regards to the appellant's contentions that are not addressed in the staff report. Therefore, staff recommends that the Commission determine that a substantial issue exists with respect to the grounds raised by Commissioners Wilson and Brownsey in the subject appeal, because there are questions as to whether the permit approved by Santa Barbara County is consistent with the coastal hazard, public access, environmentally sensitive habitat area and wetland policies and provisions of the County's certified LCP and the public access policies of the Coastal Act.

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Appendix A - Substantive File Documents

EXHIBITS

Exhibit 1 - Vicinity Map

Exhibit 2 - Parcel Aerial

Exhibit 3 - Site Plan

Exhibit 4 - Site Photos

Exhibit 5 - Project Plans

Exhibit 6 - Final Local Action Notice

Exhibit 7 - Appeal Form

Exhibit 8 - Letter from Applicant dated January 23, 2020

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of LCPs, a local government's actions on Coastal Development Permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their CDP actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea, 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 greater, on state tidelands, or along or within 100 feet of natural watercourses, and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act § 30603(a)). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act § 30603(a)(4)). Finally, developments which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act § 30603(a)(5)).

In this case, the County's CDP approval is appealable to the Coastal Commission because the entire project site is located between the sea and the first public road paralleling the sea.

2. Grounds for Appeal

The grounds for appeal of a local government approval of development shall be limited to an allegation that the development does not conform to the standards set forth in the certified LCP and/or the public access policies set forth in the Coastal Act (See Public Resources Code § 30603(b)(1)).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on the substantial issue question. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side, at the Chair's discretion, to address whether the appeal raises a substantial issue. Pursuant to Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons

must be submitted in writing. It takes a majority of Commissioners present to find that an appeal raises no substantial issue and that the Commission will therefore not review the merits of the appeal *de novo*. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application *de novo*. The applicable test for the Commission to consider in a *de novo* review of the project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the first public road paralleling the sea, the public access policies of the Coastal Act. If a *de novo* hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On November 7, 2019, the Planning Commission for the County of Santa Barbara approved CDP No. 17CDH-00000-00014 subject to conditions for the demolition of a 2,634 sq. ft. residence, a 384 sq. ft. attached carport, and 794 sq. ft. of wooden decking, and the construction of a new 10,086 sq. ft. single family dwelling (including a 2,403 sq. ft. "basement" garage constructed at grade level), a pool, retaining walls, hardscaping, landscaping, and grading consisting of 470 cu. yds. of cut and 850 cu. yds. of fill. The Planning Commission's approval of the CDP was not appealed locally (i.e., to the Board of Supervisors). The Notice of Final Action for the project was received by Commission staff on November 20, 2019 ([Exhibit 6](#)). The Commission's ten working day appeal period for this action began on November 21, 2019 and concluded at 5 p.m. on December 6, 2019.

An appeal of the County's action was filed by Commissioners Wilson and Brownsey on December 6, 2019, during the appeal period ([Exhibit 7](#)). Commission staff immediately notified the County, the applicant, and interested parties that were listed on the appeal form, and requested that the County provide its administrative record for the permit. The administrative record was received on December 13, 2019.

II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-STB-19-0214 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the 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 an affirmative vote of the majority of the appointed Commissioners present (i.e., a tied vote results in a finding that a "substantial issue" is raised).

