

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5260
FAX: (415) 904-5400
WEB: WWW.COASTAL.CA.GOV



F13a

Prepared February 9, 2023 for February 10, 2023 Hearing

To: Commissioners and Interested Persons
From: Stephanie Rexing, North Central Coast District Manager
Honora Montano, North Central Coast Coastal Planner
Subject: **STAFF REPORT ADDENDUM for F13a, CDP Application Number A-2-MAR-21-0048 (Groneman/Sibley SFD)**

The purpose of this addendum is to respond to correspondence received regarding the above-referenced CDP application item since staff report publication, as well as to make a minor change to the violation finding of the staff report. Please note that this addendum does not modify the base staff recommendation, which continues to be approval of the CDP with conditions in order to avoid a taking. In the time since the staff report for this item was published on January 20, 2023, staff has received correspondence from the Applicants, the Applicants' architect, the Surfrider Foundation, and a number of Muir Beach residents regarding the staff recommendation (all located in the second correspondence package for this item). Thus, the staff report is modified as described below to slightly change the violation finding, and to add a response to comments section, as follows.

1. Minor Findings Change

The staff report inadvertently suggests that the unpermitted lot merger would be fully resolved through the CDP as conditioned. Accordingly, the third paragraph on staff report page 39 is modified as follows:

Regarding the lot merger, CDP approval of it would authorize the land division after-the-fact, and compliance with such CDP's required conditions would remedy this violation going forward. However, if this CDP is denied, then that violation remains as well.

As stated in the staff report, the Commission's review and action on this CDP does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a CDP, or that any aspects of the violation have been resolved. Consequently, the Applicants remain subject to enforcement action for unpermitted development on the subject property after CDP action in the same way as before CDP action, and the Commission's Enforcement Division may take additional actions in the future if applicable.

2. Response to Comments Section

The following “Response to Comments” section is added to the staff report on page 57 as Section 8 just prior to the CEQA section (and the CEQA section is renumbered to Section 9 accordingly, where footnote references would be renumbered sequentially from the original report), and the attached exhibit is added to the staff report as Exhibit 9 (and titled “Exhibit 9 - Estimated Buildable Area”).

“8. Response to Comments

After the initial staff report for this item was published on January 20, 2023, the Commission received correspondence from the Applicants (dated February 3, 2023), the Applicants’ architect (Michael Heacock, dated February 3, 2023), the Surfrider Foundation (dated February 3, 2023), and a number Muir Beach residents (dated between January 1, 2023, and February 3, 2023, beginning page 50 of the second posted correspondence package). The following response is provided.

Response to Applicant Comments

Project Feasibility

The Applicants and their architect assert that the Commission should approve the project as permitted by Marin County in 2021, specifically because they assert the building envelope available under the terms and conditions would not meet the standard of a reasonable and investment-backed expectation to develop a single-family home here. The Commission disagrees, including as it appears that a house of reasonable size, approximately 2,000 square feet, could be accommodated under the terms and conditions, which include a reduction in the County-required side and front setbacks to allow for an increased buildable area nearer to Sunset Way.

Specifically, by applying the specified setbacks to the property and applying a 25-foot maximum height, a three-dimensional buildable area can be identified (see Exhibit 9). In addition, by applying 10-foot-tall floors¹ within that buildable area, a square footage area of potential house can also be identified. As shown on Exhibit 9, it appears that the terms and conditions would accommodate a roughly over 2,000 square-foot home. Likewise, it appears that estimate is conservative as the building envelope could also include spaces less than 10 feet high that could be used for storage, decks, or other uses (see red ‘airspace’ areas shown on page 4 of Exhibit 9), that would increase square footage accordingly. Given that homes in the immediate vicinity on the downslope sides of Sunset Way and Pacific Way range from 475 square feet to just over 3,000 square feet, and given that the ten adjacent bluff-side residences average approximately 1,700 square feet, a roughly 2,000 square-foot single-family home here would be comparable in size to surrounding homes.² In short, the Commission has

¹ That is, standard 8-foot tall floor to ceiling heights to which 2 feet is added to account for structural and finish components.

² Comprised of 219 Sunset Way (475 square feet), 209 Sunset Way (1,625 square feet), 195 Sunset Way (3,144 square feet), 187 Sunset Way (1,597 square feet), 185 Sunset Way (2,295 square feet), 181 Sunset Way (657 square feet) 175 Sunset Way (1,708 square feet), 308 Pacific Way (912 square feet), 310 Pacific Way (1650 square feet), and 320 Pacific Way (2,588 square feet), all as documented at Datatree (<https://web.datatree.com/>).

