

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. _____

**A RESOLUTION DENYING THE SARAFIAN AND FRIEDMAN APPEAL AND SUSTAINING
THE PLANNING COMMISSION'S ADOPTION OF THE BRIAN JOHNSON TRUST COASTAL
PERMIT SUBSEQUENT MITIGATED NEGATIVE DECLARATION
21 CALLE DEL ONDA, STINSON BEACH
ASSESSOR'S PARCEL: 195-162-49**

The Board of Supervisors of the County of Marin hereby resolves as follows:

SECTION I: FINDINGS

1. Brian Johnson, on behalf of the owners, inclusive of the Brian Johnson Trust; Janiele Herbert, successor trustee of the Modestine Bagwell 2003 Revocable Trust; Scott Combs; Rene Wicks; and Eileen Combs, has submitted a Coastal Permit application to construct a new one-story, 1,296 square-foot single-family residence on a vacant lot in Stinson Beach. The 1,296 square feet of proposed development would result in a floor area ratio of nine percent on the 15,200 square-foot lot. The proposed building would reach a maximum height of 20 feet, seven inches above surrounding grade and the exterior walls would have the following setbacks: 25 feet from the northwestern front property line; 46 feet from the northeastern side property line; 100 feet from the southwestern side property line; and 16 feet from the southeastern rear property line. Various site improvements would also be entailed in the proposed development, including a new septic system, a new permeable paving driveway, decks, and landscaping improvements.

The property is located at 21 Calle Del Onda, Stinson Beach and is further identified as Assessor's Parcel 195-162-49.

2. On July 18, 2020, the Stinson Beach County Water District (SBCWD) approved a variance for an onsite septic system. The variance authorized a reduction in the setback requirements from the Pacific Ocean, a waterbody adjacent to and which covers part of the property. As the variance qualified as a project under the California Environmental Quality Act (CEQA), the SBCWD, as the CEQA lead agency, prepared an Initial Study (IS) to determine whether the variance would result in one or more significant environmental impacts. The IS determined that impacts could potentially occur but included mitigation measures to reduce all impacts to less than significant, and the applicant agreed to incorporate the measures into the project plans. Consequently, prior to approving the variance, the SBCWD adopted a Mitigated Negative Declaration (MND).

3. The IS/MND focused on the wastewater system variance but considered future development of a residence as a reasonably foreseeable consequence of project approval. Therefore, construction of a residence was considered a part of the project and included in the environmental analysis. As a design for the future residence had not yet been developed, the IS/MND considered generally the potential impacts of the construction of a residence, based on reasonable assumptions about scale, location within the parcel, and construction methods.

4. Following the SBCWD's approval of the septic system variance, the applicant submitted an application to the Marin County Community Development Agency for a Coastal Permit to allow development of the septic system and a 1,563 square-foot, two-story residence with a 288 square-foot accessory building/garage. The application was deemed complete on July 7, 2021. At its November 22, 2021 meeting, the Planning Commission conducted a public hearing to consider the application. The Planning Commission did not make a decision on the project approval but continued the hearing to allow County staff to look further into issues raised in comment letters received from the public and from the California Coastal Commission, and to determine the environmental review requirements for the project. Upon further review, the County, as a Responsible Agency, per State CEQA Guidelines Section 15381, determined that it would be necessary to prepare a Supplemental Environmental Review (SER) to determine the correct CEQA document to support a decision on the project. Pursuant to State CEQA Guidelines Section 15162, due to the involvement of new significant environmental effects, the conclusions of the SER resulted in preparation of a Subsequent Mitigated Negative Declaration (SMND).
5. After the Planning Commission its hearing in November 2021, the applicant reduced the scale of the proposed development from 1,563 square feet to the currently proposed one-story, 1,296 square-foot residence. The revised proposal also reduced the deck and stair area from 528 square feet to 252 square feet and eliminated a free-standing 288 square-foot garage.
6. The Marin County Environmental Planning Manager determined that, based on the SER, a Subsequent Mitigated Negative Declaration (SMND) of Environmental Impact was required for the project pursuant to the California Environmental Quality Act (CEQA).
7. The SMND for the project consists of the Mitigated Negative Declaration, Initial Study, responses to comments, and all supporting information incorporated by reference therein.
8. The SMND was completed in compliance with the intent and requirements of CEQA, the State CEQA Guidelines, and the County's CEQA process.
9. On Monday, January 9, 2023, the Initial Study and proposed SMND were completed and distributed to agencies and interested parties to commence a 30-day public review period for review and comment on the SMND, and a notice of the public review period and public hearing was published in a general circulation newspaper pursuant to CEQA.
10. On July 31, 2023, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project. By a vote of three ayes and three noes, the Planning Commission denied the SMND. The Planning Commission voted to continue the hearing to August 14, 2023.
11. On August 14, 2023, the Planning Commission held a duly noticed public hearing to take public testimony and consider the project. By a vote of one no and five ayes, the Planning Commission voted to reconsider the prior decision on the SMND that was made on July 31, 2023.
12. On August 28, 2023, the Planning Commission held a duly noticed public hearing to take public testimony and consider the project, including the SMND. The Planning Commission adopted the SMND and approved the project.
13. On August 29, 2023, Elizabeth Brekhus, on behalf of neighboring property owners identified as the Sarafians, and Jack Siedman, on behalf of a neighboring property owner

identified as Robert Friedman, submitted a timely joint appeal of the Brian Johnson Trust Coastal Permit and SMND approval.

14. On October 24, 2023, the Marin County Board of Supervisors held a duly noticed public hearing to take public testimony and consider the project and the SMND.

15. The bases of appeal are insufficient to overturn the Planning Commission's adoption of the SMND. The SMND, RTC and subsequent RTC documents elaborate extensively on the issues raised by the appellant and the corresponding responses in accordance with the requirements of CEQA. Pursuant to State CEQA Guidelines Section 15384, the appellant did not provide any substantial evidence that would constitute a fair argument, based on substantial evidence in the record, of a potentially significant environmental impact resulting from the project. The appellant's assertions amount to argument, speculation, and unsubstantiated opinion, which does not constitute substantial evidence that contradicts the analysis and findings in the SMND, RTC or subsequent Memorandum documents. Therefore, an environmental impact report is not required, as all of the potential environmental impacts have been either mitigated to a less than significant level or have been found to be less than significant pursuant to CEQA.

SECTION II: ACTION

NOW THEREFORE, BE IT FURTHER RESOLVED that the Marin County Board of Supervisors hereby adopts the Subsequent Mitigated Negative Declaration of Environmental Impact for the Brian Johnson Trust Coastal Permit project as adequate and complete in compliance with CEQA, the State CEQA Guidelines and the County Environmental Review Procedures, and as adequate and complete for consideration in making a decision on the merits of the project.

SECTION III: ADOPTION

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 24th day of October, 2023 by the following vote to wit:

AYES: SUPERVISORS

NOES:

ABSENT:

STEPHANIE MOULTON-PETERS, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

ATTEST:

Matthew H. Hymel
Clerk of the Board of Supervisors

MARIN COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. _____

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PERMIT
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SECTION I: FINDINGS

1. Brian Johnson, on behalf of the owners, inclusive of the Brian Johnson Trust; Janiele Herbert, successor trustee of the Modestine Bagwell 2003 Revocable Trust; Scott Combs; Rene Wicks; and Eileen Combs, has submitted a Coastal Permit application to construct a new one-story, 1,296 square-foot single-family residence on a vacant lot in Stinson Beach. The 1,296 square feet of proposed development would result in a floor area ratio of nine percent on the 15,200 square-foot lot. The proposed building would reach a maximum height of 20 feet, seven inches above surrounding grade and the exterior walls would have the following setbacks: 25 feet from the northwestern front property line; 46 feet from the northeastern side property line; 100 feet from the southwestern side property line; and 16 feet from the southeastern rear property line. Various site improvements would also be entailed in the proposed development, including a new septic system, a new permeable paving driveway, decks, and landscaping improvements.

The property is located at 21 Calle Del Onda, Stinson Beach and is further identified as Assessor's Parcel 195-162-49.

2. On November 22, 2021, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project. The project presented to the Planning Commission entailed the construction of a new two-story, 1,563 square-foot single-family residence, a 288 square-foot detached garage, a new septic system, decks, and landscaping improvements on the vacant lot. The Marin County Planning Commission took public testimony and continued the hearing with a request for staff to conduct additional environmental review and to conduct a takings analysis on the siting of the residence due to its location in an environmentally sensitive habitat area, specifically coastal dunes.

3. The applicant subsequently revised the project as is described in paragraph 1 above. Based on the Marin County Environmental Planning Manager's determination, a subsequent Mitigated Negative Declaration of Environmental Impact (SMND) was also prepared for the project, pursuant to the California Environmental Quality Act (CEQA).

4. On July 31, 2023, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project. By a vote of three ayes and three noes, the Planning Commission denied the SMND. The Planning Commission also voted to continue the hearing to August 14, 2023.

5. On August 14, 2023, the Planning Commission held a duly noticed public hearing to take public testimony and consider the project. By a vote of one no and five ayes, the Planning Commission voted to reconsider the prior decision on the SMND that was made on July 31, 2023.
6. On August 28, 2023, the Planning Commission held a duly noticed public hearing to take public testimony and consider the project, including the SMND. The Planning Commission adopted the SMND and approved the project.
7. On August 29, 2023, Elizabeth Brekhus, on behalf of neighboring property owners identified as the Sarafians, and Jack Siedman, on behalf of a neighboring property owner identified as Robert Friedman, submitted a timely joint appeal of the Brian Johnson Trust Coastal Permit and SMND approval.
8. On October 24, 2023, the Marin County Board of Supervisors held a duly noticed public hearing to take public testimony and consider the project.
9. The bases of appeal are insufficient to overturn the Planning Commission's decision, for the reasons discussed below.

A. AO Flood Zone Moratorium

The appellants assert that the project is inconsistent with the Local Coastal Program Unit 1, Policy IV-30 as well as County Code Section 22.56.130.I(L)(2), which prohibits development within the AO flood zone.

Response

As further discussed in Section 11.C of this resolution below, the project is inconsistent with the Marin County Local Coastal Program's policies regarding the Easkoot Creek floodplain. Further, the project is also inconsistent with the determination issued by the County on July 28, 2015, which clarifies that properties located within the AO and AE flood zones, as mapped by the Federal Emergency Management Agency (FEMA) are subject to development limitations.

However, the Marin County Local Coastal Program, Implementation Plan Section 22.70.180 provides that if the application of the policies, standards, or provisions of the Local Coastal Program (LCP) to proposed development would potentially constitute a taking of private property, then a development that is not consistent with the LCP may be allowed on the property to avoid a taking, provided such development is as consistent as possible with all applicable policies and is the minimum amount of development necessary to avoid a taking as determined through a takings evaluation.

In order to evaluate the applicant's reasonable investment-backed expectation that he would be permitted to develop the property, a takings analysis is included in Section 12 of this resolution, which includes an evaluation of ownership history, owner investments in the property and its development, and land use regulations and restrictions that applied to the property at the time the applicant acquired it or have been imposed since acquisition.

B. FEMA VE Floodplain Base Flood Elevation

The appellants assert that the development identifies an incorrect base flood elevation of 18'2" and does not comply with Marin County Code Title 23.09.