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-STB-19-0214 raises a **Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and the public access policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The subject coastal development permit was approved by the County of Santa Barbara Planning Commission on November 7, 2019 for the demolition of the existing 2,634 sq. ft. residence, a 384 sq. ft. attached carport, and 794 sq. ft. of wooden decking, and the construction of a new 10,086 sq. ft. single family dwelling (including a 2,403 sq. ft. “basement” garage constructed at grade level), a pool, retaining walls, hardscaping, landscaping, and grading consisting of 470 cu. yds. of cut and 850 cu. yds. of fill ([Exhibit 5](#)). The subject project is located on a beachfront property at 711 Sand Point Road in the Carpinteria area of Santa Barbara County. The subject property is zoned Single Family Residential (R-1) and is bordered by a private road (Sand Point Road) and the El Estero (Carpinteria) Slough to the north, the Pacific Ocean to the south, and residentially developed properties to the east and west ([Exhibits 1 and 2](#)). Many of the properties along Sand Point Road were initially developed in the 1940’s and 1950’s as seasonal beach cottages, which have been steadily redeveloped over the years with larger residences. The existing home that is to be demolished was originally constructed in 1952. An existing rock revetment is also situated on the property, which is part of a larger rock revetment extending from 539 to 845 Sand Point Road that was initially constructed in 1964 to protect the existing residences ([Exhibit 4](#)). This revetment was then fortified and enlarged further seaward in 1983 without the benefit of a CDP. Repair work to replace areas of the 1983 revetment was performed in 1994 and 1998, also without the necessary CDPs. Commission Enforcement staff is working with the County and affected property owners in order to address these revetment violations.

B. APPELLANTS’ CONTENTIONS

The appeal filed by Commissioners Wilson and Brownsey is attached as [Exhibit 7](#). The appeal grounds assert that the approved project is not consistent with policies and provisions of Santa Barbara County’s certified Local Coastal Program (LCP) and the Coastal Act regarding coastal hazards, the provision of public access, and the protection of environmentally sensitive habitat areas and biological productivity and quality of wetlands. Those policies and provisions include Land Use Plan (LUP) Policies 3-12, 3-14, 7-3, 9-2, 9-9, and 9-14, Coastal Zoning Ordinance/Implementation Plan (CZO/IP) Sections 35-97.3, 35-97.8, and 35-97.9.4, and Coastal Act Sections 30210, 30211, 30212, 30231, 30240, and 30253.

C. ANALYSIS OF SUBSTANTIAL ISSUE

1. Hazards and Shoreline Development

The appellants contend that the project, as approved by the County, does not conform to the policies of the LCP relating to coastal hazards and shoreline development. Specifically, the appellants raise issues with respect to consistency with the LUP policies (cited below) that require new development to avoid impacts to coastal resources and to be sized, sited and designed to minimize risks from hazards without the need for shoreline protective devices.

Land Use Plan Policy 1-1 states that all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County Land Use Plan as guiding policies.

Coastal Act Section 30253 states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structure integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Land Use Plan Policy 3-12 states:

Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc.

Land Use Plan Policy 3-14 states:

All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.

The approved residence includes a 2,403 sq. ft. non-habitable at-grade understory, consisting of a three car garage and additional storage space, and a 7,683 sq. ft. designated habitable level. The subject project also includes installation of an approximately 2,000 sq. ft. deck on the seaward side of the house. The finished floor elevation of the habitable portion of the structure would be 17.8 ft. NAVD 88, while the finished floor elevation of the non-habitable portion would be 8.5 ft. NAVD 88 ([Exhibit 5](#)). The lower level (non-habitable portion) of the structure would be constructed using break-away walls.

The project site is located on a sand spit between the ocean and a tidally-influenced salt marsh and is extremely vulnerable to coastal hazards and flooding. Pursuant to the County's Floodplain

Management Ordinance and Flood Hazard Overlay, the project site is located within a “Coastal High Hazard Area.” Section 30253 of the Coastal Act, which is incorporated in the County’s LCP, mandates that new development minimize risks to life and property in areas of high geologic and flood hazard, and not create or contribute significantly to erosion. LUP Policy 3-12 states that permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, and LUP Policy 3-14 provides that all development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions, and areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.

