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Hearing Date: 4/13/23

STAFF REPORT: APPEAL – DE NOVO REVIEW

APPEAL NUMBER: A-4-STB-19-0214

APPLICANT: Cosmoledo Trust

APPELLANT: 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: Remodel and additions (847 sq. ft.) to an existing 2,850 sq. ft., one-story, single-family beachfront residence with attached carport, resulting in a 3,697 sq. ft., one-story, single-family residence. The project also includes a new 850 sq. ft. wood deck, pool, spa, and grading consisting of 380 cu. yds. of cut and 40 cu. yds. of fill. The applicant has also proposed to enhance the on-site dune ESH through the removal of non-native species, such as iceplant and other species, and the planting of native species appropriate for the habitat type.

STAFF RECOMMENDATION: Approval with Conditions

MOTION & RESOLUTION: Page 6

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve the de novo coastal development permit (CDP) application, pursuant to revisions to the project proposed by the applicant and subject to eleven special conditions described below, on the basis that the project conforms to the public access and recreation, coastal hazards, and environmentally sensitive habitat area protection policies of the certified County of Santa Barbara's certified Local Coastal Program (LCP), as well as the public access and recreation policies of the Coastal Act.

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, a pool, retaining walls, hardscaping, landscaping, and grading consisting of 470 cu. yds. of cut and 850 cu. yds. of fill. On February 12, 2020, the Commission found that the County's action approving the proposed development raised a substantial issue with respect to the project's conformance with the County of Santa Barbara'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. The Commission is now required to hold a de novo hearing on the merits of the project, which is the subject of this staff report.

Following the Commission's substantial issue hearing, the applicant met with Commission staff to discuss the ways by which the issues raised by the appeal could be resolved in the de novo CDP review. In response, the applicant has significantly reduced the proposed project scope for the de novo CDP and submitted revised project plans. The applicant no longer proposes the demolition of the existing single-family residence and the construction of a new single-family residence. Instead, the applicant now proposes remodeling the existing one-story, 2,634 sq. ft. single-family residence and constructing an 847 sq. ft. addition, resulting in a 3,697 sq. ft. residence. The proposed project consists of demolishing 49.8% of existing walls (interior and exterior) to accommodate the proposed addition, and the foundation for the new additions to the residence would consist of 21 new concrete caissons (25% increase in new foundation for the additions). The proposed project also includes a new swimming pool and attached spa (supported by 17 new concrete caissons) that would be situated east of the residence, an 850 sq. ft. wood deck (supported by wood posts with short concrete footings to be easily removable) with a walkway between the house and the pool, and associated grading.

The subject project is located on a beachfront property at 711 Sand Point Road in the Carpinteria area of Santa Barbara County. 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 from both the ocean and marsh sides. The property is currently developed with an existing 2,634 sq. ft. single-family residence and attached carport that pre-dates the Coastal Act. An existing rock revetment is also situated on the property, which is part of a larger rock revetment initially constructed in 1964 to protect the existing residences. The project site is also adjacent to the El Estero (Carpinteria)

Slough wetland area to the north of Sand Point Road and contains approximately 0.48-acre of coastal southern foredune habitat between the existing residence and the rock revetment.

The coastal hazard analysis prepared for the subject site has shown that the proposed development is expected to be subject to substantial wave action, shoreline erosion, and flooding over its expected life. Therefore, if new development along the shoreline is to be found consistent with the LCP, the most landward feasible location must be utilized to minimize hazards. In this case, the residential additions, deck, and pool/spa are not proposed to be sited further seaward than the existing footprint of the existing residence. The proposed residential additions have been designed on caissons at the elevation of the existing residence. The limited additions to the existing residence would not serve to significantly extend the life of the existing structure, and no changes to the existing rock revetment are proposed or required. Additionally, the wood deck has been designed with removable wood posts on shallow footings to be easily removable when it becomes threatened or damaged by coastal waves, erosion, or other hazards. Further, the proposed pool/spa, while supported on caissons, will be constructed at grade to also be removable when threatened by hazards. The proposed pool and deck are considered accessory structures that must be removed when they become threatened by wave runup, flooding, or erosion and are not entitled to shoreline protection. As such, the proposed project has been sited and designed to minimize hazard risk for as long as possible, and will avoid impacts to public access.

However, it is important to clarify that the new proposed accessory development of a pool and deck is not entitled to shoreline protection under the Coastal Act or LCP. Therefore, **Special Condition Two (2)** has been required to ensure that no future shoreline protective device will be constructed on-site to protect the proposed development and to require the landowner to remove the accessory development when it becomes threatened with damage or destruction from coastal hazards or is damaged by coastal hazards. Because the risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. **Special Condition Three (3)** will ensure that the applicant is aware of and acknowledges the nature of the hazards that exist on the site, and that may adversely affect the stability or safety of the development it protects and will effectuate the necessary assumptions of those risks by the applicant.

As mentioned, the project site is adjacent to the El Estero (Carpinteria) Slough wetland area to the north of Sand Point Road, which is mapped as an environmentally sensitive habitat area in the County's LCP. The site also contains approximately 0.48-acres of coastal southern foredune habitat. Southern foredunes meet the LCP definition of ESH because they are rare and are easily disturbed and degraded by human activities and development. The County's LCP requires development adjacent to ESH areas to be sited and designed to avoid significant disruption of habitat values of those areas and requires buffers between development and ESH. In this case, the proposed residential additions would not extend any closer to the coastal dune ESH or to the El Estero Slough wetland than the existing structure. The proposed pool location will maintain the

LCP-required 100 foot buffer from the slough, and will provide a 20-28 foot buffer from on-site dune ESH that will serve to avoid significant disruption of habitat values within the ESH. Additionally, the proposed raised deck and walkway design would also function to direct foot traffic and use within the developed portions of the site and avoid inadvertent volunteer paths within the dune ESH. The applicant has also proposed to enhance the on-site dune ESH by removing non-native species, such as iceplant and other species, and planting native species appropriate for the habitat type. To ensure the applicant's proposal is effectively implemented, **Special Condition Six (6)** requires the applicant to submit a final landscaping and dune habitat enhancement plan prior to issuance of the permit. As such, the proposed development has been sited and designed to avoid significant disruption of habitat values within the on-site dune ESH and is sited and designed to avoid any significant adverse impacts to wetlands and is compatible with the continuation of the nearby wetlands.

Staff recommends **Special Conditions 1-11** to ensure consistency with the hazards and shoreline processes, environmentally sensitive habitat areas, public access and recreation, visual resources, water quality, and other development standards, policies of the certified County of Santa Barbara LCP, and the public access and recreation policies of the Coastal Act.

The motion and resolution to act on this recommendation follow below on **page 6**.

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APPENDIX A – Substantive File Documents

EXHIBITS

[Exhibit 1 Vicinity Map](#)

[Exhibit 2 Parcel Aerial](#)

[Exhibit 3 Site Photos](#)

[Exhibit 4 Project Plans](#)

[Exhibit 5 Biological Memorandum from Dr. Jonna Engel, Staff Ecologist](#)

I. MOTION AND RESOLUTION ON DE NOVO REVIEW

MOTION: *I move that the Commission approve Coastal Development Permit Number A-4-STB-19-0214 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote by a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the public access and recreation policies of the Coastal Act and the policies of the certified Local Coastal Program for the County of Santa Barbara. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impact of the development on the environment.