Response

Pursuant to maps prepared by the Federal Emergency Management Agency (FEMA), the property is encumbered by the AO flood zone along the northern portion of the property and the VE flood zone along the majority of the property. The septic system is proposed to be located within the AO flood zone and the residence is proposed to be located within the VE flood zone.

According to the most recent FEMA Flood Hazard Zone maps, the Base Flood Elevation (BFE) in the VE flood zone is 16 feet NAVD88. Current FEMA regulations do not incorporate sea level rise into the determination of the 100-year base flood elevation. However, a coastal engineering analysis was prepared by Noble Consultants, Inc., dated July 12, 2016, which analyzed coastal flood hazards on the site for a previously proposed project design. The coastal engineering analysis conducted in 2016 identified a 100-year flood elevation of approximately 16.2-18.1 feet, NAVD88, considering sea-level rise projections identified at the time the analysis was prepared.

The previous coastal engineering analysis conducted for the project site was later updated in 2020 and 2021 to review previous findings and to include an updated analysis of wave runup, overtopping and overland wave propagation to determine wave conditions at the project site based on the 100-year storm event in the year 2070, including the consideration of the effects of sea level rise. Materials provided by the applicant, include a letter from Civic Knit dated May 6, 2020, and a letter from R.M. Noble & Associates dated May 13, 2021. These documents were further reviewed and evaluated through a County-initiated Supplemental Environmental Review and Subsequent Mitigated Negative Declaration (SER/MND), prepared by Sicular Environmental Consulting and Land Management. An additional Response to Comments (RTC) was prepared following the circulation of the SER/MND on January 9, 2023, as well as a recent Response to Appeal memorandum dated October 13, 2023.

Pursuant to the updated coastal engineering analyses, the 100-year base flood elevation for the project would increase from the previously identified 18.1 feet, NAVD88 to 19.1 feet, NAVD88. As such, the appellant's assertion is incorrect.

The currently proposed residence would be elevated and entails a pier foundation system. Per the plans submitted June 10, 2022, the lowest structure member is proposed to be elevated at 19.1 feet NAVD 88 with a subfloor identified as 21 feet NAVD 88. The proposal was reviewed by the Department of Public Works and found to be acceptable. The Marin County, Department of Public Works, Land Development Division would determine BFE compliance with Marin County Code Title 23 requirements at the time of Building Permit review.

C. California Coastal Act, Sea Level Rise Hazards, Shoreline Protection, and Impact to Neighboring Properties

The appellant asserts that project is inconsistent the California Coastal Act, Public Resources Code Section 30253, for development as it relates to minimizing risks to life

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

The appellant also asserts that plans include large concrete retaining walls and that the Murray Engineering initial geotechnical study finds that the home will likely require rammed piers to reduce the potential for liquefaction-induced ground failure to protect the home and septic system and should therefore be denied because the seismic shaking risks identified have not been addressed or mitigated. Further, the appellants assert that the CEQA initial study was done only with respect to the septic system in the Easkoot Flood Plain and does not take into account the shoreline hazards.

Response

Marin County Interim Code Section 22.56.130.I.K provides shoreline protection requirements, including standards and requirements for shoreline protective works and is further discussed in Section 11.B of this resolution. As further discussed, the proposed project is not located within a bluff erosion zone and nor does it entail shoreline protective devices or any revetments, breakwaters, groins, harbor channels, seawalls, or cliff retaining walls.

The project does, however, entail a septic system that would utilize a raised bed with a low-lying retaining wall intended to increase separation from seasonal high groundwater and to protect the dispersal field from potential wave erosion. Further, the project entails a residence that would utilize a pier foundation system.

The applicant provided a coastal engineering analysis and geotechnical report prepared by engineering consultants, Noble Consultants, dated June 22, 2020. Additionally, Noble Consultants prepared a supplemental letter dated May 13, 2021, further clarifying flood risks including impacts during high tides and sea level rise. The applicant also provided a Preliminary Geotechnical Feasibility Study prepared by Murray Engineers Inc., dated January 14, 2021.

These documents were further reviewed and evaluated through a County-initiated Supplemental Environmental Review and Subsequent Mitigated Negative Declaration (SER/SMND), prepared by Sicular Environmental Consulting and Land Management. An additional Response to Comments (RTC) was prepared following the circulation of the SER/SMND on January 9, 2023. The RTC also included additional evaluation based on the January 2023 storms, which caused significant coastal flooding in Stinson Beach between January 5 and January 7, 2023. The SER/SMND evaluated whether the project, inclusive of the residence, would have any new impacts that were not evaluated in a previous Initial Study/Mitigated Negative Declaration prepared by the Stinson Beach County Water District in 2020 for the proposed septic system.

Pursuant to the evaluation under the SER/SMND and RTC, the retaining wall that would accommodate the septic system would only extend three to six inches above existing grade and due to its landward location, would not act as a shoreline protective device. Though the retaining wall is designed to withstand wave run-up forces to protect the septic

system from localized erosion during inundation, it is not designed or intended to arrest shoreline or bluff erosion or coastal retreat. Therefore, the retaining wall component of the septic system is consistent with LCP provisions for shoreline protection.

Further, the SER/SMND and RTC affirms the conclusions of the updated coastal engineering analysis completed for the proposed project. This included a hazard analysis of flood hazard risks from both coastal and Easkoot Creek flooding, including shoreline erosion, flood condition, and wave runup based on current sea level rise projections.

The SER/SMND and RTC concludes that the septic system design, including the retaining wall, would not redirect wave energy in a manner that would create erosion, geologic instability, or destruction of the site or neighboring properties due to altered on-site conditions nor would it arrest natural coastal erosion or coastline recession resulting in substantially altered landforms. As such, the SER/SMND and RTC affirms that the septic system barrier would not result in physical impacts that conflict with California Coastal Act shoreline protection policies.

Similarly, and as further discussed in Section 11.C of this resolution, the proposed pier foundation system would elevate the residence above calculated flood elevations. As further evaluated in the SER/SMND, the pier foundation system also would not substantially alter on-site drainage patterns, including wave runup processes nor would it result in impeding or redirecting flood flows onto surrounding properties. The findings of the SER/SMND and RTC were also reaffirmed by Sicular Environmental Consulting and Land Management via the Response to Appeal memorandum dated October 13, 2023.

Lastly, per the Preliminary Geotechnical Feasibility Study prepared by Murray Engineers Inc., dated January 14, 2021, though the project site is not located within a State-defined earthquake fault zone for the San Andreas fault, the project site would be subject to strong to very violent ground shaking during an earthquake, the Marin County Community Development Agency, Building and Safety Division will require seismic compliance with the California Building Code prior to issuance of a project building permit. This was further reviewed and evaluated under the SER/MND, which concluded that the project would have no impact or less-than-significant impacts regarding geology and seismicity. As such, no additional mitigation is required.

D. Dune and Sandy Habitat Protection

The appellants assert that the plans violate the LCP due to proposed construction within Environmentally Sensitive Habitat Areas (ESHA) and that the plans fail to adequately identify the extent of ESHA on the property or identify adequate buffers and mitigation measures to protect the ESHA consistent with the LCP.

Response

As further detailed in Sections 10.B and 11.A of this resolution, the project is inconsistent with the Marin County's Local Coastal Program's (LCP) policies related to biological resources, ESHA protection, and dune protection. The applicant provided a Biological Site Assessment of the site prepared by WRA Environmental Consultations dated October 2019 along with a supplemental letter prepared by said firm dated October 4, 2021.

These documents, along with the previous Initial Study/Mitigated Negative Declaration (2020 IS/MND) conducted by the Stinson Beach County Water District in 2020, were further reviewed and evaluated through the Supplemental Environmental Review and Subsequent Mitigated Negative Declaration (SER/SMND) initiated by the County and prepared by Sicular Environmental Consulting and Natural Lands Management.

An additional Response to Comments (RTC) was prepared following the circulation of the SER/SMND on January 9, 2023. The SER/SMND and RTC included an expanded evaluation and identification of ESHA on the site, including Figure MR2-1 and Table MR2-1 on pages 12 and 13 in the RTC, which provides a detailed habitat distribution and approximate impacts by type and square footage. This figure also includes the permanent footprint of the development and limits of grading associated with the project. The SER/SMND and RTC concluded that the project presents a significant impact on sensitive habitat that was not previously identified in the 2020 IS/MND. The findings of the SER/SMND and RTC were also reaffirmed by Sicular Environmental Consulting and Land Management via the Response to Appeal memorandum dated October 13, 2023.

As further discussed in Section 9.A above, the Marin County Local Coastal Program, Implementation Plan Section 22.70.180 provides that if the application of the policies, standards, or provisions of the Local Coastal Program (LCP) to proposed development would potentially constitute a taking of private property, then a development that is not consistent with the LCP may be allowed on the property to avoid a taking, provided such development is as consistent as possible with all applicable policies and is the minimum amount of development necessary to avoid a taking as determined through a takings evaluation.

A takings analysis was conducted pursuant to the LCP and the applicable findings have been made as further discussed in Section 12 below. Further, the project is consistent as possible with other policies and regulations related to coastal access; agriculture and mariculture; water resources; community design; energy; housing; public facilities and services; transportation; historical and archaeological resources; and park, recreation, and visitor-serving uses. Lastly, the project has been mitigated pursuant the SER/SMND, as further discussed in Section 11.A of this resolution and a condition of approval will require that a Dune Restoration Plan be submitted to the County for review prior to the issuance of a building permit.

E. Denying the Permit Does Not Result in a Constitutional Takings

The appellants assert that there has been no showing of any substantial investment commensurate with reasonable investment-back expectations for the site. Further, the appellants assert that the property owners received notice that development was strictly prohibited in the AP floodplain such that the owners have been fully aware that re-development of their lot was prohibited. Additionally, the appellants assert that there has been no physical invasion of their property by the government nor has the applicant established that the denial of a permit “would deny them all economically beneficial or productive use of their land”.

Response

Subsequent to the hearing on November 22, 2021, additional materials were submitted by the applicant's consultant, Civic Knit, on July 12, 2023, including two documents attached to this memorandum titled, "Ownership History 21 Calle del Onda, Stinson Beach California" and "Owner Investments – 21 Calle del Onda, Stinson Beach, California". In order to evaluate whether denying the project would result in a taking, the takings analysis herein below analyzes facts relevant to consideration of this issue, including facts related to the topics referenced by the applicants, the ownership history, details regarding owner investments in the property and its development, and land use regulations and restrictions that applied to the property at the time the applicant acquired it or have been imposed since acquisition. These points are further discussed in Section 12 of this resolution.

F. The Project was approved without an Approved Septic System

The appellants assert that the project is inconsistent with Implementation Plan Section 22.70.070, which requires the applicant to show the project conforms to Marin County Local Coastal Program and Section 22.64.160(A) provides an application utilizing a private sewage disposal system should only be approved if the system is approved by the Environmental Health Service Division of the Community Development Agency or other authorities and complies with all requirements for individual septic disposal system by the Regional Water Quality Control Board.

Response

The project site had previously received the Stinson Beach County Water District's approval for an onsite septic system on July 18, 2020. The approval expired on July 18, 2023.

