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# Th13b

Appeal Filed: 7/2/2021  
Action Deadline: 9/13/2021  
Staff: Sara Pfeifer - SC  
Staff Report: 8/20/2021  
Hearing Date: 9/9/2021

## **STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION**

**Appeal Number:** A-2-MAR-21-0048

**Applicants:** Eric and Madeline Groneman

**Appellants:** Commissioners Linda Escalante and Caryl Hart

**Local Government:** Marin County

**Local Decision:** Marin County Coastal Development Permit Number P2989 approved by the Marin County Deputy Zoning Administrator on May 27, 2021

**Project Location:** Mostly vacant bluff property above Muir Beach at 183 Sunset Way in the unincorporated community of Muir Beach in western Marin County (APN 199-235-66)

**Project Description:** Construction of a new 2,160 square-foot single-family residence, 430 square-foot garage, 369 square-foot storage space, new septic and leach field system, and related development fronted by buried and other armoring

**Staff Recommendation:** Substantial Issue Exists

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### **IMPORTANT HEARING PROCEDURAL NOTE**

Please note that at the hearing for this item the Commission will not take testimony on staff's substantial issue recommendation unless at least three Commissioners request it. Commissioners may ask questions of the Applicants, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether to take such testimony. If the Commission does decide to take such testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits). Only the Applicants,

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persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

### **SUMMARY OF STAFF RECOMMENDATION**

Marin County approved a coastal development permit (CDP) authorizing the construction a new single-family residence and related development fronted by both new armoring and existing unpermitted armoring on the bluffs above Muir Beach seaward of Sunset Way in the unincorporated Muir Beach area of Marin County. The appeal contends that the County-approved project raises questions of consistency with the Marin County Local Coastal Program (LCP) and the public access policies of the Coastal Act related to coastal hazards, related shoreline and beach area coastal resource protections, public access, landform alteration, and visual resources. Specifically, the appeal contends that the approved development appears to be located seaward of the blufftop edge, to be partially below grade and set into the bluff itself via a significant foundation system, and to rely on shoreline armoring<sup>1</sup> for safety and stability, all of which leads to coastal resource issues and concerns associated with beaches, bluffs, and public views.

The LCP requires that new development be set back from coastal blufftop edges to ensure that such development is safe, stable, and won't be threatened by coastal hazards within its expected lifetime without reliance on armoring. In this case, the County identified a blufftop edge that appears to actually be on the bluff face itself, and measured setbacks from that point. It is not clear that the 'edge' is anything more than a point on the face of the bluff, including as the entire site appears to extend from Sunset Way down to the beach at a roughly sixty-percent slope, and thus all of the proposed development may actually be seaward of the blufftop edge here, which would not be consistent with LCP blufftop setback requirements. In addition, the bluff would be excavated and portions of the development would be partially sited below grade, raising questions regarding whether such landform alteration is allowed by the LCP at such a bluff setting. Further, the project appears to rely on both new armoring and existing unpermitted armoring that currently fronts the property for safety and stability, which is not allowed by the LCP, and includes a foundation system that could also be considered armoring. Lastly, the County's approval did not analyze impacts to sand supply, public access, or public views, including due to rather extreme landform alteration, that would result from the aforementioned project elements, and the approval did not incorporate

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<sup>1</sup> Some of which is unpermitted and being tracked by the Commission as a violation (Commission Enforcement Case V-2-16-010).

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any required measures or conditions to mitigate such expected impacts, raising further LCP resource protection concerns.

Accordingly, staff recommends that the Commission find that a **substantial issue** exists with respect to the County-approved project's conformity with the LCP and the Coastal Act's public access provisions, and that the Commission take jurisdiction over the CDP application for the proposed project. The single motion and resolution to do so is found on page 6 below.

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**EXHIBITS**

- Exhibit 1 – Project Location Map
- Exhibit 2 – Project Site Photos
- Exhibit 3 – County-Approved Project Plans
- Exhibit 4 – Marin County Final Local CDP Action Notice
- Exhibit 5 – Appeal of County CDP Action

## **1. MOTION AND RESOLUTION**

Staff recommends that the 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 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 substantial issue finding and a future 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:** I move that the Commission determine that Appeal Number A-2-MAR-21-0048 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **no** vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-2-MAR-21-0048 presents 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 Marin County Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