A site-specific coastal hazard analysis¹ prepared for the project concluded that the approved development would be safe with 4.9 ft. of sea level rise (without reliance on the existing revetment), because the finished floor elevation of the habitable portion of the structure would be above the future estimated water elevation of 16.9 ft. NAVD 88. In response to requests for additional information and analysis from County and Commission staff, two additional coastal hazard analysis memorandums were prepared for the project^{2,3}. The additional analysis concluded that the project site would initially become inundated with approximately 2.5 ft. of sea level rise over current conditions. The analysis also found that with approximately 4.6 ft. of sea level rise the project site would flood to a water elevation of 15.8 ft. NAVD 88, and the shoreline would retreat to the approximate location of the approved dwelling. When using the medium-high risk aversion and high emissions scenario as recommended in the Ocean Protection Council’s *State Sea Level Rise Guidance* (2018 update) and the Coastal Commission’s *Sea Level Rise Policy Guidance* (2018 update), 2.5 ft. of sea level rise would occur by the year 2060 and 4.6 ft. of sea level rise would occur between 2080 and 2090 – well within the 75-year design life of the project. An additional scenario was analyzed, which combined 5.7 ft. of sea level rise (expected to occur around the year 2095 – the end of the project’s design life) combined with a 100-year storm. The analysis determined that the future flood elevation for this scenario would be 16.4 ft. NAVD 88, which is 1.4 ft. below the finished floor elevation of the designated habitable portion of the structure. It is clear from the analysis that the structure will be subject to wave action and flooding over its expected life, in consideration of sea level rise and storm events with eroded beach conditions. However, the analysis and the County’s findings fail to include a detailed analysis of what combinations of tidal conditions, wave conditions, and sea level rise threshold amounts would result in impacts to the approved structure and the infrastructure it is dependent on, and how soon these impacts could begin occurring and at what frequency.

Although the approved project is expected to be subject to substantial wave action, shoreline erosion, and flooding over its expected life, the County concluded that because the proposed residence would be “constructed at a higher elevation above sea level than the existing structure...the proposed project would represent an improvement from current conditions with respect to sea level rise and exposure to geologic hazards.” However, the approved residence is

¹ *Sea Level Rise Assessment for 711 Sand Point Road*, prepared by Stantec, dated February, 21, 2018

² *Final Response to County of Santa Barbara Coastal Engineering Review, 711 San Point Road, Carpinteria, CA, Cosmoledo Trust New Residence*, prepared by GeoSoils, Inc., dated April 16, 2018

³ *Response to California Coastal Commission Comments, Draft Mitigated Negative Declaration for the Cosmoledo Trust, New Residence at 711 San Point Road, Dated August 19, 2019*, prepared by GeoSoils, Inc., dated September 3, 2019

significantly larger than the existing residence and occupies a greater footprint and lineal width of the property that would be vulnerable to coastal hazards. Further, the approved residence extends approximately 20 feet seaward of the existing residence, and the approved deck extends approximately 40 feet seaward of the existing deck, potentially increasing the vulnerability of the residence and associated development to coastal hazards. The development will be increasingly acted upon by wave uprush and increased wave action in the future due to anticipated sea level rise, which may exacerbate beach erosion and affect the sand supply and beach profile, thereby impacting the public's ability to gain access along the beach over the expected life of the project.

In order to be consistent with the LCP, the most landward feasible location (and other siting and design alternatives) that will minimize risks from coastal hazards under reasonably foreseeable sea level rise, storm, and wave uprush scenarios must be analyzed. Given the degree of risk posed by existing and projected coastal hazards in this highly vulnerable area, the County's approval in this case has not demonstrated that the project design would minimize hazards from the identified sea level rise scenarios for as long as possible without relying on existing or new protective structures (or preclude removal or landward relocation of the existing rock revetment, portions of which are unpermitted) and while avoiding or minimizing impacts to coastal resources and public access. The County's findings fail to analyze a range of siting and design alternatives (such as reducing the structure's size and footprint and locating the residence further landward) which would locate development as far landward as feasible in consideration of the significant site constraints that exist at this location, and that would keep areas of the site, which are particularly flood-prone, in open space. The County included several conditions of approval which stipulate that the approved development shall be removed from the site if it is substantially destroyed by coastal inundation. However, the approved conditions do not serve to ensure that the approved development minimizes risk from coastal hazards and avoids or minimizes impacts to coastal resources over time as required by the County's LCP, including Section 30253, which is incorporated therein. Therefore, the Commission finds that substantial issue is raised regarding the approved development's consistency with the hazard and shoreline development policies and provisions of the certified LCP and Coastal Act policies referenced above.