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provided what should be deemed a reasonable building envelope under these circumstances. Importantly, the exercise in a takings approval context is not one of maximizing the Applicants' home size, rather it is to provide a reasonable economic use that can avoid a takings and that meets LCP requirements to the extent possible. Given that, it could be argued that the Commission is being generous here and should be focused more on the low end of the surrounding home size range in an approval (e.g., 475 square feet), and in that context, a roughly 2,000 square-foot home is eminently reasonable.

The Applicants' architect also argues that the County's two-car off-street parking requirement could not be met under the recommended conditions. Staff notes that the County does not require the parking spaces to be in a two-car garage, nor to be covered, and thus such parking could be accommodated in other ways, such as through using a portion of the above-described building envelope for parallel parking along the Sunset Way right-of-way, or for a standard garage (i.e., 400 square feet). If the latter were chosen, the home would still be some 2,000 square feet, it is just that 400 of those square feet would be in an attached garage, with an accompanying roughly 1,600 square feet of living space (or more, as described above).

The Applicants' architect also takes issue with the reduction of the side setback from 10 feet to 5 feet, stating that it will anger neighbors and reduce public views to the ocean. It is true that this setback reduction could block and/or alter seaward public views from Sunset Way, but, and as indicated in the above Public Views section, any residential development that extends above Sunset Way is going to have that impact. Here the change from a roughly 25-foot-wide Sunset Way view impediment (with 10-foot side yard setbacks) to a 35-foot-wide impediment (with 5-foot side yard setbacks), is simply an incremental impact in that regard. Further, these reduced setbacks allow for an increased buildable area in the less hazardous portion of the property closer to Sunset Way that can accommodate a roughly 2,000 square-foot home. Given these facts, it is an appropriate tradeoff in a takings approval context, especially given the more significant public view impacts from the project are as seen from the beach and shoreline below, and the reduced side yard setback should have an insignificant additional public view impact from those vantage points as conditioned for screening and other public view mitigation measures.

Alleged Report Inaccuracies

The Applicants' letter also includes a list of items they consider to be inaccurate in this report, although they don't identify what would purportedly be correct, each of which are covered here. First, the Applicants disagree with several conclusions regarding the proposed project's proximity to the beach and ocean, and the project's potential for impacts on public views, including those related to the structure's height and bulk. Specifically, the Applicants disagree with the conclusion that the project would be in public view from Muir Beach and therefore would result in significant impacts to that public viewshed. In making such an assertion, the Applicants appear to be suggesting that only the largest area of Muir Beach nearest the parking lot constitutes the beach. However, this is inaccurate. Yes, that larger sandy area is part of the beach, but so too are the narrower beach areas, including that area below the Applicants' property and extending upcoast to the headland that defines the upcoast edge of the beach. So,

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while it may be true that there are other houses in full view of, and closer to, the larger sandy beach area, the smaller sandy beach area below the subject property is not somehow deemed to not exist as part of the beach just because it is smaller.³ In other words, the Commission considers all of the beach at Muir Beach to be the 'beach' and not just the largest section of it. In that context, it is a fact that the proposed development would be one of the closest and largest residences to the beach area, including related to the area directly fronting this proposal, and would have substantial impacts to those public views, including because it would replace one of the last remaining vegetated open spaces on the bluff face above Muir Beach with development (see also Public Views section of this report).

In terms of the proposed development's height and bulk, the Applicants allege that the proposed project would meet the LCP's 25-foot maximum allowed height limit. However, it is clear from the Applicants' own cross-sections that that is not the case (see, for example, page 6 of Exhibit 4), and that the Applicants' proposed residence would reach up to 31 feet above existing grade in places. It appears that the Applicants' base their assertion that their proposed project meets the 25-foot height allowance on measuring the maximum height not from existing grade, but rather measuring it from a point above existing grade. However, the LCP measures heights from existing grade, and, as indicated, the Applicants' proposed residence exceeds this height limit by up to 6 feet in places.