## **2. FINDINGS AND DECLARATIONS**

### **A. Project Description and Location**

The proposed project is located on a mostly undeveloped 18,372 square-foot parcel at 183 Sunset Way (APN 199-235-66)<sup>2</sup> on the seaward edge of the Muir Beach community in unincorporated western Marin County. The parcel slopes downward (at a slope of about 60%) toward the ocean from Sunset Way (at an elevation about 130 feet above sea level) for approximately 230 feet to a point on the bluff that is about 15 feet above sea level. The parcel is set apart from the toe of the bluff, the beach, and the ocean by a separate parcel (APN 199-235-57) under other ownership that parallels the shoreline. Unpermitted shoreline armoring (including a multi-tiered stone wall as well as riprap) extends across both parcels and the beach.<sup>3</sup> The Applicants' parcel is zoned coastal residential agriculture (C-RA-B2), and is adjacent to single-family residences on either side and inland across Sunset Way. See **Exhibit 1** for a location map, and see **Exhibit 2** for photographs of the site and surrounding area.

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<sup>2</sup> Marin County approved CDP P2610 on February 19, 2020, which included a lot merger of APNs 199-235-47 and 199-235-48, creating APN 199-235-66. However, the Commission has found no evidence that the required notice of County CDP action was ever received by the Commission, and no evidence that the required 10-working day appeal period for such County action ever ran. As a result, it does not appear that the merger has been properly permitted.

<sup>3</sup> The unpermitted armoring appears to have been installed by the upcoast property owners (at 185 Sunset Way), and is the subject of Commission Enforcement Case V-2-16-010.

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The County-approved project would allow for the construction of a new 2,160 square-foot two-story single-family residence, a 430 square-foot detached garage located above a 369 square-foot storage space, a septic system, and related development, all fronted by a series new subsurface slope stabilization piers. The residence, garage, and storage space would be partially buried into the hillside, with cantilevered portions of the structures supported by a concrete slab foundation, numerous retaining walls to support the upslope side of the new interior floors, and 18-inch diameter concrete piers cast at least 5 feet into bedrock (i.e., up to 12 feet in depth). The septic system and leach field would be located further seaward and downslope from these residential structures (to an elevation about 34 feet above sea level), fronted by the subsurface slope stabilization piers. The project also requires a parking easement from the neighboring parcel at 181 Sunset Way, which is also owned by the Groneman family. See **Exhibit 3** for the County-approved project plans.

### **B. Marin County CDP Approval**

On May 27, 2021, the Marin County Deputy Zoning Administrator approved CDP P2989 authorizing the above-described residential development at the subject site. The County's notice of its CDP decision was received in the Coastal Commission's North Central Coast District Office on Friday, June 18, 2021 (see **Exhibit 4**), and the Coastal Commission's ten-working day appeal period for this action began on June 21, 2021 and concluded at 5pm on July 2, 2021. One valid appeal (discussed below, and shown in **Exhibit 5**) was received during the appeal period.

### **C. 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; (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 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 Commission. This County CDP decision is appealable because it is located within 300 feet of the top of a coastal bluff and because it is between the sea and the first public road paralleling the sea.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

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The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline. In this case the Applicants have not waived the 49-working day requirement, and the 49-working day deadline falls on September 13, 2021.

The Coastal Act and the Commission's implementing regulations are structured such that a substantial issue is presumed when the Commission acts on this question unless the Commission finds that an appeal does *not* raise a substantial issue, and the Commission considers a number of factors in making that determination.<sup>4</sup> At this stage, the Commission may only consider issues raised by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such full hearing is requested, a substantial issue is automatically found. If the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicants, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, if applicable, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is

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<sup>4</sup> The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a substantial 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 the Coastal Act's public access provisions; (2) the extent and scope of the development; (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, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

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often referred to as the “de novo” review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

### **D. Summary of Appeal Contentions**

The appeal contends that the County-approved project raises questions of consistency with the Marin County LCP and the public access policies of the Coastal Act related to coastal hazards, related shoreline and beach area coastal resource protections, public access, landform alteration, and visual resources. Specifically, the appeal contends that the approved development appears to be located seaward of the blufftop edge, to be partially below grade and set into the bluff itself via a significant foundation system, and to rely on shoreline armoring for safety and stability, all of which leads to coastal resource issues and concerns associated with beaches, bluffs, and public views. For all of these reasons, the appeal suggests that the Commission needs to further evaluate these issues to ensure LCP and Coastal Act conformance. See full appeal contentions in **Exhibit 5**.

### **E. Standard of Review**

The standard of review for considering these appeal contentions is the certified Marin County LCP (which is made up of a certified Land Use Plan (LUP) and a certified Implementation Plan (IP)) and the public access policies of the Coastal Act (which include Coastal Act Sections 30210 through 30224). Because the LCP cites to and incorporates Coastal Act Chapter 3 policies, these policies too are applicable here.