II. PROCEDURAL HISTORY AND STANDARD OF REVIEW

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of coastal development permits (including any new development which occurs between the first public road and the sea, such as the proposed project site). In this case, the County's action approving a CDP for development at the subject site was appealed to the Commission, which found during a public hearing on February 13, 2020, that a substantial issue was raised with respect to the approved project's conformance with the County's LCP. The applicant has since revised the proposed project after coordination with Commission staff and the Commission is now required to hold a de novo hearing on the merits of the proposed revised project, which is the subject of this staff report.

For the Commission's "de novo" review of the application, the standard of review for the proposed development is, in part, the policies and provisions of the County of Santa Barbara LCP. In addition, pursuant to Section 30604(c) of the Coastal Act, all proposed development located between the first public road and the sea (such as the project site) including those areas where a certified LCP has been prepared, must also be reviewed for consistency with the public access and recreation policies of the Coastal Act. All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in Santa Barbara County's certified LCP as guiding policies pursuant to Policy 1-1 of the County's Coastal Land Use Plan (LUP).

III. STANDARD CONDITIONS

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

IV. SPECIAL CONDITIONS

1. **Plans Conforming to Geotechnical and Coastal Engineer's Recommendations**

By acceptance of this permit, the permittee agrees to comply with the recommendations contained in the submitted coastal engineering and geology, geotechnical, and/or soils reports, which are listed in Appendix A (Substantive File Documents). These recommendations, including recommendations concerning foundations, construction, grading, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant(s) prior to commencement of development.

The final plans approved by the consultant(s) shall be in substantial conformance with the plans approved by the County relative to foundation, construction, grading, drainage, and height of the structure. Any substantial changes in the proposed development approved by the County that may be required by the consultant(s) shall require an amendment to this permit or a new Coastal Development Permit.

2. **Waiver of Right to Future Shoreline Protective Device and Development Removal**

By acceptance of the permit, the permittee acknowledges that the residential additions and accessory development authorized by this permit- including the wood deck, pool, and spa- constitutes new development under the Coastal Act, and is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act, as incorporated into the certified County of Santa Barbara LCP. Thus, by acceptance of this permit, the permittee hereby waives, on behalf of itself and all successors and assigns, any rights to construct such shoreline protective devices to protect the development approved pursuant to CDP No. A-4-STB-19-0214.

By acceptance of this Permit, the permittee further agrees, on behalf of itself and all successors and assigns, that the permittee/ landowner shall remove the approved residential additions and accessory development, or portions of it, and restore the site, if: (1) the County or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for use due to damage or destruction from waves, flooding, erosion, elevated groundwater, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for use without the use of bluff or shoreline protective devices; (2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; (3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies. In addition to these requirements, the permittee/landowner shall remove the wood deck and pool/spa, or portions of it, if it becomes threatened with damage or destruction from the coastal hazards listed above, is damaged by coastal hazards, or if reinforcement or any other protective action is needed.

In the event that portions of the development fall to the beach or marsh areas before they are removed, the permittee/ landowner shall remove all recoverable debris associated with the development from the marsh, beach and ocean and lawfully dispose of the material in an approved disposal site. The permittee/ landowner shall obtain a CDP for removal of approved development and recoverable debris unless the County of Santa Barbara and/or Coastal Commission, as applicable based on permitting authority, provides a written determination that no CDP is legally required.

3. Coastal Hazard Risk

By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:

- A. Coastal Hazards: That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, fluvial flooding, groundwater inundation, and the compounding effects of each of these hazards and as influenced by sea level rise and climate change;

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- B. Assume Risks: To assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such coastal hazards in connection with this permitted development;
- C. Waive Liability: To unconditionally waive any claim of damage or liability against the Coastal Commission, and their officers, agents, and employees for injury or damage from such coastal hazards;
- D. Indemnification: To indemnify and hold harmless the Coastal Commission and their officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards;
- E. Shifting Property Boundaries and Permit Intent: The boundary between public land (tidelands) and private land may shift with rising seas, the structure(s) may eventually be located on public trust lands, the development approval does not permit development to be located on lands impressed with a public trust interest, and any development that comes to be located on such lands due to the movement of the mean high tide line must be removed unless the Coastal Commission determines, pursuant to a permit amendment, that the development may remain pursuant to the Coastal Act and authorizes it to remain (pursuant to Special Condition 2). If the development comes to be located on lands impressed with a public trust interest due to the movement of the mean high tide line, the applicant would also be subject to the State Lands Commission's (or other designated trustee agency's) discretionary leasing approval. The intent of this permit is to allow for the approved project to be constructed and used consistent with the terms and conditions of this permit for only as long as it remains reasonably safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance to protect it from coastal hazards, and for only as long as the approved project remains on private property;
- F. Disclosure: All documents related to any future marketing and sale of the subject property, including but not limited to marketing materials, sales contracts, deeds, and similar documents shall notify buyers of the terms and conditions of this Coastal Development Permit; and
- G. Property Owner Responsible: That any adverse effects to property caused by the permitted project shall be fully the responsibility of the owner of the property on which the permitted project is located.
- H. Essential Services: Sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage, drainage, or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable;
- I. Removal Trigger: The approved residential additions and accessory development may be required to be removed or relocated and the site restored if removal is required pursuant to Special Condition Two (2).

4. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. A-4-STB-19-0214. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to any future development on any portion of the parcel. Accordingly, any future improvements to any portion of the property, other than as provided for in the approved plans, shall require an amendment to Coastal Development Permit No. A-4-STB-19-0214 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government based on permitting authority.

5. Deed Restriction/Recordation of Notice of Terms of CDP

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant’s entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

6. Final Landscaping and Dune Habitat Enhancement Plan

To implement the applicant’s proposal, *prior to issuance of the Coastal Development Permit*, the applicant shall submit, for the review and written approval of the Executive Director, two sets of final landscaping and dune enhancement plans prepared by a licensed landscape architect or a qualified resource specialist. The final landscaping and dune enhancement plans shall, at a minimum, include the following:

- A. Landscaping Plan. All graded and disturbed areas associated with the approved development shall be planted and maintained for erosion control purposes within sixty (60) days of completion of construction of the approved project. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site.

- B. Dune Enhancement Plan. The dune habitat enhancement area shall generally include the approximately 0.48-acre footprint of existing foredune habitat located seaward of the approved residential improvements. The final dune enhancement plan shall provide a map and narrative description of the proposed dune enhancement activities, including procedures for identification and removal of invasive and non-native plant species, and a planting plan using native coastal strand and southern foredune plant species (plant palette) with source of plant material and plant installation methods. All non-native invasive plants shall be removed with hand tools, and no herbicides or rodenticides shall be employed. Solarization (the use of black plastic to kill iceplant) may be used to eradicate the invasive iceplant within the dunes. The design of the plan shall include any special provisions deemed necessary to facilitate the survival and success of all existing native plants and sensitive species. Enhancement activities shall be implemented prior to occupancy of the approved development and shall be maintained pursuant to the approved plan. No development, except for the approved dune enhancement activities, shall occur within the dune enhancement area.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. Interim Erosion Control Plans and Construction Responsibilities

- A. *Prior to issuance of the Coastal Development Permit*, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:
1. Erosion Control Plan
 - (a) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access, staging, and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags.
 - (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
 - (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
 - (d) The plan shall specify that grading shall take place only during the dry season (April 15 – October 15). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains

and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10-year, 6-hour duration rainfall intensity event.