The Applicants also contend that the project site is not adjacent to the ocean and on the immediate shoreline, contending that an intervening parcel lower down the bluff face at the toe of the bluff that is owned by a third party somehow severs any such connection between the site and the ocean/shoreline. However, although this report explicitly notes, as the Applicants note, that there is a separate narrow parcel under different ownership at the bluff toe adjacent to the beach (see page 15 of this report in the Project Location, Description, and History section), the Applicants, respectfully, miss the point that the Commission is making. Whether or not there is an intervening parcel is immaterial to the question regarding the location of the proposed project in relation to the ocean and shoreline. The report doesn't indicate that the Applicants' property lines are immediately adjacent to the ocean/shoreline, rather that the property is, including as it is located on a bluff face. It is undisputed that that property is so located related to these resources (and, in fact, it has discernable and adverse impacts to them as described in the findings above). Respectfully, it is somewhat disingenuous to suggest that the Commission should simply disregard this project's location relative to the ocean and shoreline as if it were located in an inland subdivision; it is not. It is important to describe its location relative to these resources so that its impacts can be clearly evaluated in the ways that affect them.

In terms of armoring, the Applicants state that they were not involved with the construction of the various armoring structures present at the base of the bluff and thus should not be responsible for the violation on their property. The Commission notes that

³ In fact the narrowing of the beach here appears to be directly correlated to the presence of the unpermitted concrete and concrete-grouted rock retaining walls and riprap that appear to have had an adverse effect on beach formation and retention (see also Violations section of this report).

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this report already states that the armoring structures appear to have been constructed prior to the Applicants' acquiring the property, however the responsibility for addressing such unpermitted development runs with the land, and therefore, is now the responsibility of this Applicants who own the land in question. Further, as detailed in this report, such armoring structures are not being required to be removed at this time due to the complexities involved (and will be the subject of future enforcement action), thus the Applicants' observations about their lack of involvement in armoring installation does not have any bearing on this application.

The Applicants also disagree that the proposed development would rely on such unpermitted armoring for protection from hazards such as bluff erosion, and that this conclusion was corroborated by the Commission's Geologist, Dr. Joseph Street. Neither are accurate. In fact, these issues are analyzed on pages 24-25 of the report, where it is noted that the Applicants' own geotechnical reports found, "that the existing unpermitted armoring has essentially halted shoreline erosion at the base of the bluff, and project siting and design relies on this fact." This report further concludes that in addition to relying on the existing protective structures at the base of the bluff, the proposed development would rely on extensive new armoring structures in the form of concrete piers fronting the septic system, and a series of retaining walls and piers as part of the residence and garage foundation, all of which is prohibited by the LCP.

The Applicants also disagree with the conclusion that the "applicable LCP coastal hazard policies in place for some 40 years require denial of this project," alleging that other CDPs in Muir Beach have been approved by the Commission, where the Commission has not noted that steeply sloping lots are located on bluff faces. There are multiple issues with this allegation. For one, this report has made very clear the manner in which this proposed development is inconsistent with the LCP, an LCP that has been in place for 40 years. Thus, the statement is, contrary to the Applicants' assertions, correct.

Further, the Applicants appear to be arguing that the Commission's history of similar Muir Beach CDP actions would suggest that the Commission is being inconsistent in the way in which it is analyzing the Applicants' application against the LCP as compared to the way it has analyzed other similar projects under the LCP. However, there is no such Commission history. In fact, of the ten residences in the immediate area on the bluff side of Sunset Way and Pacific Way, only one home was built after the passage of the Coastal Act (and before the LCP was certified, as it was built in 1977), and it is unclear if that development ever received a CDP. All nine of the other homes in the vicinity were apparently built between 1920 and 1960, and predate both the Coastal Act and the LCP. Thus, three things are noted. First, the Commission has not approved any homes that have similar issues in the area, and thus the Applicants' assertion is incorrect on both counts.⁴ Second, none of the homes have been permitted under the LCP. Third, as this report accurately states, these existing nearby homes were not subject to present-

⁴ In fact, the Commission denied a CDP for development at the Applicants' site in 1977, as discussed below.

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day LCP regulations, and thus are of limited utility in terms of examples for LCP-consistent development.

Additionally, the Applicants contend that the proposed project would “provide over 100 years before the structure’s foundation would begin to serve as armoring.” However, that statement is not supported by the evidence. In fact, the Applicants’ own analyses indicate that the buried concrete pier armoring associated with the septic system, an inextricable project need that cannot be analyzed apart from the rest of the residential development, may be impacted by erosion in as little as 40 years. In addition, the residential structure’s proposed foundation, consisting of a series of retaining walls and integral drilled concrete piers, is designed to help mitigate for the risks of building on a steeply sloping bluff face, where all of these proposed elements are designed to help maintain stability through mitigating the effect of, and impeding, natural bluff erosional processes, and thus function as coastal armoring in that sense. Thus, both the foundation elements and the septic system protection would “begin to serve as armoring” on installation, and not in 100 years (or even 40), as alleged by the Applicants.