2. Public Access

The appellants assert that the proposed project fails to conform to the following LCP and Coastal Act policies and provisions regarding provision of public access:

Land Use Plan Policy 1-1 states that all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County Land Use Plan as guiding policies.

Coastal Act Section 30210 states:

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.

Coastal Act Section 30211 states:

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.

Coastal Act Section 30212, in relevant part, states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agricultural would be adversely effected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Land Use Plan Policy 7-3, in relevant part, states:

For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory...

At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access shall be removed as a condition of development approval.

Article II Coastal Zoning Ordinance Section 35-50, in relevant part, states:

The purposes of this ordinance are to:

...

(3) Maximize public access to and along the coast and maximize public recreational opportunities in the Coastal Zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

A fundamental goal of the Coastal Act is to “maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone” (Coastal Act § 30001.5, subd. (c)). To achieve this goal, both the Coastal Act and the County’s certified LCP set forth specific policies governing the provision of public access and recreational opportunities, and development along the coast. The Coastal Act, through Sections 30210, 30211, 30212, and the County’s certified LCP, through LUP Policy 7-3 and CZO/IP Section 35-50, prioritize the public’s right to access the shoreline, require the balanced provision of maximum public access as a component of new development, and mandate that development not interfere with the public’s right of access to the sea.

The appeal raises issues related to the consistency of the project with LUP Policy 7-3, which requires all new development between the first public road and the ocean to grant a lateral public

access easement along the shoreline, as well as the public access provisions of the Coastal Act and certified LCP to maximize public access to and along the coast. The proposed project constitutes substantial redevelopment of the subject site, and the County's action on the subject CDP failed to address LUP Policy 7-3 or the potential impacts to public access and recreation on and along the beach from the construction of the new residence. Instead, the County determined that the project would not interfere with public beach access, since there is no public access to the beach adjacent to the project site. However, as discussed in the prior section of this report, the development will be increasingly acted upon by wave uprush and increased wave action in the future due to anticipated sea level rise, which may exacerbate beach erosion and affect the sand supply and beach profile, thereby impacting the public's ability to gain access along the beach over the expected life of the project.

Additionally, the approved dwelling and deck are situated further seaward than the existing residence and existing deck. The seaward encroachment of the approved development may preclude the potential re-location of the existing unpermitted rock revetment to a more landward configuration in the future should it be needed to protect adjacent development. Given that this beach is expected to narrow in the future due to sea level rise, such preclusion of the potential re-location of the rock revetment could impede the public's access to and along the beach. Further, the County's findings did not provide factual evidence that the new residence has been sited as far landward as feasible to protect public access along the beach, including as the beach narrows and moves landward over time. The approval of this development contains implications for other future development proposals on lots similar to the subject lot. Thus, the proposed project will set a precedent for future proposals which propose to extend development further seaward. Therefore, the Commission finds that substantial issue is raised regarding the approved development's consistency with the public access policies and provisions of the certified LCP and Coastal Act policies referenced above.

3. Environmentally Sensitive Habitat Areas and Wetlands

The appellants assert that the project, as approved by the County, fails to conform to the following LCP policies and provisions regarding environmentally sensitive habitat areas and the biological productivity and quality of wetlands:

Land Use Plan Policy 1-1 states that all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County Land Use Plan as guiding policies.

Coastal Act Section 30107.5 and **Article II Coastal Zoning Ordinance Section 35-58** states:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored

through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Land Use Plan Policy 3-14 states:

All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.

Land Use Plan Policy 9-2, in relevant part, states:

Because of their State-wide significance, coastal dune habitats shall be preserved and protected from all but resource dependent, scientific, educational, and light recreational uses...

Disturbance or destruction of any dune vegetation shall be prohibited, unless no feasible alternative exists, and then only if re-vegetation is made a condition of project approval. Such re-vegetation shall be with native California plants propagated from the disturbed sites or from the same species at adjacent sites.