- (e) The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.
- (g) All temporary, construction related erosion control materials shall be comprised of biodegradable materials (natural fiber, not photo-degradable plastics) and must be removed when permanent erosion control measures are in place. Biodegradable erosion control materials may be left in place if they have been incorporated into the permanent landscaping design.

2. Construction Best Management Practices

- (a). No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b). No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers. No machinery shall be allowed in the intertidal zone at any time.
- (c). Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d). Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e). All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day. All construction debris shall be removed from the beach daily and at the completion of development.

- (f). The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g). Debris shall be disposed of at a permitted disposal site or recycled at a permitted recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h). All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil. No stockpiling of dirt or construction materials shall occur on the beach.
- (i). All grading shall be properly covered and sandbags, ditches, or other Best Management Practices (BMPs) shall be used to prevent runoff and siltation
- (j). Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (k). The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (l). Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (m). Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work.
- (n). All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

8. Lighting Restriction

By acceptance of this permit, the permittee acknowledges and agrees that the only exterior, night lighting that is allowed on the site is the following:

- A. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas, on the site. This lighting shall be limited to fixtures that are directed downward and shall use bulbs that do not exceed 60 watts, or the equivalent, unless a higher wattage is authorized by the Executive Director.
- B. Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.
- C. The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

No light source will be directly visible from public viewing areas such as the beach and ocean area, and no lighting around the perimeter of the site, the beach area or for aesthetic purposes shall be allowed.

9. Sign Restriction

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach located adjacent to the subject site is private or otherwise not open to the public, or (b) contain similar messages that attempt to prohibit public use of this portion of the beach.

10. Public Rights

- A. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property now or in the future.
- B. This permit does not authorize the development to physically interfere with any public access rights that may exist at any future date.

11. Biological Monitoring and Pre-Construction Surveys

By acceptance of this permit, the permittee agrees it shall retain the services of a qualified biologist or environmental resource specialist (hereinafter, "environmental resource specialist") to conduct sensitive species surveys (including birds and terrestrial species) and monitor all project activities identified in Section F of this condition. At least 30 calendar days prior to commencement of any project activities, the permittee shall submit the name and qualifications of the environmental resource specialist, for the review and approval of the Executive Director. The permittee shall have the environmental resource specialist ensure that all project operations are carried out consistent with the following:

- A. The permittee and environmental resource specialist shall hold a pre-construction meeting followed by weekly updates for all construction personnel about the environmental sensitivity of the site, the construction/BMPs requirements and reporting rules to avoid adverse impacts, and the particular species of concern.

- B. The environmental resource specialist shall conduct surveys 30 calendar days prior to commencement, or recommencement, of the approved activities to detect any active sensitive species, reproductive behavior, and active nests within 500 feet of the project site. Follow-up surveys must be conducted 3 calendar days prior to the initiation of site work and nest surveys must continue on a monthly basis throughout the nesting season or until the project is completed, whichever comes first.
- C. In the event that any sensitive species are present in or adjacent to the work area but do not exhibit reproductive behavior and are not within the estimated breeding/reproductive cycle of the subject species, the qualified biologist shall implement a resource avoidance program with sufficient buffer areas to ensure adverse impacts to such resources are avoided. The environmental resource specialist must have the requisite permits for working with/handling the respective sensitive species. The applicant shall immediately notify the Executive Director of the presence of such species and which of the above actions are being taken. If the presence of any such sensitive species requires review by the United States Fish and Wildlife Service and/or the California Department of Fish and Wildlife, then no development activities shall be allowed or continue until any such review and authorizations to proceed are received, subject to the approval of the Executive Director.
- D. If an active nest of a federally or state-listed threatened or endangered species, bird species of special concern, or any species of raptor or heron is found, the applicant shall notify the appropriate State and Federal agencies within 24 hours, and shall develop an appropriate action specific to each incident. The permittee shall notify the California Coastal Commission in writing within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.
- E. If an active nest of any federally or state listed threatened or endangered species, species of special concern, or any species of raptor or heron is found within 300 feet of construction activities (500 feet for raptors), the permittee shall retain the services of an environmental resource specialist with experience conducting bird and noise surveys, to monitor bird behavior and construction noise levels. The environmental resources specialist shall be present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction related noise. The environmental resource specialist shall monitor birds and noise every day at the beginning of the project and during all periods of significant construction activities. Grading and demolition construction activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest(s) site. If construction noise exceeds a peak level of 65 dB at the nest(s) site, sound mitigation measures such as sound shields, blankets around smaller equipment, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction within 300 ft. (500 ft. for raptors) of the nesting trees/areas shall cease and shall not recommence until either new sound mitigation can be employed or nesting is complete.

- F. The environmental resource specialist shall be present during grading, excavation, and vegetation removal activities. The environmental resource specialist shall require the permittee to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise. If significant impacts or damage occur to sensitive habitats or wildlife species, the permittee shall be required to submit a revised or supplemental program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit or a new coastal development permit.
- G. Habitat protective symbolic fencing (post and rail or rope) around sensitive areas shall be installed prior to the start of construction and shall remain in place and in good condition until construction is completed. The placement of the fencing shall be identified on site by the environmental resource specialist.
- H. For the purpose of this special condition, “sensitive species” shall be taken to mean any special-status wildlife species. Special-Status Species are species listed as Endangered, Threatened, or Rare under the federal or state Endangered Species Acts, Candidate Species, State and Globally Listed Species Ranked 1 through 3, California Species of Special Concern, California Fully Protected Species, and, pursuant to CEQA Guidelines Section 15380(d), all other species tracked by the California Natural Diversity Database (CNDDDB), which are considered by the California Department of Fish and Wildlife to be those species of greatest conservation concern, and locally important species including raptors, herons, and songbirds.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION, SETTING, AND BACKGROUND

The subject project is located on a 6.30-acre beachfront property at 711 Sand Point Road in the Carpinteria area of Santa Barbara County. The subject property is zoned Single Family Residence (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 1-3). The property is currently developed with an existing 2,634 sq. ft. single-family residence, a 384 sq. ft. attached carport, and a 794 sq. ft. of wood deck. Many of the properties along Sand Point Road were initially developed in the 1940s and 1950s as seasonal beach cottages, which have been steadily redeveloped over the years with larger residences. The existing home was originally constructed in 1952.

An existing rock revetment is also situated at the site, both on the property and adjacent state-owned tidelands. The revetment is part of a larger rock revetment extending along 539 to 845 Sand Point Road that was initially constructed by the County of Santa Barbara in 1964 to protect the existing residences (Exhibit 2). 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. The application does not include resolution of the violation and, thus, even if this application is approved, and the permit is exercised, a violation will remain at the site that will not be addressed by the Commission's action on this application. Commission enforcement staff is working with the County and affected property owners in order to address these revetment violations.

The project site also contains approximately 0.48 acres of coastal foredune habitat between the existing residence and the rock revetment based on the sandy substrate as well as the evidence of dune morphology (dune hummocks, hollows, and ridges). The foredune habitat area 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*). One individual of red sand verbena (*Abronia maritima*), a special-status plant species, was identified in the dune area at the time of the applicant's biological assessment. The northern portion of the parcel (approximately 5.83 acres) is located within the El Estero (Carpinteria) Slough wetland area, which is mapped as an environmentally sensitive habitat area in the County's LCP.