Marin County Local Coastal Program, Implementation Plan Section 22.64.140.A(1) provides:

"Adequate public services. Adequate public services (that is, water supply, onsite sewage disposal or sewer systems, and transportation, including public transit as well as road access and capacity if appropriate) shall be available prior to approving new development per Land Use Policy C-PFS-1.

No permit for development may be approved unless it can be demonstrated, in writing and supported by substantial evidence that it will be served with adequate water supplies and wastewater treatment facilities, consistent with the subsections below: [...]"

Section 22.64.140.A(1)(d) further provides:

"The application for development utilizing a private sewage disposal system shall only be approved if the disposal system:

- 1) Is approved by the Environmental Health Services Division of the Community Development Agency or other applicable authorities.
- 2) Complies with all applicable requirements for individual septic disposal systems by the Regional Water Quality Control Board."

The current and unchanged septic system design that was previously approved by the Stinson Beach County Water District (SBCWD) has been designed to meet the lowest wastewater design daily flow rate tier of 150-gallons pursuant to the standards of the SBCWD's requirements for septic systems. The requirements that the SBCWD applies to these septic system designs have not changed since SBCWD's prior approval. In addition, the applicant will be required to present a current and valid approval from SBCWD in order to secure a building permit from the County. As a result, there is substantial evidence that the septic system design for the project has been, and will be again, approved by applicable authorities prior to construction, and also that the project will be served by adequate wastewater treatment facilities. Further, as discussed in section 10.J of this resolution, a condition of approval will require that prior to issuance of a building permit, the applicant will be required to provide evidence of a septic system approval from the SBCWD.

G. The Planning Commission's Authority to Reconsider or Approve the Project

The appellants assert that the Planning Commission did not have the authority to reconsider or approve the project on August 14, 2023 and August 28, 2023 following the denial at the hearing on July 31, 2023. The appellants assert that the Planning Commission's action violates the denial and the procedures for project approval adopted by Marin County and State Law.

Response

On July 31, 2023, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project. By a vote of three ayes and three noes, the Planning Commission denied the SER/SMND. However, the Planning Commission did not take action on the merits of the project and instead voted to continue the hearing in order to further consider the project merits to August 14, 2023.

On August 14, 2023, the Planning Commission held a duly noticed public hearing to take public testimony and consider the revised project. During the hearing, staff discussed with the Planning Commission that pursuant to the Planning Commission Bylaws, ratified by the Board of Supervisors on December 9, 2008, the Planning Commission may reconsider a decision as follows:

"A decision of the Commission may be reconsidered at a subsequent, public-noticed meeting only if a motion to reconsider is made by a Commissioner who voted in the majority on the original decision and is approved by a majority vote of those Commissioners present at: (1) the same meeting at which the matter was decided; or (2) the subsequent meeting at the time the minutes and resolution reflecting the action taken at the original meeting are considered for ratification. If a majority of the Commission decides to reconsider an action, a new public notice shall be distributed. Nothing in this section shall be construed as to waive the requirements of the Permit Streamlining Act."

Commissioner Lind, who originally voted no to the adoption of the SER/SMND, made a motion to reconsider the previous decision made on July 31, 2023. Subsequently, by a vote of one no and five ayes, the Planning Commission voted to reconsider the prior decision on the SER/SMND that was made on July 31, 2023, and to continue the hearing to August 28, 2023 in order to take action on both the environmental review and the merits

of the project. A subsequent public notice was duly distributed for the reconsideration of the SMND for the project and the consideration of the Brian Johnson Trust Coastal Permit.

On August 28, 2023, the Planning Commission held a duly noticed public hearing to take public testimony and consider the project, including the reconsideration of the SER/SMND. Subsequently, the Planning Commission adopted the SER/SMND and approved the project.

H. Project did not comply with CEQA

The appellants assert that the Planning Commission did not require a full CEQA review of the project, instead relying on the mitigated negative declaration completed by the Stinson Beach County Water District. The appellants assert that the Commission should have required a full CEQA review given the project location on environmentally sensitive beach and dunes.

Response

As previously discussed in Section 2 above, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project, including the environmental review, on November 22, 2021. County staff initially relied upon the previous Initial Study/Mitigated Negative Declaration (2020 IS/MND) conducted by the Stinson Beach County Water District (SBCWD) in 2020. However, the Marin County Planning Commission took public testimony and continued the hearing with a request for staff to conduct additional environmental review and to conduct a takings analysis on the siting of the residence due to its location in an environmentally sensitive habitat area, specifically coastal dunes.

The 2020 IS/MND focused on the wastewater system variance under the SBCWD's review but considered future development of a residence as a reasonably foreseeable consequence of project approval. Therefore, construction of a residence was considered as part of the project and included in the environmental analysis. As a design for the future residence had not yet been developed, the IS/MND considered generally the potential impacts of construction of a residence, based on reasonable assumptions about scale, location within the parcel, and construction methods.

Following the Planning Commission hearing in November 2021 and subsequent to the applicant's revisions to the project, the County, as a Responsible Agency per State CEQA Guidelines Section 15381, determined that it would be necessary to prepare a Subsequent Environmental Review (SER) to determine the correct CEQA document to support a decision on the project. Pursuant to State CEQA Guidelines Section 15162, due to the involvement of new significant environmental affects, the conclusion of the SER resulted in preparation of a Subsequent Mitigated Negative Declaration (SMND).

The SER/SMND for the project was completed by Sicular Environmental Consulting and Natural Land Management on behalf of the County and was distributed to agencies and interested parties on January 9, 2023 for a 30-day public review period. The environmental review was conducted in conformance with the requirements of CEQA and a SMND is appropriate and legally adequate for the project.

10. The project is consistent with the mandatory findings for Coastal Permit Approval (Marin County Local Coastal Program, Implementation Plan Section 22.70.070) related to agriculture and mariculture, water resources, community design, community development, energy, housing, public facilities, transportation, historical and archaeological resources, and parks, recreation, and visitor-serving uses. However, the project is inconsistent with findings related to biological resources.

A. Coastal Access. The proposed project, as conditioned, is consistent with the applicable policies contained in the Public Coastal Access section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.180 (Public Coastal Access). Where the project is located between the nearest public road and the sea, a specific finding must be made that the proposed project, as conditioned, is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act (commencing with Section 30200 of the Public Resources Code)

The project is proposed entirely within the subject property; therefore, the project would not alter the existing public beach access provided at the terminus of Calle del Onda located adjacent to the northwestern property line of the subject property. Further, the project entails a voluntary offer proposed by the applicant to dedicate a 40-foot-wide lateral access easement located across the southern and most seaward portion of the property. The proposed lateral public access easement would result in enhanced shoreline access as the subject property does not currently provide any access easements located along the beach. However, to further ensure consistency with the Marin County Local Coastal Program, a condition of approval requires that the applicant shall record an offer of dedication for the public use of the proposed 40-foot-wide and 80-foot-long lateral access easement prior to issuance of a Building Permit.

The project is consistent with the LUP public coastal access policies (C-PA-3, C-PA-4, C-PA-17, C-PA-21) and this finding because the project site contains adequate nearby public access, and the applicant has proposed new public coastal access.

B. Biological Resources. The proposed project, as conditioned, is inconsistent with the applicable policies contained in the Biological Resources section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.050 (Biological Resources).

The project is proposed on a shorefront lot in Stinson Beach within a coastal dune area, which also characterizes the area surrounding the project site, including Marin County Upton Beach and Stinson Beach located to the south.

Pursuant to the Marin County Local Coastal Program, coastal dunes are considered to be environmentally sensitive habitat areas (ESHAs). The Marin County Land Use Plan (LUP) includes policies to protect ESHAs, including C-BIO-1, which states:

“1. An environmentally sensitive habitat area (ESHA) is 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.

2. ESHA consists of three general categories: wetlands, streams and riparian vegetation, and terrestrial ESHAs. Terrestrial ESHA includes non-aquatic habitats that support rare and endangered species; coastal dunes as referenced in C-BIO-7 (Coastal Dunes); roosting and nesting habitats as referenced in C-BIO-10 (Roosting and Nesting Habitats); and riparian vegetation that is not associated with a perennial or intermittent stream. The ESHA policies of C-BIO-2 (ESHA Protection) and C-BIO-3 (ESHA Buffers) apply to all categories of ESHA, except where modified by the more specific policies of the LCP.”

Buffers to ESHAs are required pursuant to C-BIO-3(3), which states:

“Establish buffers for terrestrial ESHA to provide separation from development impacts. Maintain such buffers in a natural condition, allowing only those uses that will not significantly degrade the habitat. Buffers for terrestrial ESHA shall be 50 feet, a width that may be adjusted by the County as appropriate to protect the habitat value of the resource, but in no case shall be less than 25 feet.”

Development within coastal dunes is prohibited pursuant to the Marin County LUP Policy C-BIO-7, which states:

“Prohibit development in coastal dunes to preserve dune formations, vegetation, and wildlife habitats. Prevent overuse in dune areas by mechanisms such as restricting parking, and directing pedestrian traffic through signage and sand fencing to areas capable of sustaining increased use. Prohibit motor vehicles in dune areas except for emergency purposes, and prohibit motor vehicles in non-dune beach areas except for emergency and essential maintenance purposes and where previously coastal permitted.”

Further, the Marin County LUP Policy C-BIO-9 provides specific requirements related to Stinson Beach Dune and Beach Areas as follows:

“Prohibit development that would adversely impact the natural sand dune formation and sandy beach habitat in the areas west of the paper street Mira Vista and the dry sand areas west of the Patios. Prohibit development west of Mira Vista, including erection of fences, signs, or other structures, to preserve the natural dune habitat values, vegetation and contours, as well as the natural sandy beach habitat. Continue to pursue a land trade between the lots seaward of Mira Vista and the street right-of-way to more clearly establish and define the public beach boundaries.

Site development of other shorefront lots within the Stinson Beach and Seadrift areas outside of the natural sand dune formations, consistent with LUP Policy C-BIO-7 (Coastal Dunes). Where no dunes are evident, any new development on shorefront lots shall be set back behind the first line of terrestrial vegetation as far as is necessary to demonstrate required stability and hazards protection, avoid the need for shoreline protective devices, protect sandy beach habitat, and provide a buffer area between private and public use areas to protect both the scenic and visual character of the beach, and the public right of access to the use and enjoyment of sand areas.”

The applicant submitted a Biological Site Assessment (BSA) of the site, which was conducted in October 2019 by WRA, Environmental Consultants, along with a supplemental letter prepared by WRA, Environmental Consultants dated October 4, 2021. Additionally, an Initial Study was prepared by the Stinson Beach County Water District (SBCWD), as the lead agency responsible for the environmental review, related to a wastewater system variance for the site and the resulting Mitigated Negative Declaration

and a Mitigation Monitoring and Reporting Program was adopted by the agency on July 18, 2020.

These environmental review documents were initially reviewed and debated during a previously noticed public hearing by the Marin County Planning Commission on November 22, 2021. The Planning Commission continued the hearing and requested County staff to reevaluate the SBCWD's Initial Study and assess the environmental review requirements for the project. The County, as a Responsible Agency per State CEQA Guidelines Section 15381, conducted a Subsequent Environmental Review and Subsequent Mitigated Negative Declaration (SER/SMND), as well as a subsequent Response to Comments (RTC) prepared for the County by Sicular Environmental Consulting and Natural Lands Management.