### **F. Substantial Issue Determination**

#### ***Applicable LCP and Coastal Act Provisions***

The LCP includes a formula for determining appropriate blufftop setback distances, and includes policies designed to minimize risks to life and property, including:

***Shoreline Protection and Hazard Areas Policy 1:*** *New structures shall be set back from the Bolinas and Muir Beach bluffs a sufficient distance to ensure with reasonable certainty that they are not threatened from cliff retreat within their economic life expectancies. Adequate setback distances will be determined from information contained in required geologic reports and the setback formula established below. These setbacks will be of sufficient distance to eliminate the need for shoreline protective works.*

*Setback (meters) = structure life (years, normally at least 40 years) x retreat rate (meters/year).*

***Shoreline Protection and Hazard Areas Policy 5:*** *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline process shall be permitted when required to serve coastal-dependent uses or to protect existing structures*



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*(constructed before adoption of the LCP), or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

**Shoreline Protection and Hazard Areas Policy 7:** *Because revetments, seawalls or other shoreline protective works can be detrimental to maintenance of natural shoreline processes and can interfere with visual enjoyment and coastal access, such works are discouraged.*

**Development Requirements, Standards, and Conditions: Shoreline Protection Provision K(2):** *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline process shall be permitted only when: ... e. There will be no reduction in public access, use and enjoyment of the natural shoreline environment, and construction of a structure will preserve or provide access to related public recreational lands or facilities. f. The structure will not restrict navigation, mariculture or other coastal use and will not create a hazard in the area in which it is built.*

**New Development and Land Use Policy 24:** *Development shall be designed to fit a site's topography and existing soil, geological, and hydrological conditions so that grading, cut and fill operations, and other site preparation are kept to an absolute minimum and natural landforms are preserved. Areas of a site which are not suited to development because of known soil, geologic, flood, erosion or other hazards that exist to a degree that no amount of corrective work consistent with these policies, including but not limited to the protection of natural landforms, can eliminate or substantially reduce the hazards to the property endangered thereby shall remain in open space.*

And the LCP cites to and incorporates Coastal Act Sections 30235, 30253, and 30251, which state:

**Section 30235:** *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

...

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

**Section 30251:** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be*

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*sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

Further, the Coastal Act's access policies are applicable in this case:

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

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

**Section 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.*

Thus, the LCP requires that development be sited and designed to ensure stability and structural integrity over time, all without reliance on coastal armoring. Further, the LCP notes that the bluffs in the Muir Beach area experience erosion at rapid rates, and thus that many of Muir Beach's vacant lots have not been developed because they are considered dangerous for building. Accordingly, the LCP notes that development here needs to be carefully scrutinized to ensure that it would not necessitate shoreline armoring or create undue risk. Armoring is only allowed under certain very narrow criteria, and any allowed armoring must be sited and designed to minimize impacts and to mitigate for impacts that are unavoidable. Applicable Coastal Act provisions provide similar direction. The LCP also requires that development not lead to significant landform alteration or public view degradation.

### **Analysis**

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The Applicants provided a Geotechnical Investigation (by Miller Pacific Engineering Group),<sup>5</sup> on which the County's approval relies, that identified a 6-inch annual bluff retreat rate, thereby determining that a 50-foot blufftop setback would provide 100 years of protection to the proposed project. However, the report describes the blufftop edge at this location as approximately 20 to 30 feet above sea level, citing to evidence of vertical bluffs at that location comprised of "relatively hard, resistant graywacke sandstone." However, the report also indicates that the parcel is comprised of a steep 60-degree slope, and it appears to be fairly uniform extending from Sunset Way down some 130 feet of elevation to the beach and ocean below. In other words, it appears that the blufftop edge, such as it is at this location, could be at or above Sunset Way, and the property may be better considered the bluff face itself (see cross sections showing the slope on pages 6 of Exhibit 3). Development is required to be sited inland of the blufftop edge by the LCP, and if the entire property is seaward of that point, then the County-approved development cannot meet such LCP requirement. This represents a fundamental and foundational issue regarding this project and whether it is consistent with LCP hazards policies.