On November 7, 2019, the County of Santa Barbara Planning Commission approved a CDP (No. 17CDH-00000-00014) 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.

The County's approval was appealed to the Coastal Commission on December 6, 2019. On February 12, 2020, the Commission determined that a substantial issue existed with respect to the grounds on which Appeal No. A-4-STB-19-0214 was filed because the approved project was inconsistent with the coastal hazards, environmentally sensitive habitat area, public access and recreational policies and provisions of the County's certified LCP, and the public access policies of the Coastal Act.

Following the Commission's substantial issue hearing, the applicant met with Commission staff to discuss the ways by which the issues raised by the appeal could be resolved. Based on several discussions with Commission staff to address the coastal resource issues, the applicant has significantly reduced the proposed project scope and has submitted a revised project description and project plans (Exhibit 4) for the de novo CDP. The applicant no longer proposes the demolition of the existing single-family beachfront residence and the construction of a new single-family residence. Instead, the applicant now proposes to remodel the existing one-story, 2,634 sq. ft. single-family residence and construct an 847 sq. ft. addition, resulting in a 3,697 sq. ft. residence. The proposed project consists of demolishing 49.8% of existing walls (interior and exterior) to accommodate the proposed addition. The percentage of new walls to be added is 21.6%. The foundation of the existing residence would not change; however, the foundation for the new additions to the residence would consist of 21 new concrete caissons with a system of grade beams above (25% increase in new foundation for the

additions). All of the existing wood siding on the home would be replaced in order to insulate the structure and will be similar to the 6-inch cedar plank wood siding that exists today. The maximum height of the home, as measured from the lowest existing grade, will remain approximately 24 feet. An existing sundeck on the roof level would be converted to contain mechanical equipment, resulting in changes to this portion of the roof, and the existing roof will be extended to cover some areas of the proposed 847 sq. ft. addition.

The proposed project also includes a new 18 ft. wide by 70 ft. long (4.5 ft. deep) swimming pool and attached spa that would be situated east of the residence, and a 850 sq. ft. wood deck with walkway between the house and the pool. The existing grade in this location varies significantly between the house and the east property line, and the pool and wood deck are proposed to be constructed at approximately average grade elevation in this area in order to minimize large retaining walls on the east side of the pool and facilitate removal in the event of significant storm damage. The proposed pool/spa would be supported by 17 new concrete caissons, and the proposed wood deck would be supported by wood posts with short concrete footings to be easily removable.

Grading is also proposed, consisting of a total of 380 cu. yds. of cut and 40 cu. yds. of fill (240 cu. yds. cut and 30 cu. yds. fill for the pool, and 140 cu. yds. cut and 10 cu. yds. fill to lower the existing grade at the garage entry to install new garage doors on the existing carport).

The applicant proposes to enhance the on-site dune ESH through the removal of non-native species, such as iceplant and other species, and the planting of native species appropriate for the habitat type.

B. HAZARDS AND SHORELINE DEVELOPMENT

Policy 1-1 of Santa Barbara County's certified Land Use Plan (LUP) 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.

Section 30253 of the Coastal Act states, in part, that new development shall:

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

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be

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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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30270 of the Coastal Act states:

The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

Land Use Plan Policy 3-1 states:

Seawalls shall not be permitted unless the County has determined that there are no other less environmentally damaging alternatives reasonably available for protection of existing principal structures. The County prefers and encourages non-structural solutions to shoreline erosion problems, including beach replenishment, removal of endangered structures and prevention of land divisions on shorefront property subject to erosion; and, will seek solutions to shoreline hazards on a larger geographic basis than a single lot circumstance. Where permitted, seawall design and construction shall respect to the degree possible natural landforms. Adequate provision for lateral beach access shall be made and the project shall be designed to minimize visual impacts by the use of appropriate colors and materials.

Land Use Plan Policy 3-3 states:

To avoid the need for future protective devices that could impact sand movement and supply, no permanent above-ground structures shall be permitted on the dry sandy beach except facilities necessary for public health and safety, such as lifeguard towers, or where such restriction would cause the inverse condemnation of the parcel by the County.

Land Use Plan Policy 3-8 states:

Applications for grading and building permits, and applications for subdivision shall be reviewed for adjacency to, threats from, and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other geologic hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report shall be required. Mitigation measures shall be required where necessary.

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 certified Santa Barbara LCP contains policies and provisions, as detailed above, that regulate shoreline development. These policies and provisions require new beachfront development to avoid impacts to beaches 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. Section 30253 of the Coastal Act 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, 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. In addition, Section 30270 of the Coastal Act requires the Commission to take into account the effects of sea level rise in coastal resource planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise. Coastal Act Section 30235 places limits around approvable protective devices.

In addition, LUP Policy 3-1 of the County's LCP prohibits the construction of shoreline protective devices unless it is determined necessary to protect existing principal structures when there is no other less environmentally damaging alternative reasonably available. LUP Policy 3-3 of the County's LCP prohibits permanent above-ground structures on the dry sandy beach in order to avoid the need for future protective devices that could impact sand movement and supply, with the exception of facilities necessary for public health and safety, such as lifeguard towers, or where such restriction would cause the inverse condemnation of the parcel by the County.

Sea level rise (SLR) will have dramatic impacts on California's coast in the coming decades and is already impacting the coast today. In the past century, the average global temperature has increased by about 0.8°C (1.4°F), and global sea levels have increased by 7 to 8 inches (17 to 21 cm). In addition, SLR has been accelerating in recent decades, with the global rate of SLR tripling since 1971 (IPCC, 2021). There is strong scientific consensus that SLR will continue over the coming millennia regardless of future human actions, but the exact rate and amount will depend on the amount of

future greenhouse gas emissions as well as the exact contribution from sources such as the Antarctic and Greenland ice sheets, which are areas of continuing research. While planning coastal development under this uncertainty presents challenges, it is widely documented that underestimating SLR could result in costly damages and adverse outcomes to coastal resources. Planning and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that SLR will change coastal landscapes and hazard conditions. Not only will siting and design decisions regarding proposed coastal development influence the future safety of the development and overall resiliency of the California coast, but such decisions will also affect the way that coastal resources protected under the Coastal Act respond to changing sea levels over time.

Currently, the best available science on SLR projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018) and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018). These documents present probabilistic SLR projections as well as an extreme “H++” scenario for twelve locations (tide gauges) along the California coast, and provide recommendations for which projections to use in various planning contexts based on level of risk aversion and project type. For projects that would have limited consequences if impacted by SLR or a relatively high ability to adapt, the guidance recommends analyzing a set of SLR projections called the “low risk aversion scenario,” which has an estimated 17% chance of being met or exceeded according to current science. The medium-high risk aversion scenario, which has an estimated 0.5% chance of being exceeded, should be analyzed for projects with greater consequences and/or a lower capacity to adapt, like residential and commercial development. Finally, the “H++” scenario (which has no calculated probability but is associated with research on potential extreme ice sheet melt) should be analyzed for critical infrastructure and other projects that have little to no adaptive capacity, would be irreversibly destroyed or significantly costly to repair, and/or would have considerable public health, public safety, or environmental impacts if damaged or destroyed. In this case, the risk aversion scenario recommended by both the Commission and OPC Guidance for residential projects is “medium-high” as it represents a scenario that is relative high within the range of possible future SLR scenarios and is therefore appropriately precautionary. In other words, the statewide SLR guidance recommends use of the relatively high projection of SLR associated with the medium-high risk aversion scenario, even though it has a lower probability (1-in-200 chance), because of the high consequences to precious coastal resources, valuable development, and life and safety that would occur if SLR were underestimated, and the recognition that many of these impacts cannot be undone once they have occurred.