The SER/SMND expanded upon the 2020 environmental review adopted by the SBCWD to consider new information presented through public comment submitted for the public hearing to consider the project on November 22, 2021. Additionally, the SER/SMND identified and considered new impacts posed by the revised project including the 1,296 square-foot residence and appurtenant facilities such as paving, the septic system, and landscape improvements.

The previous 2020 IS/MND prepared by SBCWD concluded that the biological resource values of the sand dunes, a sensitive natural community, would be slightly but not substantially reduced by the project based upon the prevalence of non-native species (i.e., ice plant), absence of special-status species, and existing recreational pressure on the site.

However, the County-initiated SER/SMND affirms that the project site contains dune habitat that is afforded status as a sensitive natural community and is considered to be ESHA because such habitat is considered to be rare due to historical declines in its overall abundance and is particularly vulnerable to human disturbance and degradation. Further, the SER/SMND affirms that the ESHA would be impacted by the project because portions of the development footprint would be sited in coastal dune habitat.

According to the SER/SMND and subsequent Response to Comments (RTC), approximately 1,573 square feet of the 15,200 square-foot project site is comprised of coastal dune habitat considered to be ESHA. The project footprint entails 1,658 square feet of development, including the proposed 1,296 square-foot residence and appurtenant facilities. Of the ESHA area identified on site, approximately 942 square feet of ESHA would be permanently affected by being paved or built over, 169 square feet of ESHA would be temporarily affected by grading but would not be paved or built over, and 462 square feet of ESHA would be unaffected. As such, the ESHA on site would be impacted by the project due to the proposed residential development within and adjacent to dune ESHA without any buffers.

Therefore, the project is inconsistent with the Marin County Land Use Plan's policies for biological resources (C-BIO-1, C-BIO-3, C-BIO-7, and C-BIO-9) because it entails development within and adjacent to coastal dune ESHAs and does not maintain any buffers from the coastal dune. Because a strict application of this policy would likely constitute a potential regulatory taking of the property, findings have been made to

address the potential for a taking in Section 12 below, pursuant to Marin County Local Coastal Program, Implementation Plan Section 22.70.180.

However, the project is consistent as possible with this finding because the project was sited and designed to minimize encroachment into sandy beach areas as much as possible. Further, the project has been mitigated to reduce the impacts to biological resources, including a mitigation measure to prepare and implement a Dune Restoration Plan prepared by qualified restoration biologist, as further discussed in the SER/SMND. The mitigation measure entails components of a Dune Restoration Plan as detailed in the Marin County Implementation Plan Section 22.64.050(A)(1)(d).

The project has been designed to further comply with other policies of the LCP, including the stringline method of preventing beach encroachment pursuant to LUP Policy C-BIO-8, which states:

“In a developed area where most lots are developed and where there are relatively few vacant lots, no part of a proposed new development (other than an allowable shoreline protective device), including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjacent structures. Enclosed living space in a new unit or addition shall not extend farther seaward than a second line drawn between the most seaward portions of the enclosed living space of the adjacent structures.”

On June 10, 2022, the applicant revised the project and provided a revised site plan drawing that provides a stringline utilizing an existing structure on the adjacent property located immediately to the southeast of the subject property and an existing structure on the adjacent property located immediately to the northwest of the subject property pursuant to LUP Policy C-BIO-8. The extent of proposed development, including decks, would be setback from the landward side of the stringline and would therefore prevent new development from encroaching farther onto the beach than the most seaward portions of existing adjacent structures. An alternative stringline provided by the applicant utilizing structures from other properties further demonstrates that the proposed development would not encroach further onto the sandy beach than the existing pattern of development of other shoreline lots in the vicinity.

To further maximize consistency with this finding, a condition of approval will require that a Dune Restoration Plan be submitted to the County for review prior to the issuance of a building permit.

C. Environmental Hazards. The proposed project, as conditioned, is consistent with the applicable policies contained in the Environmental Hazards section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.060 (Environmental Hazards).

On July 13, 2021, the Board of Supervisors voted to activate the certified Local Coastal Program (LCP) Amendments. All portions of Marin’s LCP Amendments have been approved by the Board of Supervisors and certified by the Coastal Commission with the exception of chapters related to environmental hazards, which remain the subject of ongoing work and public input. As a result, those sections of the original versions of the LCP, certified by the Coastal Commission in 1980 (Unit I) in 1981 (Unit II) and the Marin County Interim Code Sections 22.56.130I.H, 22.56.130I.K, and 22.56.130I.L still apply to environmental hazards and are further discussed in section 1.7 below.

D. Agriculture and Mariculture. The proposed project, as conditioned, is consistent with the applicable policies contained in the Agriculture and Mariculture sections of the Marin County Land Use Plan and the applicable agricultural and maricultural standards contained in Chapter 22.32.

The project entails the construction of a single-family residence and is located within an area governed by a conventional residential zoning district, C-R2 (Coastal, Residential, Two-Family). As the project does not entail agricultural or maricultural uses, this finding does not apply.

E. Water Resources. The proposed project, as conditioned, is consistent with the applicable policies contained in the Water Resources section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.080 (Water Resources).

The project entails site work and the construction of new pervious and impervious surfaces on a vacant property. The project site is relatively flat with an average slope of seven percent. The project site consists of non-native vegetation and includes coastal dune and sandy beach areas.

The project would result in 1,658 square feet of new impervious surface. Associated earthwork would result in 52 cubic yards of cut and 118 cubic yards of fill, resulting in a total of 170 cubic yards of earthwork and net import of 66 cubic yards. The applicant provided a grading and drainage plan that was reviewed and found to be acceptable by the Department of Public Works. Additionally, an engineered grading and drainage plan depicting and describing best management practices and a storm water control plan would be required prior to the issuance of a building permit for the project.

Though the project entails minor alterations of the site including the removal of non-native vegetation, it has been sited to cluster development on the most landward portions of the site and would retain portions of the site containing sandy beach to the greatest extent possible. As such, the project is consistent with the standards related to water quality, grading and excavation because it entails adequate water quality and erosion control measures and associated grading would be the minimum necessary for the development.

Therefore, the project is consistent with the LUP water quality policies and would not result in substantial soil erosion or discharge of sediments or pollutants into surface runoff that would adversely affect the quality of coastal waters (C-WR-1, C-WR-2, C-WR-3, C-WR-6) because the grading and drainage improvements would comply with the Marin County standards and best management practices required by the Department of Public Works.

F. Community Design. The proposed project, as conditioned, is consistent with the applicable policies contained in the Community Design section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.100 (Community Design).

The project entails the development of a single-family residence proposed within a residential neighborhood located to the north of Stinson Beach within the Stinson Beach community.

The neighborhood is comprised of a varied mix of architectural styles consisting of both one-story and two-story homes that were constructed before and after the adoption of Base Flood Elevation (BFE) requirements of the Federal Emergency Management Agency (FEMA), resulting in homes with varied heights. The new residence is proposed to be located within the VE FEMA zone flood zone where BFE requirements are applicable and project components such as a septic system that would be located within the AO FEMA flood zone.

The property is located in an area governed by the C-R2 (Coastal, Residential, Two-family) zoning district where a maximum height of 25 feet is allowed pursuant to the Marin County Implementation Plan, Table 5-4-a. The residence is proposed to reach a maximum height of 20 feet, seven inches above existing grade.

The project site is not located on or near a visually prominent ridgeline. Uninterrupted views of the ocean from Hwy 1 are blocked by existing development and naturally occurring topographic features.

The project has been sited such that it would preserve views of the ocean as seen from public viewing places such as the terminus of Calle Del Onda. Views of the distant Mount Tamalpais to the north of the subject property from the ocean would not be further affected than existing conditions as the project has been designed to be set back from the seaward portion of the property and in alignment with the existing pattern of residential development in the neighborhood.

As such, the project is consistent with the Stinson Beach Community Standards pursuant to Marin County Implementation Plan Section 22.66.040, LUP policies related to development in Stinson Beach (C-SB-1), and LUP community design policies for the protection of scenic and visual qualities of the coast (C-DES-2 and C-DES-3) because the height, scale and design of the residence is compatible with the existing pattern of development in the neighborhood. Further, the project would not result in adverse impacts to existing scenic views to and from the ocean as seen from public viewing places and would fit within the context of the surrounding natural and built environment, consistent with LUP community design policies (C-DES-1 and C-DES-4).

G. Community Development. The proposed project, as conditioned, is consistent with the applicable policies contained in the Community Development section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.110 (Community Development).

The project site is located within a developed residential neighborhood located along the shoreline of the Marin County Park's Upton Beach in the community of Stinson Beach. Further, the project entails the construction of a residence consistent with the governing residential zoning district, C-R2 (Coastal, Residential, Two-family). Therefore, the project is consistent with this finding.

H. Energy. The proposed project, as conditioned, is consistent with the applicable policies contained in the Energy section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.120 (Energy).

The project would be required to satisfy all energy-saving standards as required by the County's Building and Safety Division prior to the issuance of a building permit. Therefore, the project is consistent with the LUP energy policies (LUP Policies EH-2.1, EH-2.3, and CD-2.8) and this finding because it would be constructed in conformance with County energy efficiency standards, as verified during review of the Building Permit application.

- I. Housing. The proposed project, as conditioned, is consistent with the applicable policies contained in the Housing section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.130 (Housing).**

The proposed project entails the construction of a new residence on a vacant property and therefore, would not result in the removal or demolition of low and/or moderate-income housing. Therefore, the project is consistent with the LUP housing policies to address low- and moderate-income housing needs in the Coastal Zone (LUP Policies C-HS-1) because it does not entail the demolition of existing deed restricted affordable housing and would not affect the available housing stock in the surrounding community.

- J. Public Facilities and Services. The proposed project, as conditioned, is consistent with the applicable policies contained in the Public Facilities and Services section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.140 (Public Facilities and Services).**

The project is located on an existing lot and would be provided water service by the Stinson Beach County Water District. The project site had previously received the district's approval for an onsite septic system on July 18, 2020. The approval expired on July 18, 2023. However, the septic system has been designed to meet the lowest wastewater design daily flow rate tier of 150-gallons pursuant to the standards of the SBCWD's requirements for septic systems. Further, as conditioned herein, the applicant will be required to provide evidence of a septic system approval from the SBCWD prior to issuance of a building permit. Therefore, the project is consistent with the LUP public facilities and services policies (C-PFS-1 and C-PFS-7) and this finding because it would be adequately served by existing public water service and an onsite septic system pursuant to MCC LUP Section 22.64.140 and must meet the minimum requirements of the SBCWD prior to the issuance of a building permit.

- K. Transportation. The proposed project, as conditioned, is consistent with the applicable policies contained in the Transportation section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.150 (Transportation).**

The project is currently accessed from Calle Del Onda and would not entail any alterations or impacts to existing roadway facilities or public parking facilities. Therefore, the project is consistent with the LUP transportation policies (C-TR-1 and C-TR-2) and this finding because it would not entail any alterations to existing roadway facilities or result in impacts to the scenic quality of Highway One.

- L. Historical and Archaeological Resources. The proposed project, as conditioned, is consistent with the applicable policies contained in the Historical and Archaeological Resources section of the Marin County Land Use Plan and the**

applicable standards contained in Section 22.64.160 (Historical and Archaeological Resources).