The Applicants also allege that report text indicating that the LCP indicates that the site is dangerous and should be left as open space is inaccurate, and instead suggest that the applicable language only requires ‘careful evaluation to assure that the site can support the proposed development without undue risk or armoring.’ However, LCP Shoreline Protection and Hazards Area Policy 4 explicitly discourages development at sites like this, including as it is within 300 feet of the mean high tide, which is one of that policy’s stated criterion (see report pages 18 and 19). The LCP also states that bluff lots in Muir Beach “were often earlier by-passed as representing more difficult or even dangerous building sites” (see report page 23). In addition, LCP New Development and Land Use Policy 24 indicates that properties like this that are not suited to development due to hazards (which so qualifies this property by definition under LCP Shoreline Protection and Hazards Area Policy 4), where those hazards cannot be eliminated or substantially reduced through LCP consistent measures (which also so qualifies this project due to its LCP inconsistencies, including related to development on a bluff face and supported by armoring), are required to remain open space (see also report discussion on page 27). Thus, the Applicants are simply incorrect in their allegation.

Finally, the Applicants included several supporting documents with their comment letter, including those related to the 2020 merger of two lots that created the subject property (approved by Marin County via non-CDP processes, but not via required CDP for such a land division). This merger, which the Commission considers to be unpermitted as it did not include a CDP, is discussed in detail in this report (see, for example, the Violations section). In fact, the Applicants are applying for a CDP after-the-fact for the subject land division, which is analyzed in this report. It is not clear to what end the land division materials were submitted, but they do not change the Commission’s analysis of the relevant lot issues.

The Applicants’ supporting documents also include a 1977 Coastal Commission staff report and proposed project plans associated with a proposed single-family home by a previous applicant at 183 Sunset Way (CDP application 205-77). Importantly, the

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Commission in 1977 denied the CDP application for that proposed 2,200 square-foot residence due to the hazardous nature of the site and lack of evidence that a septic system could be safely sited here, raising similar concerns as are present in this current application. In fact, that 1977 staff report notes that “there is substantial evidence that the subsurface conditions on this property are extremely unstable, that bluff erosion is occurring, and that the economic lifespan of a dwelling constructed here would be questionable. In addition, the Commission would undoubtedly be faced with future construction of a new seawall to protect the sloughing lot and eroding bluff face, to protect development at this site.” Again, as with the land division materials, it is not clear what the Applicant intended to show with these materials, but it is clear evidence that the Commission has always considered this to be a site where development consistent with the law (then in 1977 solely the Coastal Act, and now here the LCP and the Coastal Act’s access and recreation policies) is not possible. In fact, although the referenced staff report is from over 45 years ago, this current report analyzed similar issues of safety, stability, reliance on shoreline armoring, and septic system feasibility, while also accounting for the acceleration of such hazards due to sea level rise, and reached a similar conclusion about development potential at this site, albeit with the additional takings analysis in this current case leading to approval criteria.

Response to Surfrider Foundation Comments

The Surfrider Foundation comments generally express support for determining that the proposed development is inconsistent with the Coastal Act and LCP due to its location on a bluff face and reliance on shoreline armoring. However, Surfrider goes on to contend that a denial of the project would not result in a successful takings claim and therefore that the Commission should deny the CDP. Further, Surfrider argues that if a revised development proposal is approved here, such as the one recommended by staff, a project life should be defined, and the development should not be considered permanent.

The Commission agrees that this proposed development cannot rely on armoring to provide stability and safety consistent with the LCP, and analyzed this project in that way (see, for example, report discussion beginning on page 24). In fact, this is one of the primary reasons why the LCP dictates denial of this CDP application. It is only as a result of takings considerations that the Commission is allowing some armoring here, while endeavoring to limit it as much as is possible with a residential development such as this, particularly in terms of the septic system. Further, the recommended conditions of approval would prohibit any future armoring (see **Special Condition 3.c.**).

Regarding Surfrider’s conclusion that a denial would not constitute a takings, as is indicated in the Takings section of this report, there is evidence that would support both sides of an argument over whether a denial of a CDP for the proposed project would be a takings. This endorses Surfrider’s argument in that respect. At the same time, however, the Commission has concluded that, on balance, a court is more likely to conclude that denial of the proposed project would constitute a takings than to conclude otherwise, and thus here is approving a reduced project to avoid such a takings.

Surfrider’s concerns that as sea levels rise, approvals for shoreline development should include protections for public trust lands and coastal public access are valid.