With SLR, development will experience increasingly hazardous conditions, including worsening storm flooding, inundation, groundwater rise, and shoreline and bluff erosion. On a relatively flat shoreline, even small amounts of SLR can cause large losses of beach width. For example, for a shoreline with a slope of 40:1, a simple geometric model indicates that every foot of SLR will result in a 40 foot landward movement of the ocean/beach interface, resulting in significant loss of beach habitat and recreational space as well as representing a change in the location of public tidelands subject to the public trust doctrine. This change could also expose previously protected backshore

development to increased tidal/wave action and flooding, and those areas that are already exposed to such conditions will be exposed more frequently and with greater severity. SLR will also cause coastal groundwater tables to rise in some locations, potentially emerging from the ground to cause flooding, as well as impacts such as damage to development and infrastructure, saltwater intrusion into aquifers, and changing liquefaction risks. Importantly, rising groundwater could constrain the types of adaptation strategies that can be protective; for example, while shoreline armoring may be effective to address overland flooding and inundation from SLR, it may not protect against groundwater rise impacts, depending on the characteristics of the site.

These changing hazard conditions may also alter the impacts of development upon coastal resources. In particular, coastal resources such as beaches and wetlands could disappear if they are squeezed between rising sea levels and a fixed line of development on the shoreline. Such losses will impact public access, recreation, public views, and other coastal resources – all of which are protected under Chapter 3 of the Coastal Act and the County's LCP. Therefore, to be consistent with the policies cited above, proposed development must be sited, designed, and conditioned in such a way that minimizes hazards, including SLR hazards, and considers the impact of the development upon coastal resources over its full anticipated life, avoiding and mitigating those impacts as appropriate.

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 from both the ocean and marsh sides. The project site is also located within a "Coastal High Hazard Area" pursuant to the County's Floodplain Management Ordinance and Flood Hazard Overlay. Therefore, the proposed improvements to the existing residential development at this site are expected to be subject to wave action, shoreline erosion, and flooding over its expected life. Additionally, an existing rock revetment is also situated on the property, which is part of a larger rock revetment initially constructed in 1964 to protect the existing residences. However, the proposed project does not include any new development associated with the property's existing and unpermitted rock revetment(s).

The proposed project consists of a remodel and 847 sq. ft. of additions to an existing, one-story, 2,634 sq. ft. single-family residence that pre-dates the Coastal Act, construction of a new at-grade wood deck, at-grade pool/spa, and associated grading. Less than 50% of existing walls (interior and exterior) would be demolished to accommodate the proposed remodel and additions. All of the proposed residential additions would be located beneath existing roof overhangs or on top of existing deck areas, and would extend no further seaward than the existing structure. The foundation of the existing residence would not be changed; however, the foundation for the new additions to the residence would consist of 21 new concrete caissons with a system of grade beams above. The new 850 sq. ft. wood deck and pool/spa would be situated immediately east of the residence, and no further seaward than existing development. The proposed pool/spa would be supported by 17 new concrete caissons, and the proposed wood deck would be supported by wood posts with short concrete footings to be easily removable. The existing residence is set back approximately 120 ft. from the existing rock revetment, and the proposed project would maintain that setback. The site

elevation at the structure stringline is approximately +12 ft. NAVD88. The finished floor elevation of the existing residence and the proposed residential additions is +15.27 ft. NAVD88, and the proposed pool bottom elevation would be +9.70 ft. NAVD88, and the surface elevation of the proposed pool and deck would be +14.20 ft. NAVD88. The applicant has submitted a site-specific coastal hazard analysis¹ and two additional coastal hazard analysis memorandums^{2,3} that were prepared for the previously proposed project to demolish the existing residence and construct a new residence and associated development. Although these studies were prepared for a different project scope, they remain informative to assess coastal hazard vulnerabilities for the proposed revised project. The analysis concluded that flooding of Sand Point Road from the marsh could occur with 1.6 ft. of sea level rise (expected to occur around the year 2050 under the medium-high risk aversion scenario), and the subject site could initially become inundated with approximately 2.5 ft. of sea level rise over current conditions. The analysis also found that with approximately 4.6 feet of sea level rise, expected to occur within the next 60 years under the medium-high risk aversion scenario, the project site would flood to a water elevation of +15.8 ft. NAVD88, assuming no revetment is in place. An additional scenario was analyzed, which combined 5.7 ft. of sea level rise (expected to occur around the year 2095 under the medium-high risk aversion scenario) combined with a 100-year storm, and the future flood elevation for this scenario would be +16.4 ft. NAVD88 assuming no revetment in place.

It is clear from the analysis that the subject site is vulnerable to coastal hazards, considering sea level rise, flooding, and storm events with eroded beach conditions. Therefore, if new development along the shoreline is to be found consistent with the LCP, the most landward feasible location must be utilized to minimize hazards. Shoreline structures must also be located as far landward as feasible to protect public access along the beach. Further, new development must avoid and provide an adequate setback from sensitive habitat areas, such as the El Estero Slough wetland to the north of the site, as well as adjacent dune habitat areas. In this case, the residential additions, deck, and pool/spa are not proposed to be sited further seaward than the existing footprint of the existing residence. The proposed residential additions have been designed on caissons at the elevation of the existing residence. The limited additions to the existing residence would not serve to significantly extend the life of the existing structure, and no changes to the existing rock revetment are proposed or required. Both the residential additions and the pool and deck improvements would also be adequately set back from the slough wetland area and adjacent foredune habitat area, consistent with the LCP. Additionally, the wood deck has been designed with removable wood posts on shallow footings to be easily removable when it is threatened by coastal waves, erosion, or other hazards. Further, the proposed pool/spa while supported on caissons will be constructed at grade to be removable when threatened by hazards.

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 Sand 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 Sand Point Road, dated August 19, 2019, prepared by GeoSoils, Inc., dated September 3, 2019

The proposed pool and deck are considered accessory structures that must be removed when they become threatened by wave runup, flooding, or erosion and are not entitled to shoreline protection. As mentioned above, the existing revetment is unpermitted, and the Commission's enforcement staff is working with the County and affected property owners to address these violations. As part of a future CDP application to approve the existing revetment, the revetment may need to be redesigned or relocated to be found consistent with the Coastal Act. In this case, the landward siting of the proposed development would not preclude removal or landward relocation of the existing unpermitted revetment. For these reasons, the proposed project has been sited and designed to minimize hazard risk for as long as possible and would not preclude removal or landward relocation of the existing rock revetment, while not conflicting with other resource protection policies of the LCP.

Therefore, the proposed development has been sited and designed to minimize hazard risks and avoid impacts to public access and other coastal resources.