The project site is not located within any designated historic district boundaries as identified in the Marin County Historic Study for the Local Coastal Program. Therefore, the project is consistent with the LUP historical and archaeological resources polices (C-HAR-2, C-HAR-8) and this finding because the project site is not located within any mapped historic district boundaries and would not affect historical, archaeological, or paleontological resources.

M. Parks, Recreation, and Visitor-Serving Uses. The proposed project, as conditioned, is consistent with the applicable policies contained in the Parks, Recreation, and Visitor-Serving Uses section of the Marin County Land Use Plan and the applicable standards contained in Section 22.64.170 (Parks, Recreation, and Visitor-Serving Uses).

The project site is located adjacent to the Marin County Park's Upton Beach which is accessible through Calle Del Onda located along the northwestern property line of the subject property amongst other public accesses located along the beach. The project does not entail any construction of development that would encroach into existing public access points to and from surrounding public parks, recreation, or visitor-serving uses, and the project site is located within a residential zoning district. Therefore, the project is consistent with the LUP policies for parks, recreation, and visitor serving uses (C-PK-1 and C-PK-3) and this finding because it is proposed entirely on an existing residential property that is not located within a mixed-use coastal village commercial/residential zone and does not entail any construction of development that would encroach into existing public access points to and from surrounding public parks, recreation, or visitor-serving uses.

11. The project is consistent with the mandatory findings for Coastal Permit approval pursuant to Marin County Interim Code Section 22.56.130I.K. However, the project is inconsistent with the mandatory findings for Coastal Permit approval pursuant to Marin County Interim Code Sections 22.56.130I.H and 22.56.130I.L.

A. Dune Protection (Marin County Interim Code Section 22.56.130I.H)

The project site is a shorefront lot located adjacent to Marin County Park's Upton Beach and is not located adjacent to the undeveloped right-of-way known as Mira Vista Street in Stinson Beach. However, the project entails development within coastal dunes.

Marin County Interim Code Section 22.56.130.1.H(3) states:

"Development of shorefront lots within the Stinson Beach and Seadrift area shall assure preservation of the existing sand dune formations in order to protect environmentally sensitive dune habitat, vegetation and to maintain the natural protection from wave runoff which such natural dunes provide. Where no dunes are evident, new development shall, to the maximum extent feasible, be set back behind the first line of terrestrial vegetation. Development approvals for new projects located along such shorefront parcels shall be accompanied by findings, including mitigation conditions, establishing the project's design and location, minimizing the need for shoreline protective works, protecting sandy beach habitat, providing a buffer area between public and private use areas, protecting the scenic and recreational character of the beach and maintaining the public rights of access to and

use of beach dry sand areas. Permits authorizing repair and maintenance to existing shoreline structures shall to the extent feasible, provide for the above standards and objectives.”

The project entails measures to protect the sandy beach such as siting the development so that it would not be built farther onto a beachfront than a line drawn between the most seaward portions of the adjacent structures. The project is also sited within the area of existing terrestrial vegetation consisting of ice plant mats. Additionally, as discussed in the Subsequent Environment Review and Mitigated Negative Declaration (SER/SMND) prepared for the County by Sicular Environmental Consulting and Natural Lands Management, the project’s impact on coastal dune resources has been mitigated to less than significant with the incorporation of measures requiring the preparation and implementation of a Dune Restoration Plan to restore dune areas not permanently impacted by the proposed development.

However, as previously discussed above in Section 5.B, the project entails the development a shorefront lot within the Stinson Beach area and would be sited within a coastal dune without any buffers.

Marin County Interim Code Section 22.56.130.1.H(3) states:

“No development shall be permitted in the sensitive coastal dune habitats in order to preserve dune formations, vegetation and wildlife habitats. Overuse in dune areas shall be prevented by such mechanisms as restricting parking, directing pedestrian traffic to areas capable of sustaining increased use, and fencing. No motor vehicles shall be permitted in beach or dune areas except for emergency purposes.”

Therefore, the project is inconsistent with this finding because the project entails development in a coastal dune habitat. As such, findings have been made to address the potential for a taking in Section 12 below pursuant to Marin County Local Coastal Program, Implementation Plan Section 22.70.180 because the inclusion of a residence and its appurtenant facilities, including an onsite sewage disposal system, would allow for the minimum economically beneficial use of the property.

However, the project is as consistent as possible with this finding because it does not involve development in the right-of-way known as Mira Vista Street, no subdivision is proposed, no development is proposed seaward of established setback lines, and development has been setback to the first line of terrestrial vegetation. Additionally, the project has been mitigated pursuant to the SER/SMND in order to reduce impacts to coastal dunes, including a dune restoration plan. To further ensure consistency with this finding, a condition of approval will require that a Dune Restoration Plan be submitted to the County for review prior to the issuance of a building permit.

B. Shoreline Protection (Marin County Interim Code Section 22.56.130I.K)

The proposed project is not located within a bluff erosion zone. The project does not entail revetments, breakwaters, groins, harbor channels, seawalls, or cliff retaining walls.

The project entails the construction of a septic system located in proximity to a beach that would utilize a raised bed with a retaining wall to increase separation from seasonal high groundwater and to protect the dispersal field from potential wave erosion.

The applicant provided a coastal engineering analysis and geotechnical report prepared by engineering consultants, Noble Consultants, dated June 22, 2020. Additionally, Noble Consultants prepared a supplemental letter dated May 13, 2021, further clarifying flood risks including impacts during high tides and sea level rise. The analysis concluded that while the septic system may be inundated in 50 years during a 100-year storm event, it will not be directly exposed to wave action from the ocean.

The septic system is proposed to be located on the most landward portion of the subject property as required by the Stinson Beach County Water District's standards for onsite sewage disposal systems. Given the constraints of the site, there is no other nonstructural alternative that is practical or preferable for the location of the septic system and its appurtenant structures. The condition causing the system design is specific to the available project siting and the risks posed by sea level rise and flooding rather than a general erosion trend. The septic system is located more than 350 feet away from Easkoot Creek and has been set back on the most landward portion of the site to the greatest extent possible. Further, the septic system would not be located in any wetlands or other significant resource, or habitat area as verified by the Biological Site Assessments and Subsequent Environmental Review and Mitigated Negative Declaration (SER/SMND) discussed above. The septic system design, along with the siting of the residence would not result in the reduction of public access or restrict navigation or other coastal uses.

Further, the SER/SMND affirms that the proposed concrete wall surrounding the septic system is a key element designed to protect the system from localized erosion during inundation and damage due to wave action. In addition, the retaining wall is proposed to only extend three to six inches above existing grade. The design and the landward location of the septic system would not act as a shoreline protective device and is not intended to arrest shoreline, bluff erosion, or coastal retreat.

The SER/SMND further concludes that the septic design would neither redirect wave energy in a manner that would create erosion, geologic instability, or destruction of the site or neighboring properties due to altered on-site conditions. Additionally, the SER/SMND concludes that the proposed 1,296 square-foot residence would not substantially change the baseline conditions of on-site drainage patterns, including wave runup processes, or significantly alter shoreline erosion patterns (i.e., wave runup and shoreline recession) as it would be constructed on concrete piers to elevate it above calculated flood elevations. Therefore, the construction of the project, inclusive of the residence and septic system, would not alter natural shoreline processes.

The applicant has voluntarily proposed to record a deed restriction that permits no future shoreline protection and requires removal of the structure at such time as a legally authorized public agency issues and order to do so. To further ensure consistency with the Marin County Local Coastal Program, a condition of approval requires that before issuance of a building permit, the applicant shall record a deed restriction that permits no future shoreline protection and requires the removal of all structures authorized by Coastal Permit approval at such time as a legally authorized public agency issues an order to do so.

Additionally, per the Preliminary Geotechnical Feasibility Study prepared by Murray Engineers Inc, dated January 14, 2021, though the project site is not located within a State-defined earthquake fault zone for the San Andreas fault, the project site would be

subject to strong to very violent ground shaking during an earthquake, the Marin County Community Development Agency, Building and Safety Division will require seismic compliance with the California Building Code prior to issuance of a project building permit. Therefore, the project is consistent with this finding.

C. Geologic Hazards (Marin County Interim Code Section 22.56.130I.L)

The project entails development within the floodplain of Easkoot Creek.

The Marin County Local Coastal Program Unit 1, Policy IV-30 states:

“[...] Development shall not be permitted within the 100-year floodplain of Easkoot Creek and shall otherwise conform with LCP Policies on septic systems and stream protection.”

Additionally, the Marin County Interim Development Code (MCC) Section 22.56.130I.L(2) addresses floodplain development and requires that:

“Coastal project permit applications adjacent to streams which periodically flood shall include a site plan that identifies the one-hundred-year floodplain (as described by the Army Corps of Engineers). Development of permanent structures and other significant improvements shall not be permitted within the limits of the one hundred-year floodplain.”

Further, on July 28, 2015, the Marin County Community Development Agency, Planning Division issued a determination and mailed to owners of property in Stinson Beach a memorandum related to the floodplain of Easkoot Creek. The determination provided the following:

“Recently, during the county’s review of a development application to construct a residence on a property located within the floodplain of Easkoot Creek, staff from the California Coastal Commission informed the County that properties located within flood zones AO and AE as mapped by the Federal Emergency Management Agency (FEMA) are subject to the afore-mentioned limitations.”

A septic system is required for residential development on the site due to the lack of public sewage facilities. The project applicant received a Variance approval from the Stinson Beach County Water District for a new septic system. The variance authorized a reduction in the district’s setback requirements from a waterbody adjacent to the property, the Pacific Ocean. The resulting portion of the site available for the septic system, in conformance with the SBCWD’s variance approval, is located within the AO FEMA flood zone.

The project is inconsistent with Policy IV-30 and Marin County Interim Code Section 22.56.130L as discussed above, because it entails development in the one-hundred-year floodplain of Easkoot Creek, specifically in an AO FEMA flood zone.

The project proposes the construction of a new septic system that is inconsistent with Policy IV-30 and Marin County Interim Code Section 22.56.130L as discussed above. However, because strict application of this policy and code section would preclude the installation of an onsite sewage disposal system that is necessary for the residential development that would allow for the minimum economically beneficial use of the property,

findings have been made to address the potential for a taking in Section 7 below pursuant to Marin County Local Coastal Program, Implementation Plan Section 22.70.180.

Though the project is inconsistent as described above, it is as consistent as possible with this finding because a condition of approval requires that the application execute and record a waiver of public liability holding the county, other governmental agencies and the public harmless because of loss experienced by geologic activities.

12. If the application of the policies, standards, or provisions of the Local Coastal Program to proposed development would potentially constitute a taking of private property, then a development that is not consistent with the LCP may be allowed on the property to avoid a taking, provided such development is as consistent as possible with all applicable policies and is the minimum amount of development necessary to avoid a taking as determined through a takings evaluation, including an evaluation of the materials required to be provided by the applicant as set forth in Marin County Local Coastal Program, Implementation Plan, Section 22.70.180. Such takings evaluation is as follows:

A. Assumptions and Evidence. Pursuant to section 22.70.180(A), this takings analysis includes the subject parcel, which is the only parcel that is held by the applicant in the area. To inform this analysis, the applicant has provided the following information:

i. The date the applicant purchased or otherwise acquired the property, and from whom. The applicant for the subject Coastal Permit application is Brian Johnson, who submitted on behalf of the property owners, inclusive, of the Brian Johnson Trust: Janiele Herbert, successor trustee of the Modestine Bagwell 2003 Revocable Trust; Scott Combs; Rene Wicks; and Eileen Combs.