Land Use Plan Policy 9-9, in relevant part, states:

A buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands. No permanent structures shall be permitted within the wetland or buffer area except structures of a minor nature, i.e., fences, or structures necessary to support the uses in Policy 9-10.

The upland limit of a wetland shall be defined as: 1) the boundary between the land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; or 2) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or 3) in the case of wetlands without vegetation or soils, the

boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not.

Where feasible, the outer boundary of the wetland buffer zone should be established at prominent and essentially permanent topographic or manmade features (such as bluffs, roads, etc.). In no case, however, shall such a boundary be closer than 100 feet from the upland extent of the wetland area, nor provide for a lesser degree of environmental protection than that otherwise required by the plan. The boundary definition shall not be construed to prohibit public trails within 100 feet of a wetland.

...

Land Use Plan Policy 9-14 states:

New development adjacent to or in close proximity to wetlands shall be compatible with the continuance of the habitat area and shall not result in a reduction in the biological productivity or water quality of the wetland due to runoff (carrying additional sediment or contaminants), noise, thermal pollution, or other disturbances.

Article II Coastal Zoning Ordinance Section 35-97.3 states:

If a newly documented environmentally sensitive habitat area, which is not included in the ESH Overlay District, is identified by the County on a lot or lots during application review, the provisions of Sections 35-97.7 - 35-97.19 shall apply. The County will periodically update the application of the ESH Overlay District to incorporate these new habitat areas (including the 250 foot area around the habitat).

Article II Coastal Zoning Ordinance Section 35-97.8 states:

1. *Because of their statewide significance, coastal dune habitats shall be preserved and protected from all but resource dependent, scientific, educational, and light recreational uses. Sand mining and oil well drilling may be permitted if it can be shown that no alternative location is feasible and such development is sited and designed to minimize impacts on dune vegetation and animal species. Disturbance or destruction of any dune vegetation shall be prohibited, unless no feasible alternative exists, and then only if re-vegetation is made a condition of development approval. Such re-vegetation shall be with native California plants propagated from the disturbed sites or from the same species at adjacent sites.*
2. *All non-authorized motor vehicles shall be banned from beach and dune areas.*
3. *All permitted industrial and recreational uses shall be regulated both during construction and operation to protect critical bird habitats during breeding and nesting seasons. Controls may include restriction of access, noise abatement, and restrictions on hours of operations of public or private facilities.*
4. *For all permitted uses, including recreation, foot traffic on vegetated dunes shall be minimized. Where access through dunes is necessary, well-defined footpaths shall be developed and used.*

Article II Coastal Zoning Ordinance Section 35-97.9.4 states:

Except for lots which abut the El Estero (Carpinteria Slough), a buffer strip, a minimum of 100 feet in width, shall be maintained in natural condition along the periphery of all wetlands. No permanent structures shall be permitted within the wetland or buffer area except structures of a minor nature, i.e., fences, or structures necessary to support the uses in Paragraph 5 of this Section, below. The upland limit of a wetland shall be defined as:

- a. The boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; or*
- b. The boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or*
- c. In the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation and land that is not. Where feasible, the outer boundary of the wetland buffer zone should be established at prominent and essentially permanent topographic or manmade features (such as bluffs, roads, etc.). In no case, however, shall such a boundary be closer than 100 feet from the upland extent of the wetland area, nor provide for a lesser degree of environmental protection than that otherwise required by the plan. The boundary definition shall not be construed to prohibit public trails within 100 feet of a wetland.*

Coastal Act Section 30107.5 and the CZO/IP define environmentally sensitive habitat (ESH) areas as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. Section 35-97.3 of the County's CZO/IP indicates that newly documented ESH areas that are not included on the County's ESH overlay map but are identified by the County on a property during permit application review, shall be afforded the ESH protection policies and provisions of the LCP. LUP Policy 9-2 and CZO/IP Section 35-97.8 state that coastal dune habitats shall be preserved and protected because of their statewide significance, and disturbance or destruction of any dune vegetation shall be prohibited, unless no feasible alternative exists. Section 30240 of the Coastal Act, which is incorporated into the LCP, also requires development that is adjacent to ESH areas to be sited and designed to prevent significant degradation of those areas. In the case of the approved project, the site appears to contain dune habitat that constitutes ESH, and the County's action did not properly apply the ESH protection provisions of the LCP.