However, it is important to clarify that the new proposed accessory development of a pool and deck is not entitled to shoreline protection under the Coastal Act or LCP, and the Commission would not approve this component of the project if it required a shoreline protection device now or at any point in the future. Therefore, the Commission finds that **Special Condition Two (2)** is necessary, which requires the applicant to acknowledge that the accessory development authorized by this permit- including the wood deck, pool, and spa- constitutes new development under the Coastal Act, and is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act, as incorporated into the certified County of Santa Barbara LCP. In addition **Special Condition Two (2)** specifies that the landowner shall remove the approved development, or portions of it, and restore the site if (a) any government agency has ordered that the structure is not to be occupied due to coastal hazards, or requires the structure to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (d) the development requires new shoreline protective devices that conflict with LCP or relevant Coastal Act policies. **Special Condition Two (2)** also requires the landowner to remove the wood deck and pool/spa, or portions of it, if it becomes threatened with damage or destruction from coastal hazards, is damaged by coastal hazards, or if reinforcement, shoreline protective devices, or any other protective action is needed. **Special Condition Two (2)** further states that in the event that portions of the development fall to the beach or marsh areas before they are removed, the landowner shall remove all recoverable debris associated with the development from the marsh, beach and ocean and lawfully dispose of the material in an approved disposal site. The landowner shall obtain a coastal development permit for removal of approved development and recoverable debris unless the County of Santa Barbara and/or Coastal Commission, as applicable based on permitting authority, provides a written determination that no coastal development permit is legally required.

The applicant has provided updated geology and geotechnical reports for the proposed project (referenced as Substantive File Documents), which conclude that the project site

is suitable for the proposed project based on the evaluation of the site's geology in relation to the proposed development. The reports contain recommendations to be incorporated into the project plans to ensure the stability and geologic safety of the proposed project, the project site, and the adjacent properties. To ensure stability and structural integrity and to protect the site and the surrounding sites, the Commission requires the applicant to comply with the recommendations contained in the applicable reports, to incorporate those recommendations into all final design and construction plans, and to obtain the geotechnical consultant's approval of those plans prior to the commencement of construction. Furthermore, to ensure that all recommendations of the coastal engineering and geotechnical consultants have been incorporated into the proposed development, **Special Condition One (1)** requires the applicant to agree to comply with the recommendations contained in the submitted coastal engineering and geology, geotechnical, and/or soils reports and that final plans approved by the consultant(s) shall be in substantial conformance with the final plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultant shall require an amendment to the permit, or a new Coastal Development Permit.

Moreover, the proposed development is located along the shoreline in Santa Barbara County that has historically been subject to substantial damage as a result of storm and flood occurrence; therefore, ample evidence exists that all beachfront areas in the Santa Barbara County area are subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion and flooding. The subject site, even after completion of the proposed project, will continue to be subject to the high degree of risk posed by the hazards of oceanfront and marsh-side development in the future. The Coastal Act and LCP recognize that development, even as designed and constructed to incorporate the recommendations of the applicant's coastal engineer, may still involve the acceptance of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

Thus, in this case, the Commission finds that due to the possibility of tsunamis, storm waves, surges, flooding, groundwater inundation, liquefaction, and erosion, the applicant shall assume these risks as a condition of approval. Because the risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's Assumption of Risk, Waiver of Liability and Indemnity, as required by **Special Condition Three (3)**, will show that the applicant is aware of and acknowledges the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the development it protects as well as access to the development, and will effectuate the necessary assumptions of those risks by the applicant. This condition will also ensure that the applicant is aware of the potentially ambulatory nature of their seaward boundary, and that this boundary may move with sea level rise. It further ensures that future property owners will be made aware of the risks and limitations placed on the development by this permit, so that any future owners can properly assess risks before purchasing property. In general, disclosing risks to current and future property owners helps ensure that property owners

will plan with these hazards in mind and will help set reasonable expectations for future development potential and investments. Similarly, requiring property owners to assume the risks of developing in hazardous locations will help avoid the need to spend public funds on disaster recovery for private development and will ensure future owners are aware of limits on the use of shoreline armoring that harms coastal resources. These conditions help carry out LCP policies related to minimizing risks to life and property in areas of high flood and coastal hazard. Additionally, **Special Condition Five (5)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In addition, in order to ensure that no additions or improvements are made to the property without due consideration of potential hazards, the Commission finds it necessary to require a future development restriction, which requires the applicant to obtain an amended or new coastal development permit if additions or improvements to the site are proposed in the future, as detailed in **Special Condition Four (4)**.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with shoreline development and coastal hazard policies of the certified Santa Barbara County LCP, including the Coastal Act policies incorporated therein.

C. ENVIRONMENTALLY SENSITIVE HABITAT AREAS AND WATER QUALITY

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, as incorporated into the certified LCP, 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, as incorporated into the certified LCP, states:

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(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 3-19 states:

Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste, shall not be discharged into or alongside coastal streams or wetlands either during or after construction.

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 County's certified Coastal Zoning Ordinance/ Implementation Plan (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

avoid significant disruption of habitat values of those areas. In this case, the proposed project includes additions to the existing residence and the construction of a new wood deck and pool, and any new development must conform to the policies and standards of the LCP.

The 6.3-acre property is bisected by Sand Point Road, with 5.83 acres north of Sand Point Road and 0.92 acres south of Sand Point Road. El Estero (Carpinteria) Slough is located north of Sand Point Road on the subject site and is designated ESH in the County's LCP. The beachfront project site contains approximately 0.48 acres of dune habitat between the existing residence and the existing rock revetment based on the underlying sandy substrate based on the applicant's biological assessment reports and Commission Staff Ecologist Dr. Jonna Engel's site assessment. The sandy substrate is mainly covered by non-native iceplant; 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 species status plant species, was also identified within the dune area.

The applicant's biological assessment states that since the majority of the vegetation within the proposed development area is comprised of non-native species (primarily iceplant), it has limited wildlife value and is not considered Environmentally Sensitive Habitat (ESH). However, the biological assessment did not include focused surveys for silvery legless lizards or globose dune beetles, sensitive species that could inhabit this area. Additionally, there is sandy substrate in this area, and there was no analysis provided in the biological assessment regarding whether dune morphology is present within the ice plant mat area. Furthermore, 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 reports, conducted a site visit on June 9, 2020, of the subject site, and prepared a memorandum dated June 7, 2021 (Exhibit 5). It is important to note that although the proposed project has changed significantly since Dr. Engel prepared her memorandum, its assessment of the nature and extent of dune habitat on the subject site remains applicable. Dr. Engel determined that the 0.48 acres of iceplant mat habitat on the subject site seaward of the existing residence 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 applicant's biological assessment 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.

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. 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 also considered ESH under the County’s LCP. For these reasons, Dr. Engel has determined that the approximately 0.48 acres of dune habitat area between the existing residence and the revetment meets the definition of ESH.

Coastal Act Section 30240 requires that ESHA be protected from any significant disruption of habitat values, only uses dependent on those resources shall be allowed within those areas, and new development adjacent to ESHA shall be sited and designed to be compatible with, and prevent impacts which would significantly degrade, those areas. LUP Policy 9-2 and CZO/IP Section 35-97.8 states 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. The Santa Barbara County LCP requires buffers between development and ESH, although it only specifies an explicit minimum buffer width for certain types of habitat (e.g. stream ESH, wetland). No specific buffer width is included for dune ESH, so the required width must be determined based on site-specific evidence through a permit action.