According to the document titled, "Ownership History 21 Calle del Onda, Stinson Beach California" ("ownership history") provided by the applicant's consultant Civic Knit, on behalf of the property owners and received on July 12, 2023, the property has been in the owners' family since 1937. For an unidentified sum, previous members of the owners' family purchased four historic subdivision lots identified as Lots 1,2,5, and 7 in Block 3 as described in a map entitled "Subdivision Lot Q Charles Robinson Tract, Subdivision One Marin Co. Cal", filed April 28, 1931 in Map Book 5, at page 60, Marin County Records. Subsequently, a 540 square-foot residence was constructed. Following several mergers, including a County-initiated merger in which the owners waived their right to a public hearing, the above-mentioned units of real property previously identified as Assessor's Parcels 195-162-13 and 195-162-14 were merged into what is known as the subject unit of real property ("the property"), further identified as Assessor's Parcel 195-162-49.

According to a Grant Deed, recorded in Marin County Records on September 30, 1974, the property was gifted by Merle Smith to his daughters Modestine Bagwell, Colette Combs, Marnette Cedarholm, Deon Johnson and Yvette Kimball. According to the ownership history, the 20 percent share held by Marnette Cedarholm was transferred to the remaining title holders, resulting in each holding a 25 percent share as tenants in common.

The applicant, Brian Johnson, acquired an initial one-eighth interest in the property when he inherited this interest from his mother, Deon Johnson, upon her death on December 7, 1979, for which her interest was indicated to entail a value of \$16,000.00 according to a Decree of Distribution dated December 29, 1980 and recorded in Marin County Records on January 8, 1981.

The applicant acquired an additional one-eighth interest in the property in 1990 when he purchased this interest from his brother for an estimated value of \$35,000. This transaction resulted in the applicant holding a 25% in the property. At the same time, Theresa Johnson, Brian Johnson's wife, quitclaimed her interest in the property to him. Further, in 1997, Brian Johnson transferred his 25% interest into the Brian Johnson Trust.

In 2003, the applicant purchased an additional 25% interest in the property from Yvette Trost for an estimated value of \$65,000.00. This transaction resulted in the applicant holding a 50 percent interest in the property, which the applicant continues to hold today. In sum, the applicant has directly invested approximately \$108,715.00 to purchase his 50% interest in the property.

At the time the applicant, Brian Johnson, acquired his initial interest in the property in 1979, the property included a 540 square-foot residence, which was later destroyed by fire in 1985. The applicant states that after the property was destroyed, the authorities told him that he would be given permission to rebuild a residence on the property. There is no written evidence to corroborate this statement.

- ii. **The purchase price paid by the applicant for the property.** As discussed above, the applicant, Brian Johnson inherited his initial interest in the property. According to the aforementioned ownership history, Brian Johnson paid \$8,715.00 to clear Deon Johnson's estate upon her transfer of the property to him in 1980. He subsequently purchased an additional one-eighth interest in the property for \$35,000 in the 1990 and an additional 25% interest in the property for \$65,000.00 in 2003.
- iii. **The fair market value of the properties at the time the applicant acquired them, describing the basis upon which the fair market value is derived, including any appraisals done at the time.** As provided in the aforementioned ownership history, the Marin County Assessor set the combined value of the two Assessor Parcels comprising the subject property at \$59,289.00 at the time the applicant inherited his initial interest in the property in 1979.

At the time the applicant obtained a one-fourth interest by purchasing his brother's one-eighth interest for \$35,000.00, the Marin County Assessor set the value of the two parcels at \$100,000.00. No evidence has been discovered suggesting that the assessed value was materially different from the market value at the time, or that the market value did not reflect an expectation that the property could be developed. As a result, the price that the applicant paid for a one-eighth interest in the property at this time appears to have been based on an expectation that the property would be developed.

At the time the applicant obtained an additional one-fourth interest by purchasing Yvette Trost's interest for an estimated value of \$65,000.00, the Marin County Assessor assigned a land value of \$218,686. No evidence has been discovered suggesting that the assessed value was materially different from the market value at the time, or that the market value did not reflect an expectation that the property could be developed. As a result, the price that the applicant paid for a 25% interest in the property at this time appears to have again been based on an expectation that the property would be developed.

- iv. **The general plan, zoning or similar land use designations applicable to the properties at the time the applicant acquired them, as well as any changes to these designations that occurred after acquisition.** In 1979, no Local Coastal Program applied to the property. Instead, the property was zoned R2 (Two-Family, Residential District) pursuant to Ordinance 2295 adopted on July 19, 1977. Single-family and two-family dwellings were included as allowable uses under the R2 zoning district.

On May 19, 1981, the Marin County Board of Supervisors adopted zoning changes to implement coastal regulations consistent with the Marin County Local Coastal Plan, Unit 1 that were certified by the California Coastal Commission on April 1, 1980. Further, on May 19, 1981, the Marin County Board of Supervisor's adopted Ordinance 2638, which resulted in the rezoning of the subject property to C-R2. Pursuant to Ordinance 2638, the "C" combining district is a zone that was established to implement procedures and standards for the County's issuance of "Coastal project permits", consistent with the aforementioned Marin County Local Coastal Plan, Unit 1. The allowable uses under the C-R2 zoning district include one-family dwellings and two-family dwellings. The subject property remains designated under the C-R2 zoning district.

The applicant first acquired interest in the property in 1979 prior to zoning changes implemented by the certification of the Marin County Local Coastal Plan, Unit 1 and the subsequent rezoning by the Marin County Board of Supervisors as described above. The applicant acquired additional interests in the property in 1990 and 2003 as discussed above, prior to further changes to the Local Coastal Program adopted by the Marin County Board of Supervisors on July 13, 2021, as discussed in section A.5 below. These changes included amendments to coastal permitting requirements and land use policies, including those related to environmentally sensitive habitat areas. However, the C-R2 zoning district governing the subject property, including the allowable residential uses, remains unchanged.

- v. **Any development restrictions or other restrictions on use, other than government regulatory restrictions described in subsection (4) above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition.**

The owners of the property have sought to develop it in various ways for many years, and the regulatory restrictions that have applied to the property over the years have also varied.

For example, in 1979, the owners sought to divide the parcel into two separate building sites. A tentative map was approved by the Marin County Planning Department on September 11, 1979. But on November 21, 1979, the Coastal Commission recommended denial of a permit for the proposed development. The primary bases for the Commission's decision were (1) the proposed development would result in destruction of a sandy beach area to accommodate construction of a single dwelling or duplex; and (2) even if a new structure could be sited behind the first line of terrestrial vegetation, the structure would adversely affect the existing scenic and visual character of the area unless it included an adequate buffer area to protect both the public and the property owner. The Commission also found that approval of the permit would prejudice the County's ability to prepare a Local Coastal Program.

The County of Marin adopted the Marin County Local Coastal Program (LCP), Unit 1, in 1980, which included Policy IV-30.

In approximately 1985, the 540 square-foot residence on the property was destroyed. A wastewater system installed to service that residence remained on the lot but has not been used since that time. At the time, the applicant has stated that he was told by local authorities that he would be given permission to rebuild the residence (though there is no documentary evidence of this). He chose not to do so at the time.

In approximately 1990, the applicant increased his one-eighth interest in the property by purchasing a one-eighth interest in the property from his brother. In 2003, the applicant purchased a further 25% interest in the property from Yvette Trost.

On July 28, 2015, County of Marin Community Development Agency, Planning Division issued a memorandum to property owners within the vicinity related to FEMA flood zones and the Easkoot Creek floodplain, which included the following:

"Recently, during the county's review of a development application to construct a residence on a property located within the floodplain of Easkoot Creek, staff from the California Coastal Commission informed the County that properties located within flood zones AO and AE as mapped by the Federal Emergency Management Agency (FEMA) are subject to the afore-mentioned limitations."

According to the document titled "Owner Investments – 21 Calle del Onda, Stinson Beach, California" ("owner investment statement") provided by the applicant's consultant Civic Knit, on behalf of the property owners and received on July 12, 2021, the owners entered into a sale agreement with Mr. Craig Nunes for \$1,500,000.00 in 2015.

On March 9, 2016, a Coastal Permit application (P1162) was submitted by Craig Nunes, on behalf of the owners, to develop a 2,454 square-foot single-family residence on the property with an attached one-car garage, in addition to other new site improvements, including a septic system, driveway, boardwalk, and rope fence. Marin County Planning Division staff requested

additional information and provided preliminary merits comments upon initial review of the application. The comments identified three potentially serious issues with the previous proposal, including (1) the California Coastal Commission's position on development within a Shoreline Protection and Hazard Area pursuant to comments submitted on March 31, 2016, (2) that the Stinson Beach County Water District would require a variance approval for the septic system under a separate process and (3) the proposed project was identified as substantially inconsistent with the Base Flood Elevation and the FEMA maps that were relied upon at the time of the application.

On March 31, 2016, the Coastal Commission submitted comments regarding the proposed permit. On the issue of "Sandy Beach Protection," the Commission stated:

"The Marin LCP also states that development on shorefront lots in Stinson Beach shall preserve the natural sand dune formations in order to protect environmentally sensitive habitat and preserve the natural sand dune formations in order to protect environmentally sensitive habitat and maintain the natural protection from wave run-up. Where no dunes are evident, the LCP requires development on shorefront lots be set back behind the first line of terrestrial vegetation to the maximum extent feasible, in order to protect sandy beach habitat and the public right of access to [] use dry sand areas. As such, this permit application must include a biological evaluation of the property in order to assess the extent of sensitive dune habitat and species on or adjacent to the site (and appropriate buffers) and, in the event that no dune habitat exists, the first line of terrestrial vegetation.

[...]

The provision and protection of coastal access and protection of sandy beaches and dune habitat in this case could include 1) setting the development back from the beach and/or any sensitive dune habitat to the maximum extent feasible and consistent with any recommended sensitive habitat buffers (including by reducing the site of the proposed house if necessary); and/or 2) a lateral easement on the Applicant's property along the dry sand adjacent to tidelands that could be accepted by the Marin County Open Space District, which owns and maintains the adjacent beach; and/or 3) a prohibition on the proposed rope fencing that could prevent lateral public access along the beach at high tide. As required by the Marin LCP, development approval for the proposed project must be accompanied by findings, including mitigation measures and conditions of approval, establishing that the project's design and location would protect sandy beach habitat, provide a buffer area between public and private use areas, protect the scenic and recreational character of the beach and maintain the public rights of access to and use of dry sand beach areas."

On June 16, 2016, the applicant, Craig Nunes, resubmitted materials, including items that were requested by staff. In response to comments provided by the California Coastal Commission and the County, the applicant commissioned and obtained a Coastal Engineering analysis to address shoreline protection and hazard area concerns, a biological site assessment to address dune and sandy beach protection issues, a constraints map to identify site-specific constraints, and submitted an application for a variance to the Stinson Beach

County Water District for a septic system. Subsequently, the applicant, Craig Nunes, withdrew the application on August 19, 2016, and the sale was cancelled.