The project site contains approximately 0.48-acre of dune habitat between the existing house and the rock revetment based on the underlying sandy substrate as described by the applicant's biologist ([Exhibit 4](#)). As the project's biological assessment describes, the sandy substrate is mainly covered by non-native ice plant; however, 15 percent of the relative cover is comprised of native dune species, particularly beach bur sage and beach evening primrose. Additionally, one individual of red sand verbena, a special-status plant species, was also identified within the dune area. The approved development would have a significantly larger footprint than the existing development on the site and would impact a portion of the dune habitat area.

In its review, the County did not analyze the specific acreage of dune habitat that would be impacted by the approved development. Rather, the County's analysis states that the LUP

identifies four dune habitat areas as constituting ESH (Guadalupe, Surf, Devereux, and Channel Islands) and concludes that the dunes on the project site (which is not within any of these four areas) are therefore not ESH. Even though LUP Policy 9-2 and CZO/IP Sections 35-97.3 and 35-97.8 state that dunes are considered ESH under the LCP, the County found that since the subject dune area consists primarily of ice plant and other non-native vegetation, it has limited wildlife value and is not considered ESH.

Further, the site-specific biological assessment for the approved project did not include focused surveys for silvery legless lizards or globose dune beetles, two sensitive species that could inhabit this area. Rather than requiring these surveys as part of the application process, the County conditioned the project to require pre-construction surveys for these species. If the sensitive species were found during the pre-construction surveys, the individuals would be moved out of the construction area, but the habitat they were found in would become developed. In this case, not only did the County not determine that the dune habitat on the project site constitutes ESH, but it also did not require an analysis of siting and design alternatives to avoid the dune habitat.

However, previous Commission actions have found that dune habitat, even when disturbed or degraded, constitutes ESH because coastal dunes are rare and are easily disturbed and degraded by human activities and development. The Commission's Staff Ecologist, Dr. Jonna Engel, has reviewed the biological assessment and site photos for the approved project in the County's record. As described above, the project site contains approximately 0.48-acre of foredune habitat between the existing house and the rock revetment based on the underlying sandy substrate as described by the applicant's biologist. Dr. Engel's review of the biological assessment and her own observations indicate that this area should be considered southern foredune habitat based on the sandy substrate as well as the evidence of dune morphology (dune hummocks, hollows, and ridges). The biological assessment for the project states that the sandy substrate is mainly covered by non-native ice plant (*Carpobrotus edulis*) with approximately 15 percent of the relative cover comprised of two native dune species, silver beach bur (*Ambrosia chamissonis*), and beach evening primrose (*Camissoniopsis cheiranthifolia*). The biological assessment also identified one individual of red sand verbena (*Abronia maritima*), a special-status plant species in the dune area.

The LCP definition of ESH found in Article II Coastal Zoning Ordinance Section 35-58 is consistent with the Coastal Act definition and states that:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Dune-backed beaches account for roughly a quarter of California's shoreline but together, beach-dune complexes constitute only 2-3% of the State's landmass, making them one of the rarest landscapes. California dune ecosystems have suffered a disproportionately high amount of human impact because the coast is a highly desirable area for industry, tourism, recreation, and residential development. Where they do occur, coastal dunes are characterized by their sandy substrate, topographical features, and uniquely adapted vegetation communities as they extend inland. The California Department of Fish and Wildlife (CDFW) natural diversity database

(CNDDDB) identifies southern foredunes as rare having the imperiled G2 global status and the critically imperiled S2.1 state status.

As such, southern foredunes meet the definition of ESH because they are rare and are easily disturbed and degraded by human activities and development as shown by the significant loss of dune habitat across the California coast and the high cover of non-native invasive species occupying California coastal dunes. Furthermore, the Commission has found that sandy areas between the ocean and land that exhibit dune morphology, with or without native vegetation, are foredunes that meet the definition of ESH.