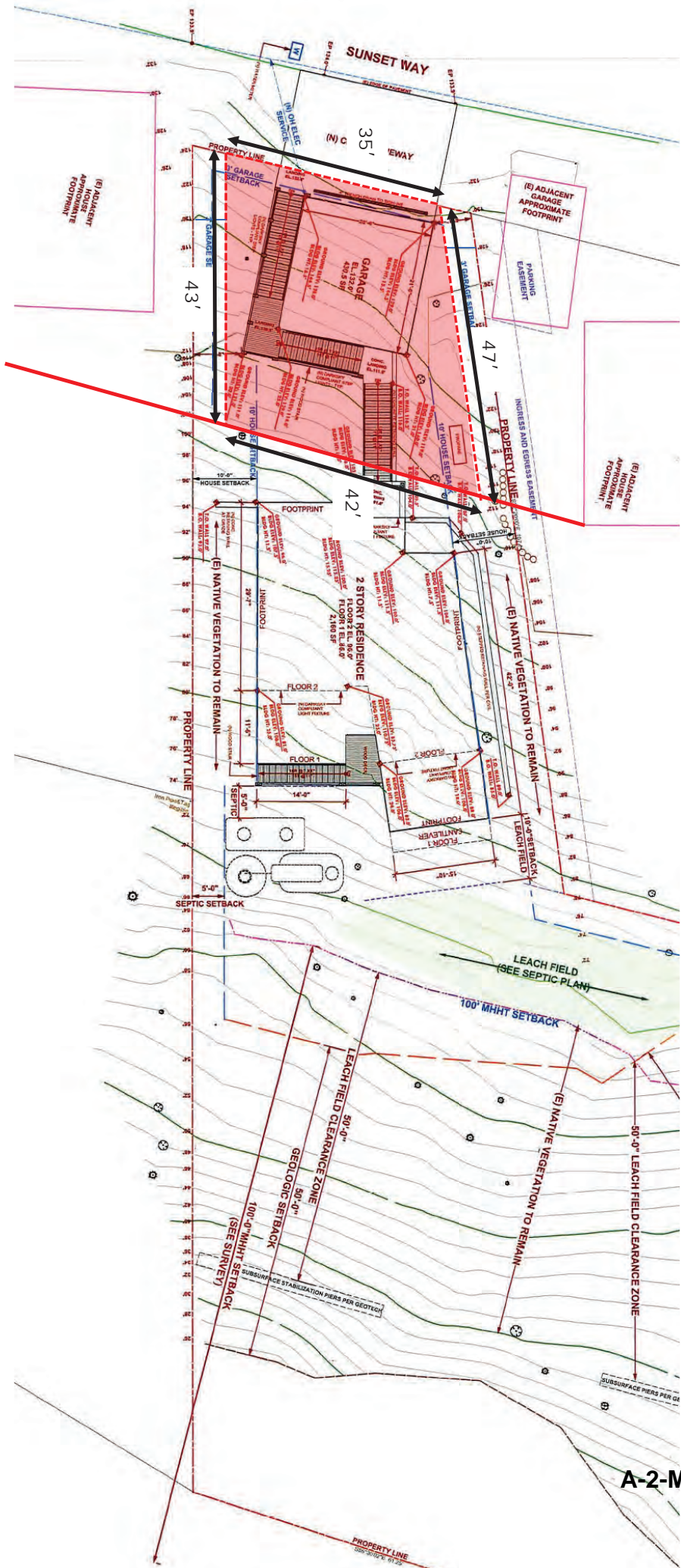
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Accordingly, the hazard-related conditions include assumption of risk, prohibition of further armoring, and removal, restoration and/or relocation triggers that are tied to criteria that will define when it is no longer appropriate to maintain the project in light of coastal hazards (see **Special Condition 3**). As such, and to Surfrider's request that a 'lifetime' be specified to avoid coastal resource impacts in the future and to ensure the development does not become permanent, a lifetime is so defined, just not in terms of a finite number of years but rather as the time period until nature suggests that the development cannot be maintained at this dangerous site without extraordinary measures to make it so, such as armoring. This approach appropriately addresses some of the uncertainties associated with project lifetime estimates and relies on natural conditions as the arbiter to when the project has reached the end of its lifetime.