In this case, the proposed residential additions would be located beneath existing roof overhangs or on top of existing deck areas, and would not extend any closer into the coastal dune ESH than the existing structure. The proposed project also includes a new swimming pool and attached spa that would be situated east of the residence, with a 850 sq. ft. wood deck with a walkway between the house and the pool. The pool/spa

would be setback between 20 and 28 feet from the on-site dune ESH. The applicant analyzed alternative pool designs and configurations in order to provide the maximum feasible buffer from the dune ESH, while also providing the required 100-foot buffer from the El Estero Slough wetland to the north. The proposed pool location will maintain the required buffer from the slough, not extend any further seaward than the adjacent existing residential development, and provide a 20-28 foot buffer from on-site dune ESH that will serve to avoid significant disruption of habitat values within the ESH. The deck and walkway between the existing residence and the proposed pool would be set back between 0 and 13 feet from the dune ESH boundary. Since the existing topography between the house and the proposed pool varies, the proposed wood deck and walkway would be supported by wood posts with short concrete footings and constructed at approximately average grade elevation in order to minimize grading to the maximum extent feasible and be easily removable when threatened or damaged by coastal hazards. The proposed raised deck and walkway design with railings would also function like a boardwalk to direct foot traffic and use within the developed portions of the site and avoid inadvertent volunteer paths within the dune ESH. As such, the proposed deck and walkway accessory development has been sited and designed to avoid significant disruption of habitat values within the dune ESH. The applicant has also proposed to enhance the on-site dune ESH through the removal of non-native species, such as iceplant and other species, and the planting of native species appropriate for the habitat type. For these reasons, the proposed development would be setback from dune ESH to the maximum extent feasible and has been sited and designed to protect, preserve, and enhance the onsite coastal dune habitat.

In order to implement the applicant's proposal to enhance the on-site dune habitat seaward of the existing and proposed development on-site, the Commission finds **Special Condition Six (6)** is necessary, which requires the applicant to provide a final landscaping and dune habitat enhancement plan prior to issuance of the permit. The final plan shall detail the non-native plant species that would be removed, methodology to be used (use of pesticides shall be prohibited), and native species to be planted shall be appropriate for the coastal foredune habitat. Further, the Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the area, such as offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. Therefore, in order to minimize adverse effects to the adjacent dune ESH habitat, **Special Condition Six (6)** also requires that all disturbed areas must be landscaped, primarily with native plants, to stabilize disturbed soils and reduce erosion and that invasive plant species shall not be used.

As previously mentioned, the project site is also adjacent to the El Estero (Carpinteria) Slough wetland to the north of Sand Point Road. LUP 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." In this case, the proposed development (residential additions, wood deck, pool, and spa) is sited and designed to avoid wetlands and will provide a

100-foot buffer from the on-site wetland. Therefore, the proposed development is sited and designed to avoid any significant adverse impacts to wetlands and is compatible with the continuation of the nearby wetlands. As such, the proposed development conforms to the wetland ESH protection policies and provisions of the County's LCP.

Although all work would take place within existing disturbed areas of the site, construction activities related to the proposed project have the potential to negatively impact the surrounding environment, habitats, and water quality. Introduction of waste or construction debris could create deleterious impacts to coastal waters and could stem from activities such as stockpiling of materials or cleaning of construction equipment. The Commission finds **Special Condition Seven (7)** is necessary, which requires that the project applicant comply with specific construction standards, erosion control measures, and best management practices, and submit interim erosion control plans and construction responsibilities prior to issuance of the permit. These measures will help protect ESHA and the biological productivity of coastal waters consistent with the relevant LCP policies cited above.

The site contains habitat that is ESHA and has the potential to sustain sensitive species that may be present or may establish within those habitats. As such, there are coastal resource issues of concern relating to potential adverse impacts to sensitive species and their habitats from project activities. In order to ensure that project activities avoid impacts to sensitive species and habitats, the Commission finds **Special Condition Eleven (11)** is necessary, which requires that an environmental resource specialist survey the project area for sensitive species prior to implementation of any project activities, delineate and monitor the active work areas, and undertake protective measures if any sensitive species or active nests are identified.

In addition, the Commission has found that night lighting of ESHA areas may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, **Special Condition Eight (8)** is required which limits night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that traverses the area at night.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the environmentally sensitive habitat area and water quality protection policies and provisions of the certified Santa Barbara County LCP.

D. PUBLIC ACCESS AND VISUAL RESOURCES

Coastal Act Section 30210, as incorporated into the certified LCP, states:

In carrying out the requirements 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 for overuse.

Coastal Act Section 30211, as incorporated into the certified LCP, 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, as incorporated into the certified LCP, states (in applicable part):

(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 affected. 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.

...

Coastal Act Section 30251, as incorporated into the certified LCP, states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be 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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Land Use Plan Policy 4-4 states:

In areas designated as urban on the land use plan maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.

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 35-61, in relevant part, states:

- ...
3. 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... In coastal areas where the bluffs are less than five feet, the area of the easement to be granted shall be determined by the County based on findings reflecting historic use, existing and future public recreational needs and coastal resource protection. At a minimum, the lateral easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the lateral 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. This policy shall not apply to development excluded from the public access requirements of the Coastal Act by Public Resources Code Section 30212 or to development incidental to an existing use on the site.

1. Public Access

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 35-61, 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. In addition, Section 35-61 of the County’s Coastal Zoning Ordinance mandates the granting of lateral easements to allow for public access along the shoreline for all new development between the first public road and the ocean, with exceptions.

In addition, the policies that limit the use of shoreline protective devices (cited in the shoreline development and coastal hazards section above) also address public access because such protective devices affect public access, as described more below. Further, the public has rights in tidelands that currently lie seaward of the proposed development, but which may come to be located closer to, or even under, the proposed development at some point in the future. The Coastal Commission has a duty, under the public trust doctrine and the Coastal Act, to ensure that new development does not impair trust resources by, for example, impeding current or future public access. The beaches of Santa Barbara County are extensively used by visitors of both local and

regional origin and most planning studies indicate that attendance of recreational sites will continue to significantly increase over the coming years.

As described above, new development on beachfront parcels should be designed in a manner that will not require the construction or use of shoreline protective devices. Construction of a shoreline protective device to protect the proposed development would arrest the landward migration of the shoreline, and the corresponding migration of the publicly accessible intertidal zone. This would make access to and along the sea difficult, if not impossible. Courts have also found that shoreline armoring can constitute trespass on public tidelands if the armoring blocks the migration of the tidelands and prevents the tidelands trustee from gaining property that should rightfully be theirs. *United States v. Milner* (9th Cir. 2009) 583 F.3d 1174, 1189-1190. As previously discussed in detail in subsection (C) above, shoreline armoring or protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of the mean high tide line (the boundary between public and private lands) during high tide and severe storm events, and potentially throughout the entire winter season. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and the winter season.

In this case, the residential additions, deck, and pool/spa are not proposed to be sited further seaward than the existing residence. The limited additions to the existing residence would not serve to significantly extend the life of the existing structure, and no changes to the existing rock revetment are proposed or required for the additions or the new accessory development. Additionally, the wood deck has been designed with removable wood posts on shallow footings to be easily removable when it is threatened by coastal waves, erosion, or other hazards. Further, the proposed pool/spa while supported on caissons will be constructed at grade to be removable when threatened by hazards.