Coastal dunes are considered ESH under the County's LCP. Specifically, LUP Policy 9-2 and CZO/IP Section 35-97.8 state that coastal dune habitats shall be preserved and protected because of their statewide significance, and limit the types of activities that may occur in dune habitat. Although the LUP lists four specific areas of dunes that are mapped as ESH, CZO/IP Section 35-97.3 provides that when newly documented environmentally sensitive habitat areas are identified during the permit application review process, even if they are not included on the County's ESH overlay map, such areas shall be afforded the ESH protection policies and provisions of the LCP. Here, the County's determination that the on-site dune habitat does not qualify as ESH does not appear to be supported by the evidence and raises a significant issue warranting Commission review.

In addition, the approved residence is adjacent to the El Estero (Carpinteria) Slough to the north of Sand Point Road and the project site. The approved project would be sited closer to the wetland than the existing residence and would provide a wetland buffer of 68 feet between the edge of the approved pool and the wetland, and 80 feet between the nearest portion of the residence and the wetland ([Exhibit 3](#)). Coastal Act Section 30231 and LUP Policy 9-14 require that the biological productivity and quality of wetlands be maintained. Land Use Plan Policy 9-9 requires a 100-foot wide minimum buffer from wetlands, and Section 35-97.9.4 of the County's CZO/IP states, "Except for lots which abut the El Estero (Carpinteria Slough), a buffer strip, a minimum of 100 feet in width, shall be maintained in a natural condition along the periphery of all wetlands." The County's analysis states that while a 100-foot buffer from wetland vegetation is generally recommended, the implementation of mitigation measures regarding stormwater and erosion control in this case will protect the adjacent wetland from indirect project impacts. However, the County incorrectly interpreted the stated exception in CZO/IP Section 35-97.9.4 regarding wetland buffers on lots adjacent to the El Estero Slough. The provision is only acknowledging that the existing pattern of development adjacent to the slough preclude maintaining a 100-foot buffer "in a natural condition" due to the presence of an access road, driveways, and residential structures existing prior to LCP certification. Where an applicant is retaining some existing development (such as an access driveway) but building an entirely new house, the policies and provisions of the LCP, taken together, mandate that the new development shall avoid wetlands and wetland buffer areas, even if the retention of the preexisting development may preclude maintenance of the buffer in a purely "natural condition." Where applying the wetland buffer for new development would result in an unconstitutional taking of private property, a smaller buffer may be allowed. The County's approval does not state that a smaller wetland buffer is appropriate in this case to avoid a taking. There appear to be siting and design alternatives for the new development that would provide a 100-foot buffer from the wetland, while also providing an adequate setback from the shore to address the structure's vulnerabilities to coastal hazards.

Further, LUP Policy 3-14 states that all development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and that areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space. In this case, the approved residence is significantly larger than the existing residence and occupies a significantly larger footprint on a property that is adjacent to wetlands and is vulnerable to coastal hazards. The County failed to look at alternative designs that would retain in open space portions of the property that will be particularly prone to flooding over the lifetime of the development. The applicant's letter of January 23, 2020 asserts that there is no basis for the Commission to require consideration of alternatives because the project allegedly has no significant impacts that need to be avoided. However, as detailed above, the project actually does have coastal resource impacts that should be minimized or avoided, and the LCP does require consideration of alternatives in this case, stating that "[d]isturbance or destruction of any dune vegetation shall be prohibited, unless no feasible alternative exists." For these reasons, issues are raised regarding the approved development's consistency with the above cited policies and provisions of the County LCP.