Response to Other Comments

Regarding the comments from local residents, a number of individuals disagree with this report and request that the Commission approve the project as originally permitted by Marin County. These comments were sent largely by Muir Beach residents who brought up a variety of issues with the Commission's analysis of this proposed project, including arguing that the proposed development would fit into the existing community and would not have adverse impacts on public views. Many letters also expressed concern over the determination that the site constitutes a bluff face and how this determination could impact development potential for the neighborhood more broadly. However, none of these comments provided any compelling evidence that would suggest that the Commission would need to alter its Coastal Act and LCP analysis in this case, and in fact the comments generally track the Applicants' comments (as well as their prior submitted materials in the file), which are responded to above. As to the effect of a decision in this case on potential future development proposals in Muir Beach, each case is considered on its own, and represents a case-specific analysis, which would be conducted again in the future when and if there is a CDP application for other development in this area.

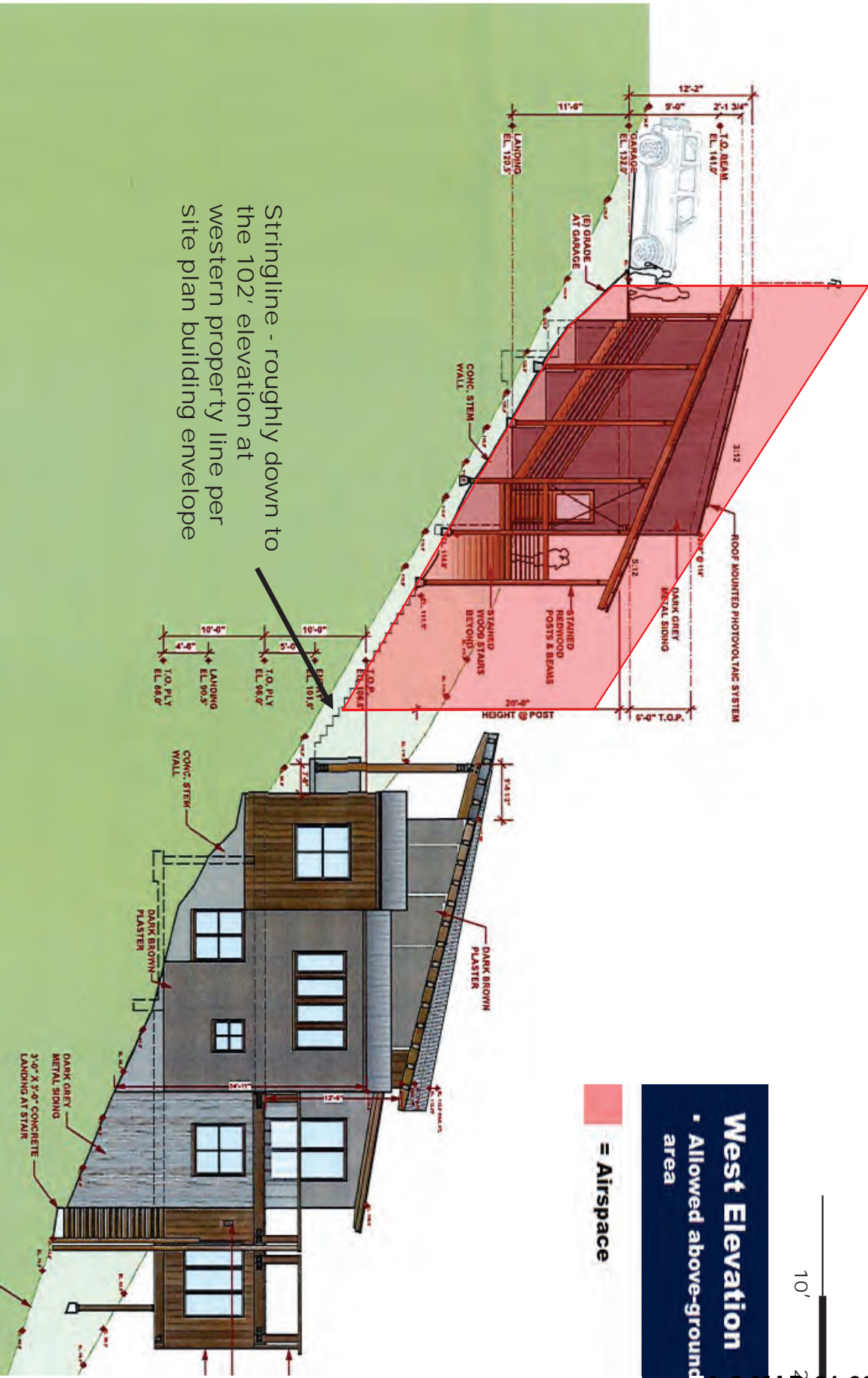
At least one commentor raised concerns about the proposed project, identifying themselves as an immediately adjacent neighbor who objects to both the project as proposed and as would be modified under a Commission approval. That commentor cited concerns about view impacts from allowing any residence to be constructed here and stated that "the alternative project would have a bigger impact on the public view from Sunset Way." This individual also expressed concerns that the unpermitted lot merger may have created a "buildable" lot where one did not exist prior. In terms of the public view contentions, this is covered above in the response to the Applicants' comments, and the same response applies here. As to the allegation that the unpermitted lot merger created a buildable lot where one did not exist prior, the Commission's conclusion is that neither pre-merger parcel was developable consistent with the LCP before, and the single resultant parcel when merged is not developable consistent with the LCP now. In other words, the merger did not create a new 'buildable' lot because nothing was buildable consistent with the LCP to begin with. It is only as a result of takings considerations that development is being approved here, and not because the merger somehow created a buildable lot, as alleged."