In addition, even if a blufftop edge were to exist seaward of Sunset Way on the property as indicated by the Applicants' report, the estimated annual 6-inch per year bluff retreat rate appears to rely on the presence of both existing and proposed armoring. In fact, the report indicates that the bluff armoring structures have essentially halted shoreline erosion at the base of the bluff, and the rate appears to be generated at least in part from such a finding. Because the LCP does not allow armoring for new residential development such as this, it is not LCP-consistent to rely on existing armoring to establish margins for safety and stability. The report also indicates that loose soils in the upper bluff threaten site stability, and thus the risk of damage due to retreat and erosion is characterized as moderate to high. In terms of slope stability and sea level rise and the potential to exacerbate bluff erosion, the report relies on the presence of armoring to indicate that bluff materials are "effectively armored by existing rip-rap and stone tidal pool walls along the shoreline", and thus such potential issues, especially over time with rising seas, do not appear to have been adequately accounted for. In short, it is not clear that the erosion rate adequately assesses potential threats at this location as required by the LCP.

Furthermore, the project includes a proposed series of subsurface slope stabilization piers that could function as a shoreline protective device supporting the bluff in front of the proposed residence and related residential development, which is not allowed by the LCP.<sup>6</sup> According to the report, these piers are recommended to reduce the risk of

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<sup>5</sup> Titled *Geotechnical Investigation New Single-Family Residence and Associated Improvements 183 Sunset Way (APN 199-235-47 and -48) Muir Beach, California* (Miller Pacific Engineering Group, August 20, 2020.)

<sup>6</sup> The County is apparently currently considering a request by the Applicants to modify the location of the subsurface slope stabilization pier system. Although the County asserts that the CDP they approved allows for them to consider such a change at a ministerial staff level, three things need to be noted. First, all implementation actions associated with the County's CDP approval have been stayed pending resolution of this appeal, and thus the County is prohibited from taking any such action. And second, as far as the Commission understands the relocation being proposed, such change would be an amendment

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instability in the long-term, as the bluff face encroaches closer to the septic field and effectively removes lateral support for the slope. In addition, the residential structures themselves would be excavated into the slope and rely on their own series of retaining walls as well as deep piers extending five feet down into bedrock. These foundation elements are not normal and typical construction, but rather are extraordinary measures that are being used in place of an effective setback, and may act as prohibited shoreline armoring as well.

Therefore, the County's approval raises significant questions regarding the project's consistency with LCP coastal hazard policies, including at a fundamental level whether there is any blufftop space available at this site, and whether the project includes and relies on shoreline armoring when the LCP prohibits new development from relying on such armoring. In addition, the unpermitted existing armoring has and would continue to contribute to the degradation of the sandy beach area, including to beach access along the shoreline that is blocked by such armoring. In addition, constructing a new home that depends on the unpermitted shoreline armoring to ensure stability of the structure would introduce more difficult questions if the armoring is required to be removed. And the new armoring could have its own series of similar impacts on beach and shoreline area coastal resources (including loss of beach, loss of beach generating materials, public view degradation, etc.). Despite LCP and Coastal Act requirements for evaluation of and mitigation for armoring impacts, the County's approval completely omitted any such analysis or associated mitigations. Finally, the project has not minimized landform alteration, but rather has maximized it. And the result will be a series of structures built into and extending out of what appears to be a natural bluff face above the beach where such development will lead to significant adverse public view impacts.

When considering a project that has been appealed to it, the Commission must first determine whether the local government's decision on the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application 'de novo' (i.e., completely reviewing the project for LCP and Coastal Act consistency) for such development. At this stage, the 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 Commission regulations provides that the 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 County'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 a factor, and may make a substantial issue determination for other reasons as well.

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to the CDP that is under appeal here if it were to occur, and could not be effected by a staff level ministerial action. And third, some sort of relocation of the pier system would not alter the fact that it could constitute prohibited armoring under the LCP. In any case, the Commission here evaluates the County's May 27, 2021 CDP decision.

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In this case, the five factors, considered together, strongly support a conclusion that the County's approval of a CDP for the proposed project raises a substantial issue of LCP and Coastal Act conformance. First, the County's decision lacks legal and factual support, including because there is inadequate evidence in the record to conclude that the subject development is adequately sited and designed to minimize hazards in the way that the LCP requires. In fact, at a fundamental level, it is not even well established that the site is anything but bluff face on which development would not be allowed by the LCP. Furthermore, there is no evaluation of whether the existing and proposed armoring is consistent with LCP hazards policies, and no evaluation of impacts due to the proposed and existing shoreline armoring that would support the proposed residence. These are significant and essential analytic gaps in the record, supporting a substantial issue finding.