The proposed pool and deck are considered accessory structures that must be removed when they become threatened by wave runup, flooding, or erosion and are not entitled to shoreline protection. As mentioned above, the existing revetment is unpermitted, and the Commission's enforcement staff is working with the County and affected property owners to address these violations. As part of a future CDP application to permit the existing revetment, the revetment may need to be redesigned or relocated to be found consistent with the Coastal Act. In this case, the landward siting of the proposed development would not preclude removal or landward relocation of the existing unpermitted revetment. For these reasons, the proposed project has been sited and designed to avoid impacts to public access.

However, it is important to clarify that the new proposed accessory development of a pool and deck is not entitled to shoreline protection under the Coastal Act or LCP, and the Commission would not approve this component of the project if it required a shoreline protection device now or at any point in the future.

Therefore, in order to protect shoreline processes, natural landforms, the ambulatory nature of the shoreline, and continued public access to the shoreline, the Commission finds that **Special Condition Two (2)** is necessary, which requires the applicant to acknowledge that the accessory development authorized by this permit- including the wood deck, pool, and spa- constitutes new development under the Coastal Act, and is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act, as incorporated into the certified County of Santa Barbara LCP. In addition, Special Condition 2 specifies that the landowner shall remove the approved accessory development, or portions of it, and restore the site when it becomes threatened with damage or destruction from coastal hazards, is damaged by coastal hazards, or if reinforcement, shoreline protective devices, or any other protective action is needed.

Next, **Special Condition Ten (10)** clarifies that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property and prohibits the applicant from using the permit as evidence of a waiver of any public rights that may exist on the property now or in the future. **Special Condition Ten (10)** also clarifies that the permit does not authorize the development to physically interfere with any public access rights that may exist at any future date. This ensures that the permit and development may not be used as evidence that public agencies have waived any public rights on tidelands or other public rights-of-way. The permit also only authorizes the development for so long as it remains on private property; thus, if any portion of the development came to be located on public trust lands, the permittee would need to either remove that development or apply to the Commission for a CDP to retain it and to the State Lands Commission or other trustee agency for a lease or other appropriate instrument allowing the encroachment to remain.

Finally, the Commission notes that numerous unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties. These signs have an adverse effect on the ability of the public to access public trust lands. Therefore, **Special Condition Nine (9)** provides that no signs shall be posted on the property subject to this permit which either (a) explicitly or implicitly indicate that any portion of the beach located seaward of the subject site is private or (b) contain messages that attempt to prohibit public use of the public beach. **Special Condition Five (5)** ensures that future owners will be made aware of the various conditions and limitations on the development so that they can appropriately take them into consideration when planning for possible purchase or planning later development.

Thus, the Commission finds that the proposed project, as conditioned, is consistent with the public access and recreation policies of the certified Santa Barbara County LCP and the Coastal Act.

2. Visual Resources

Section 30251 of the Coastal Act, incorporated into the County's LCP, requires visual qualities of coastal areas to be considered and protected and that development be visually compatible with the character of surrounding areas and be sited and designed

to protect views to and along the ocean and scenic coastal areas. In addition, Policy 4-4 of the County's LCP requires new development to be designed to conform to the scale and character of the existing community.

The subject property is located on a beachfront lot between the first public road and the sea. Development along Sand Point Road includes both residential estates and older beach cottages on parcels that have not been redeveloped. The existing residence was originally developed in 1952. Views of the site are primarily limited to Sand Point Road and from the beach. However, distant views of the property are available from Highway 101 and from public walking paths located on the southern edge of Carpinteria Slough, approximately one mile away. The proposed project consists of minor additions (847 sq. ft.) to an existing residence and the construction of a new at-grade deck and pool. The proposed additions to the existing residence will not increase the existing height of the residence and will continue to comply with the maximum allowable height requirements of the County's LCP, and will not adversely impact scenic views of the ocean or mountains from any public viewing locations. Further, the proposed residential additions and new deck and pool are consistent in character with other existing residential development in the surrounding community and would not significantly change existing public views along the beach.

The Commission has found that night lighting visually impacts nearby scenic beaches, scenic roads, parks, and trails. Further, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. In order to mitigate any potential future visual impacts of the proposed project, the Commission finds it necessary to require that exterior lighting be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas, as specified in **Special Condition Nine (9)**.

Therefore, for reasons set forth above, the Commission finds that the proposed development, as conditioned, is consistent with the requirements of the policies and provisions of the Santa Barbara County certified LCP and with Sections 30251 of the Coastal Act as incorporated into the certified LCP.

E. COASTAL ACT VIOLATIONS

Violations of the Coastal Act and LCP exist on the subject property and adjacent state tidelands, including, but not necessarily limited to fortification and enlargement further seaward of the revetment on site in 1983 without the benefit of a CDP. The unpermitted work occurred along the entire, approximately 3600' length of the revetment and included placement of many tons of boulders up to 18' seaward of the revetment. Repair work to replace areas of the 1983 revetment was performed in 1994 and 1998, also without the necessary CDPs.

This application does not include resolution of the violation and, thus, even if this application is approved, and the permit is exercised, a violation will remain at the site that will not be addressed by the Commission's action on this application. Commission

enforcement staff is working with the County and affected property owners in order to address these revetment violations.

Commission review and action on this permit 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 the development undertaken on the subject site without a coastal permit, or of any other development, except as otherwise expressed herein.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations require Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on consistency with the County's certified LCP at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the applicable policies of the certified LCP. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. Special Conditions 1-11 are required to assure the project's consistency with Section 13096 of the California Code of Regulations.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment, and that the project, as conditioned, will not have any significant impacts on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with the requirements of the certified LCP and conforms to CEQA.

APPENDIX 1

Substantive File Documents

Certified County of Santa Barbara Local Coastal Plan and Coastal Zoning Ordinance; Coastal Commission Appeal No. A-4-STB-19-0214; Santa Barbara County Planning and Development Memorandum dated October 29, 2019 (No. 17CDH-00000-00014) and attachments thereto; Draft Mitigated Declaration (19NGD-00000-00008) for the proposed Cosmoledo Trust, prepared by County of Santa Barbara, dated July 16, 2019; Santa Barbara County Notice of Final Action for Coastal Development Permit 17CDH-00000-00014; Sea Level Rise Assessment for 711 Sand Point Road, prepared by Stantec, dated February 21, 2018; 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, 2019; 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; Biological Resources Assessment for 711 Sand Point Road, prepared by Storrer Environmental Services, dated August 2018; California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits. Adopted August 12, 2015. Updated November 7, 2018; California Coastal Commission Residential Adaptation Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs. Revised March 2018; National Research Council (NRC). 2012. Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future. Report by the Committee on Sea Level Rise in California, Oregon, and Washington. National Academies Press, Washington, DC. 250 pp. Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group). Rising Seas in California: An Update on Sea-Level Rise Science. California Ocean Science Trust, April 2017; Intergovernmental Panel on Climate Change (IPCC). 2007. Climate Change 2007: Ocean Protection Council (OPC). 2013. State of California Sea-Level Rise Guidance Document. Ocean Protection Council (OPC). 2018. State of California Sea-Level Rise Guidance: 2018 Update.