10' 20'

West Elevation
- Allowed above-ground area

 = Airspace



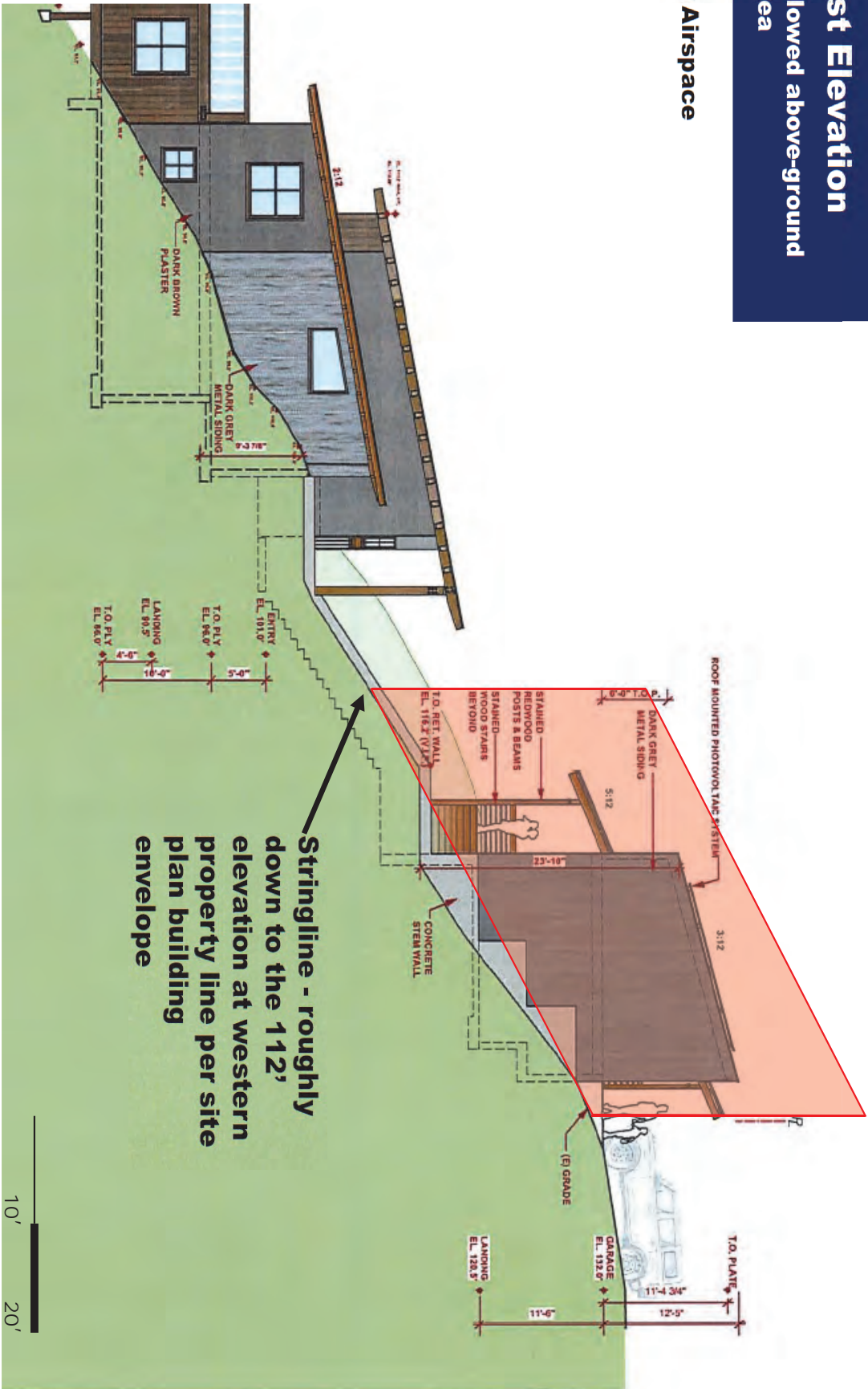
Stringline - roughly down to the 102' elevation at western property line per site plan building envelope