Second, with respect to the extent and scope of the County-approved development, while the proposed development is limited to one single-family residence and related development, the project affects irreplaceable natural resources, including a scenic bluff above and adjacent to Muir Beach, a popular visitor destination and significant ecological resource managed by the National Park Service as part of the Golden Gate National Recreation Area. As such, the extent and scope of the County-approved project is actually much larger than one single-family residence, as it may harm coastal resources of local, regional, and even national significance. To that end, LCP and Coastal Act provisions regarding sand supply and visual resources require that allowable shoreline armoring projects are designed to eliminate or mitigate impacts to, or alterations in, sediment supply and transport that would potentially result in environmental, visual, and/or public access resource impacts. In addition, the proposed project could potentially destabilize the bluff, eventually alter its ability to supply sediment to the beach below, and visually degrade the natural bluff formation resulting in adverse impacts to important coastal resources. Thus, both the second and third factors support a substantial issue finding.

As to precedence, the County-approved project may set an adverse precedent for future interpretations of the County's LCP as it includes decisions related to critical shoreline area resources that appear to conflict with LCP hazards and coastal resource protection policies. In addition, there are other similarly situated lots nearby where development could raise similar resource issues, and application of the same principals in cases there would lead to similar outcomes. Further, cumulative impacts of allowing such development under similar circumstances along the coastline of Marin County could result in inadequate/inappropriate coastal hazards evaluations and degradation of coastal resources over time and on a much larger scale, and weighs heavily in favor of finding substantial issue. Should this County-approved project go forward, it may pose a dangerous precedent that could be relied upon to analyze blufftop setback requirements and shoreline armoring allowances, creating a serious threat to all the public access, recreational, sand supply dynamics, and visual resources present in the Marin coastal planning area.

Finally, the project raises issues of regional and statewide significance as it could result in significant coastal resource impact issues. In this case, the appeal raises issues associated with the development of coastal bluff areas that are known to be vulnerable

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to hazards. Likewise, allowing shoreline armoring for any development, and not narrowing the circumstances to those allowable as prescribed by the LCP, contributes to impacts to public resources, most notably to public access and natural shoreline processes, that themselves are not allowed. As the Coastal Commission and local governments up and down the coast prepare responses and strategies to minimize the impacts of sea level rise, it will be increasingly necessary to assure adverse impacts to public resources, such as sandy beaches, are avoided and eliminated where possible by only allowing shoreline armoring in very narrow circumstances, similar to those described in the Coastal Act and the certified Marin LCP. In addition, it is imperative that all allowed shoreline armoring projects analyze the impact they have on beaches and related coastal resources, and thus on public access and recreation opportunities, and to ensure that such impacts are properly mitigated. In this case, the County approved the protection of new development by shoreline armoring, inconsistent with the LCP, and the project was approved without any adequate mitigation measures to offset the project's impact to coastal resources. It is local approvals such as these that raise issues of statewide significance given the potential to adversely impact significant coastal resources.

In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project raises a substantial issue of Coastal Act and LCP conformance. Thus, and for the reasons stated herein, the Commission finds that Appeal Number A-2-MAR-21-0048 raises substantial conformance issues in terms of coastal hazards, related shoreline and beach area coastal resource protections, public access, landform alteration, and visual resources. Therefore, the Commission finds that a **substantial issue** exists with respect to the County-approved project's conformance with the certified Marin County LCP and takes jurisdiction over the CDP application for the proposed project.

### ***Information Needed for De Novo Review***

As discussed above, the project lacks important supporting documentation, perhaps none more critical than an updated geologic and geotechnical evaluation, consistent with typical Commission-required methodologies and standards, that clearly evaluates the nature of the site and its ability to accommodate development safe from coastal hazards and without armoring, including over time. Thus, prior to bringing this matter back to the Coastal Commission for a full de novo review, and in order for the Commission to be able to properly consider the CDP application, the Applicants will need to work with Commission staff to provide an updated geologic and geotechnical evaluation that clarifies the location of the blufftop edge and includes an evaluation of erosion and related processes, including the effects of sea level rise, without relying on armoring. In addition to the aforementioned principles regarding reliance on armoring, it is worth noting that the shoreline armoring that does currently exist at this location (both on the subject property and the neighboring property) is unpermitted. The Commission recommends resolving at least the portion of that violation that is on the Applicants' property, and preferably the entire violation, prior to returning to the Commission for de novo review of the CDP application, and ideally prior to submitting an updated geologic and geotechnical evaluation. Additional materials may also be needed for Commission evaluation of coastal resource impacts, including analyses of impacts to shoreline and beach area resources from any allowable shoreline armoring (and required mitigation),

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and analyses of impacts to public views, and the Applicants will need to work with Commission staff on such materials as well.

### **3. APPENDICES**

#### **A. Substantive File Documents<sup>7</sup>**

- Marin County CDP File P2989

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

- Marin County Community Development Department

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<sup>7</sup> These documents are available for review from the Commission's North Central Coast District office.