It does not appear that the County or the Commission mentioned that FEMA flood zones or Environmentally Sensitive Habitat Areas (ESHA) restrictions barred development on the property in connection with the Nunes application.

In 2019, the applicant applied for a variance to develop a new wastewater system on the property to replace the system that had been built in connection with the residence that was destroyed by fire in 1985. In connection with that application, the Stinson Beach County Water District prepared, at the applicant's expense, a draft initial study and proposed Mitigated Negative Declaration regarding the application. On July 18, 2020, the District approved the variance and adopted the Mitigated Negative Declaration. The approval included findings that the variance is necessary for the preservation and enjoyment of a substantial property right due to insufficient area on the property to meet site criteria setbacks and to allow the potential development of a single-family residence for the lowest wastewater design daily flow rate tier of 150-gallons. Therefore, the denial of an onsite septic system and the residence it accommodates would result in a potential taking because it would not allow for the minimum economically beneficial use of the project site.

On July 13, 2021, the Board of Supervisors voted to activate the certified Local Coastal Program (LCP) Amendments, including the Marin County Land Use Plan policies for biological resources as described in Section 5.B, above, which prohibit development in Environmentally Sensitive Habitat Areas (ESHAs).

On August 5, 2021, the Coastal Commission provided comments to the applicant regarding what by then had become a proposal to develop the property with a 1,488 square-foot single-family residence and attached garage, as well as a new septic system. On the topic of ESHAs, the Coastal Commission stated that the County should require the applicant "submit a detailed biologic survey that provides the information needed to determine the extent of ESHA and appropriate buffers for avoiding such areas." On the topic of FEMA flood zones, the Coastal Commission noted that the applicant had argued that they had a reasonable expectation of approval for their development application and stated the property's development potential was constrained because "part of the parcel is covered by FEMA AO zone, resulting in that part of the property [being] subject to a development moratorium (the Eskoot FP moratorium), constraining its development potential."

B. Evaluation.

Regarding the applicant's reasonable investment-backed expectation that he would be permitted to develop the property, there is substantial evidence that the applicant invested in the property with the expectation that he would be able to develop it. For example, though the applicant acquired his initial interest in the property through inheritance, he subsequently increased his interest by purchasing additional ownership stakes from other parties in 1990 and 2003, for a sum

approximately \$108,715. In addition, the assessed value of the property on the dates he purchased additional interests in the property suggest that his purchase price was based on an expectation of being able to develop the property.

In addition, the applicant has invested money in paying property taxes over the years. According to the aforementioned owner investment statement, the owners have paid in excess of \$24,000.00 in the past five years. In 2021, the Marin County Assessor reappraised a 25 percent portion of the property, which was transferred from Modestine Bagwell Revocable Trust to Janiele Herbert, the successor trustee, increasing the entire assessed property value from \$286,885.00 to \$594,119.00.

Finally, the applicant, along with remaining owners, has also invested significant sums in development-related costs, such as the expert consultant fees and fees associated with the development and submittal of permit applications. According to the aforementioned owner investment statement, between a division amongst the owners based on the individual's percentage of ownership interest, the owners have paid approximately \$328,512 in these development-related costs, since 2018. The applicant provides that in combining the net present value of his own land purchases and his share of development costs incurred since 2018, his total financial investment is equivalent to \$385,291.00.

There is also substantial evidence that the applicant's expectation of permission to develop the property was reasonable. While there is evidence that comments from the County and Coastal Commission identified a number of impediments to development on the property over the years, there is also evidence that the applicant had a reasonable basis to conclude that modest residential development on the property would not be entirely foreclosed.

For example, when the applicant acquired his initial interest in the property, the property had a modest residence and septic system. In 1979, when the Coastal Commission recommended denial of the proposed land division of the property, it indicated that residential development on the sandy area would be difficult, and development above the first line of terrestrial vegetation might "adversely affect the existing scenic and visual character of the area unless it included an adequate buffer area to protect both the public and the property owner." But this finding did not indicate all development would be precluded, especially development above the first line of terrestrial vegetation with an adequate buffer. Further, in 1985, after the pre-existing residence burned, the applicant has stated that he was told that he would be able to rebuild the residence. His subsequent decisions to purchase a larger interest in the property in 1990 and 2003 are consistent with this understanding.

In addition, the applicant invested significant sums in development-related costs beginning in 2018. And, while certain information available to the applicant at the time would have suggested to a reasonable buyer that development on the property might be foreclosed, such as the July 28, 2015 memo regarding the property's location with FEMA flood zones, other information would have suggested that development might remain possible, such as the comments from the Coastal Commission in 2016 and 2021. In addition, the LCP provisions

prohibiting development in ESHAs was not made effective in the County until 2021, after the applicant had already expended significant sums in development costs.

Regarding economic impact, there is evidence that the application of the LCP provisions with which the project is inconsistent could deprive the applicant of a significant portion—but not all—of the economic value of the property, but that the amount of this deprivation is difficult to predict. For example, a March 8, 2023 appraisal of the property estimated its value as developed through the project at \$3,559,000. The same appraisal did not provide an estimate of the value of the property without the project. The appraisal stated that by some measures the land value of properties in the area range from 35-70% of the value of the total value of the property, but that it is inherently difficult to identify such values on an individual property basis. Thus, there is evidence that the economic impact of a decision precluding development of a residence on could vary significantly.

Regarding the character of government action, the application of the LCP provisions with which the project is inconsistent advances a legitimate and significant public interest—i.e., the regulation of proposed development pursuant to the LCP, which implements the Coastal Act, which itself protects coastal resources and requires new development minimize risks to life and property in hazardous areas. In this case, denying a permit for the project would be rooted in fundamental Coastal Act and LCP goals, objectives, and requirements, all of which advance legitimate public interests and coastal resource protections relevant to this site.

C. Supplemental Findings for Approval of Coastal Development Permit. The strict application of the Marin County Local Coastal Program Unit 1, Policy IV-30, Marin County Interim Code Section 22.56.130I.H, Marin County Interim Code Section 22.56.130I.K, and Marin County Local Coastal Program, Land Use Policies related to biological resources would likely constitute a potential regulatory taking of the property pursuant to the supplemental findings for Coastal Permit approval (Marin County Local Coastal Program, Implementation Plan Section 22.70.180.C).

- i. Based on the information provided by the applicant, as well as any other relevant evidence, there is no potential development consistent with the LCP policies, standards and provisions that would avoid a taking of the applicant's property.**

Establishing a residential use on the project site, as allowable under the governing C-R2 (Coastal, Residential, Two-family) zoning district, requires the development of either a single-family dwelling or two-family dwelling, both of which are principally permitted uses pursuant to Marin County Implementation Plan Section 22.62.070, Table 5-2-C. Further, the development of a residence on the property requires the development of an onsite septic system to treat wastewater as there is no publicly available sewage disposal, pursuant to Marin County LCP policies for public facilities and services as described in Finding 8.I above.

The project site is encumbered by the AO FEMA flood zone along the northern portion of the site and the VE FEMA flood zone along the southern portion of

the site. Additionally, the project site is located within a coastal dune area. There is no feasible location on the site that is not encumbered by unique site circumstances that would otherwise allow for any development to be consistent with policies in the Marin County Local Coastal Program as further discussed below.

Due to the location of the project site and its proximity to a sandy beach and the Pacific Ocean, the septic design relies on a raised bed for wastewater treatment surrounded by a retaining wall to increase separation from seasonal high groundwater and to protect the dispersal field from flooding and potential wave erosion. The septic system is located within the AO FEMA flood zone, inconsistent with the Marin County Local Coastal Program Unit 1, Policy IV (30) as described in Section 6.C above.

Further, the residence is sited within a coastal dune considered to be an ESHA, inconsistent with Marin County Land Use Plan policies for biological resources as described in Section 5.B and 6.A above.

The applicant submitted a septic system variance approval for the reduction of setback requirements from a water body to septic tanks, dispersal field, and pretreatment device, issued by the Stinson Beach County Water District on July 18, 2020. The approval included findings that the variance is necessary for the preservation and enjoyment of a substantial property right due to insufficient area on the property to meet site criteria setbacks and to allow the potential development of a single-family residence for the lowest wastewater design daily flow rate tier of 150-gallons. Therefore, the denial of an onsite septic system and the residence it accommodates would result in a potential taking because it would not allow for the minimum economically beneficial use of the project site.

ii. The use proposed by the applicant is consistent with the applicable zoning.

As previously discussed in Finding 10.A above, the property is located in an area governed by the C-R2 (Coastal, Residential, Two-family) zoning district. The proposed single-family residence is an allowable use identified as “principally permitted” pursuant to Marin County LCP Implementation Program Section 22.62.070, Table 5-2-C. The project is consistent with the applicable zoning because it entails a principally permitted use consistent with the applicable zoning.

iii. The use and project design, siting, and size are the minimum necessary to avoid a taking.

According to materials submitted by the applicant and as referenced in a previous Land Division application submitted to and reviewed by both the Marin County Community Development Agency and the California Coastal Commission between the period of 1979 and 1981, the project site was previously developed with an approximately 540 square-foot, two bedroom single-family residence and onsite septic system. The previous residence and

septic system were located along the northern portion of the site and generally in the area where the new septic has been approved to be located via a septic system variance issued by the Stinson Beach County Water District. The previous Land Division materials are provided as Attachment 7 to the supplemental memorandum.

The applicant reduced the scope of the project from a 1,488 square-foot residence with a 288 square-foot detached garage. This is an even further reduction from a 2,454 square-foot residence with an attached one-car garage previously proposed in 2016. The footprint of both previously proposed projects and the attached features were proposed to be located further seaward and with further encroachments onto sandy beach and coastal dune ESHA, with a 90-foot setback from the southwestern side property line adjacent to Upton Beach.

The revised and currently proposed project entails a reduced residence size of 1,293 square feet and no longer includes a garage, either detached or attached. The footprint of the revised residence would be setback towards the landward portion of the property by 10 feet, for a setback of 100 feet from the southwestern side property line adjacent to Upton Beach.

The footprint and location of the septic system remains as is in conformance with the variance approval issued by the Stinson Beach County Water District's for the reduction in setback requirements as discussed above.

The revised project would remain on the landward portions of the property within the existing line of terrestrial vegetation as much as possible where an additional septic system for an additional residential building site were proposed in a previous land division considered and denied by the California Coastal Commission in 1981.

The application of current standards for a septic system have removed previous areas of development available for a new residence and leaves the remainder of the site for the consideration of alternatives, including the ice plant mat area, now identified as coastal dune. The new residence has been sited in this remaining area and is located as close to the existing limit of terrestrial vegetation as possible along with simultaneously avoiding the AO FEMA flood zone as much as possible.

Here, almost just the same as in Coastal Commission Appeal No. A-2-MAR-15-0074 (Hjorth Residence – Stinson Beach), the “overwhelming fact” is that the Applicant proposes a residence that has been further reduced from the originally proposed 1,488 square-foot home with a 288 square-foot detached garage to a modestly-sized, 1,296 square-foot home with no garage, detached or otherwise, on a vacant lot that is zoned residential.