East Elevation

- Allowed above-ground area

 = Airspace



Stringline - roughly down to the 112' elevation at western property line per site plan building envelope



Potential Home Square Footage

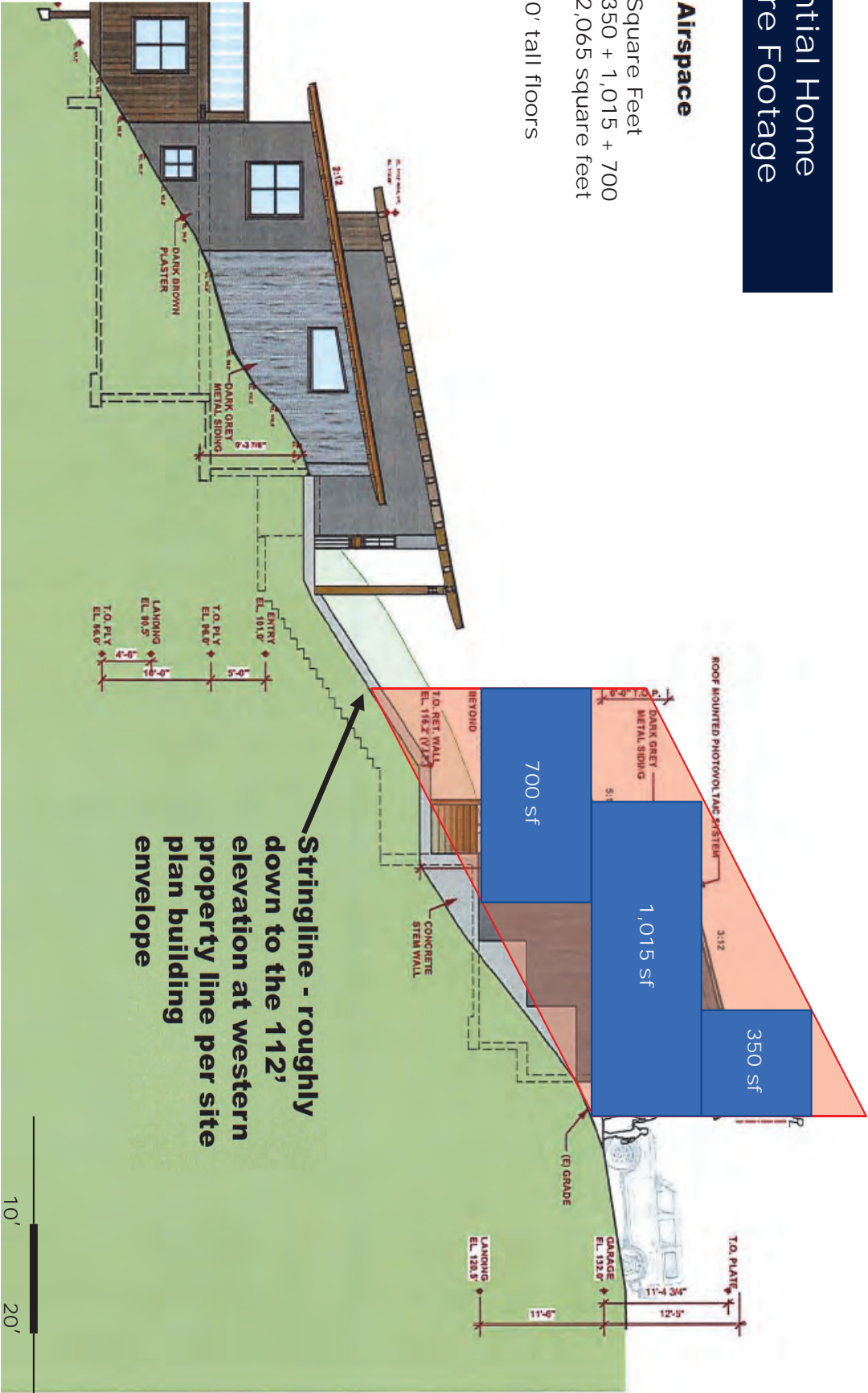
= Airspace



= Square Feet

= 350 + 1,015 + 700
= 2,065 square feet

* 10' tall floors



**Stringline - roughly
down to the 112'
elevation at western
property line per site
plan building
envelope**