4. Substantial Issue Factors Considered by Commission

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the locally-approved project's conformity to the policies contained in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. In this case, the appellants cited the LCP policies related to coastal hazards, the provision of public access, and the protection of environmentally sensitive habitat areas and biological productivity and quality of wetlands.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§ 30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

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, where applicable, the public access and recreation provisions 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 interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor. For the reasons discussed below, the Commission determines that the subject appeal raises a substantial issue with regard to the grounds on which the appeal has been filed.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the County has not provided an adequate analysis of whether the proposed development would be sited as far landward as feasible to minimize the risks of coastal hazards, protect public access along the shoreline, and protect ESH and the biological productivity and quality of wetlands. Therefore, the County has not provided an adequate degree of factual and legal support for its decision that the proposed development is consistent with the certified LCP related to hazards and shoreline development, public access, and ESH and wetland protection policies, as explained in detail above.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the approved project involves demolition of a 2,634 sq. ft. residence with a 384 sq. ft. attached carport and construction of a 10,086 sq. ft. single family dwelling, including a 2,403 sq. ft. garage understory. The approved residence is significantly larger than the existing residence and occupies a greater footprint and lineal width of the property that would be vulnerable to coastal hazards. In addition, the approved dwelling and deck are situated further seaward than the existing residence and existing deck. Given the sensitive location of the subject site, the extent of development approved here warrants finding substantial issue.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site is located on a sand spit between the ocean and a tidally-influenced salt marsh. The proposed development would be within 100 ft. of adjacent wetlands. Additionally, environmentally sensitive dune habitat exists on the project site, which would be directly impacted by the approved project. Development in such a location raises substantial issue with regard to shoreline processes, coastal hazards, public access, environmentally sensitive habitat areas, and the biological productivity and quality of wetlands. Specifically, public access in shorefront areas subject to sea level rise is a very important issue, and one that supports finding substantial issue.

The fourth factor in evaluating whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, the precedential value of the County's decision for future interpretation of its LCP is significant, because there are several other beachfront lots nearby where substantial redevelopment could raise similar resource issues. As described above, under the certified LCP, beachfront development is required to be sized, sited and designed to minimize risks from hazards. If redevelopment of beachfront property (such as the subject project) is not required to be consistent with the applicable LCP policies, cumulative impacts of residential development along the coastline of Santa Barbara County could result in an increased risk of hazards and degradation of coastal resources over time. This is an issue of important precedent not just for the County but also statewide.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues or those of regional or statewide significance. In this case, the appeal not only raises local issues, but also has implications for resources of regional or statewide significance. The subject development raises issues associated with redevelopment in areas that are extremely vulnerable to coastal hazards and flooding and which hazards are

expected to increase over time as a result of sea level rise. These are important issues common to jurisdictions throughout the Coastal Zone, and planning for sea level rise and shorefront adaptation are issues of top importance for the Coastal Commission right now. Therefore, this appeal does have regional and statewide significance.

In conclusion, the Commission finds that the factors listed above demonstrate that a substantial issue exists in this case. For the reasons discussed in detail above, the appeal raises a substantial issue with respect to the consistency of the approved development with the policies and provisions of the Coastal Act and the County's certified LCP regarding coastal hazards, the provision of public access, and the protection of environmentally sensitive habitat areas and biological productivity and quality of wetlands. In evaluating whether the subject appeal raises a substantial issue, the Commission has explicitly addressed several factors that play a part in identifying if the issues raised in an appeal are "significant." The Commission finds that there is not adequate factual and legal support for the County's position that the proposed project complies with LCP policies. The resources at issue have regional and statewide significance. Further, because the County has not ensured that the project conforms to the existing policies and provisions of the LCP and has not provided sufficient evidence to support its decision, the project will have adverse precedential value regarding interpretation of the County's LCP for future projects. Therefore, the Commission finds that a substantial issue exists with respect to the grounds raised by Commissioners Wilson and Brownsey in the subject appeal, relative to the approved project's conformity to the relevant policies and provisions of the Coastal Act and the County's certified LCP.

APPENDIX A

Substantive File Documents

Certified Santa Barbara County Local Coastal Plan and Coastal Zoning Ordinance; Santa Barbara County Planning and Development Memorandum dated October 29, 2019 (No. 17CDH-00000-00014) and attachments thereto; Santa Barbara County Notice of Final Action for Coastal Development Permit 17CDH-00000-00014.