Further, the development would result in a nine percent floor area ratio. Based on Marin County Assessor's data for properties within a 600-foot radius from the property, excluding parkland properties owned by the federal government, the average property size is approximately 6,737 square feet and the average

home size is approximately 1,377 square feet. As such, the average floor area ratio of properties within a 600-foot radius is 20 percent. The proposal entails a nine-percent floor area ratio (FAR). Over half of the properties sampled exceed a 10 percent FAR. So, the proposal would have a FAR that is far less than over half of the properties within a 600 foot radius.

In conclusion, as considered under the Appeal No. A-2-MAR-15-0074, and based on the constraints of the site, along with the footprint of previous development, the project site along with limitations on the septic system location does not allow for conditions on the project to make a “modest home more modest”. Regardless of the size of the home, any residential development located anywhere on the subject property would be inconsistent with the LCP due to the presence of dune habitat and the Easkoot Creek floodplain. Therefore, a reduction in the size of the residence alone would not remedy any inconsistencies with the LCP.

iv. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified LCP other than the provisions for which the exception(s) is (are) necessary to avoid a taking.

The development of a septic system and the potential for the future development of a single-family residence was initially evaluated through an Initial Study prepared by WRA, Environmental Consultants and the resulting Mitigated Negative Declaration was adopted by the Stinson Beach County Water District on July 18, 2020. This adopted environmental review concluded that the project as mitigated would not result in significant environmental impacts. The County of Marin, as a responsible agency further evaluated the project with the new impacts of the residence through a Subsequent Environmental Review and Subsequent Mitigated Negative Declaration prepared by Sicular Environmental Consulting and Natural Lands Management and found that as mitigated the project would not result in significant environmental impacts.

Though the proposed septic system is inconsistent with provisions for floodplain development pursuant to the Marin County Local Coastal Program Unit 1, Policy IV(30) and Marin County Interim Code Section 22.56.130I.K, the impacts of the septic system have been mitigated such that the project would result in less-than-significant impacts to the environment including the conditions of adjacent watercourses, wetlands, subsurface water, the health and safety of persons residing or working in the neighborhood of the property, or the general health and safety of the public.

The Marin County LCP policies C-BIO-2 and C-BIO-3 include provisions for mitigation; however, mitigation is only appropriate when resource dependent uses are allowed pursuant to Land Use Policy C-BIO-2(1), which states:

“Protect ESHAs against disruption of habitat values, and only allow uses within those areas that are dependent on those resources or otherwise specifically provided in C-BIO-14 (Wetlands), C-BIO-15 (Diking, Filling, Draining and Dredging) or C-BIO-23 (Coastal Streams and Riparian Vegetation).”

Though the project is inconsistent with the LCP policies to protect ESHAs as described above, the project was sited and designed to minimize encroachment into sandy beach areas and support the protection and enhancement of biological resources. Further, as discussed in the SER/MND, the project has been mitigated to reduce the impacts to biological resources, including a mitigation measure to prepare and implement a Dune Restoration Plan prepared by qualified restoration biologist.

Further, the project has been designed to further comply with other policies of the LCP, including the stringline method of preventing beach encroachment pursuant to LUP Policy C-BIO-8, which states:

“In a developed area where most lots are developed and where there are relatively few vacant lots, no part of a proposed new development (other than an allowable shoreline protective device), including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjacent structures. Enclosed living space in a new unit or addition shall not extend farther seaward than a second line drawn between the most seaward portions of the enclosed living space of the adjacent structures.”

On June 10, 2022, the applicant revised the project and provided a revised site plan drawing that provides a stringline utilizing an existing structure on the adjacent property located immediately to the southeast of the subject property and an existing structure on the adjacent property located immediately to the northwest of the subject property pursuant to LUP Policy C-BIO-8. The extent of proposed development, including decks, would be setback from the landward side of the stringline and would therefore prevent new development from encroaching farther onto the beach than the most seaward portions of existing adjacent structures. An alternative stringline provided by the applicant utilizing structures from other properties further demonstrates that the proposed development would not encroach further onto the sandy beach than the existing pattern of development of other shoreline lots in the vicinity.

Further, the project is otherwise consistent with all provisions of the certified Local Coastal Program as described in Section 5 and 6 above. To further ensure compliance with the LCP, a condition of approval, Marin County Uniformly Applied Conditions 2021, Special Condition Number 4, herein requires the owners to execute and record a waiver of public liability for the project holding the County of Marin, other governmental agencies and the public harmless because of loss experienced by geologic activities.

v. The development will not result in a public nuisance. If it would be a public nuisance, the development shall be denied.

The development will not result in a public nuisance because, as conditioned, the development is not injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, or an unlawful obstruction to the free passage or use of any public space.

SECTION II: ACTION

NOW THEREFORE, BE IT RESOLVED that the project described in condition of approval 1 is authorized by the Marin County Board of Supervisors, subject to the conditions of project approval.

This decision certifies the proposed project's conformance with the requirements of the Marin County Development Code and in no way affects the requirements of any other County, State, Federal, or local agency that regulates development. In addition to a Building Permit, additional permits and/or approvals may be required from the Department of Public Works, the appropriate Fire Protection Agency, the Environmental Health Services Division, water and sewer providers, Federal and State agencies.

SECTION III: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby approves the project described in condition of approval 1, subject to the conditions listed below.

CDA-Planning Division

1. This Coastal Permit approval authorizes the construction of a new one-story, 1,296 square-foot single-family residence and associated septic system on a vacant lot in Stinson Beach. The 1,296 square feet of approved development would result in a floor area ratio of nine percent on the 15,200 square-foot lot. The approved building would reach a maximum height of 20 feet, seven inches above surrounding grade and the exterior walls would have the following setbacks: 25 feet from the northwestern front property line; 46 feet from the northeastern side property line; 100 feet from the southwestern side property line; 16 feet from the southeastern rear property line. Various site improvements would also be entailed in the proposed development, including a new septic system, a new driveway, decks, and landscaping improvements.
2. Plans submitted for a Building Permit shall substantially conform to plans identified as Exhibit A, entitled "Reconstruction of Residence," consisting of 19 sheets prepared by Civic Unit, received in final form on June 10, 2022, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit evidence of a septic system approval from the Stinson Beach County Water District.
4. BEFORE ISSUANCE OF A BUILDING PERMIT, and pursuant to the applicant's voluntary proposal, the applicant shall record a deed restriction against the title to the property that shall serve to notify all current and future owners that the development authorized by this Coastal Permit, including, but not limited to, the residential building and other development authorized under this Coastal Permit, shall be promptly removed in part or in whole by the property owner(s) at their sole expense, when any government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of a shoreline protective device; or in the event that coastal hazards eliminate access for emergency vehicles, residents, and/or guests to the site due to the degradation

and eventual failure of Calle Del Onda as a viable roadway. Marin County shall not be required to maintain access and/or utility infrastructure to serve the approved development in such circumstances. Development associated with removal of the residential building or other development authorized by this Coastal Permit shall require Director approval of a plan to accommodate same prior to any such activities. No shoreline protective device shall be permitted on this property in perpetuity.

5. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall record an offer of dedication for a minimum 40-foot-wide and 80-foot-long lateral public access easement to be located across the southern and most seaward portion of the property for public use in a form acceptable to the Community Development Director, County Counsel, and the California Coastal Commission Executive Director.
6. The project shall conform to the Planning Division's "Uniformly Applied Conditions 2023" with respect to all of the standard conditions of approval and the following special conditions: 4 (waiver of liability).
7. DURING CONSTRUCTION, all off-road diesel-powered equipment with engines greater than 25 horsepower shall meet Tier 4 emissions standards.

(MM-AIR-2)

8. PRIOR TO ISSUANCE OF A BUILDING PERMIT, consistent with Certified Implementation Program Section 22.64.050(A)(1)(d), Habitat Mitigation, the Applicant shall prepare a Dune Restoration Plan for County review and approval that provides for dune and related habitat enhancement for all vegetated coastal dune habitat located between the unvegetated sandy beach and non-dune ice plant mats located behind the dunes outside the approved building envelope. The Dune Restoration Plan shall be prepared by a qualified restoration biologist, shall meet all the requirements of Certified Implementation Program Section 22.64.050(A)(1)(d)(3), and at a minimum shall include the following elements:
 - a. Dune Inventory. Coastal dune habitat shall be inventoried on the Project site to depict dune impact and restoration areas. The restoration area shall be enumerated and drawn onto a site plan similar to that presented in the Figure MR2-1 of the Brian Johnson Trust Coastal Permit Supplemental Environmental Review/Draft Subsequent Mitigated Negative Declaration Response to Comments prepared by Sicular Environmental Consulting and Natural Lands Management.
 - b. Dune Contours. Final contours of the site, after project grading, necessary to support dune restoration and development screening, shall be identified.
 - c. Ice plant Removal. To accommodate native plantings, non-native ice plant shall be removed from the site by means such as those described by the California Invasive Plant Council (CAL-IPC, 2022).
 - d. Native Dune Plants. All required plantings shall be native dune species from local stock appropriate to the Stinson Beach area and shall be maintained in good growing conditions during a 10-year review period and shall be replaced with new plant materials as necessary to ensure continued compliance with the restoration plan.
 - e. Initial Planting. Installation of all plants shall be completed prior to occupancy of the new home. Within 30 days of completion of initial native dune plant installation, the Applicant shall submit a letter to the County from the project biologist indicating that plant installation has taken place in accordance with the approved restoration plan, describing long-term maintenance requirements for the restoration, and identifying the

three-, five- and ten-year monitoring submittal deadlines (Measures g and i, below). At a minimum, long-term maintenance requirements shall include site inspections by a qualified biologist annually, or more frequently on the recommendation of the biologist, to identify and correct any restoration and maintenance issues.

- f. Site Protection. During the initial plant establishment period, ropes or low-profile fencing shall be minimally used to screen planted areas from recreational users and dogs.
- g. Monitoring. At three, five, and ten years from the date of initial planting under the Dune Restoration Plan, the Applicant or his successors in interest shall submit, for the review and approval of the County, a restoration monitoring report prepared by a qualified specialist that certifies that the on-site restoration is in conformance with the approved Dune Restoration Plan, along with photographic documentation of plant species and plant coverage.
- h. Remediation. If the restoration monitoring report or expert's inspection report indicates the restoration is not in conformance with or has failed to meet the performance standards specified in the approved Dune Restoration Plan, the Applicant shall submit a revised or supplemental restoration plan for the review and approval by the County. The revised restoration plan shall be prepared by a qualified restoration biologist and shall specify measures to remediate those portions of the original plan that have failed as identified in the restoration monitoring report or inspection report. These measures, and any subsequent measures necessary to carry out the approved Dune Restoration Plan, shall be carried out in coordination with the County until dune restoration is established in accordance with the Dune Restoration Plan's specified performance standards.
- i. The restored dune areas shall meet the following minimum performance standards:
 - i. Density (perennial native species only): average 1 plant per 4 square feet.
 - ii. Percent total cover (perennial native species only): 1 year: 15%; 2 years: 25%; 3 to 5 years and beyond: 35%.
 - iii. Percent relative cover: all species are within normal range.
 - iv. Composition: at least five native, perennial species.
 - v. Health and vigor: plants are in good health, exhibit normal flowering, and damage from people, deer, or pets is negligible.
 - vi. Exotic species: within the restoration areas (i.e., not within outdoor living areas) invasive, non-native plants are few in number and not evident.
 - vii. Provision for additional further action if monitoring conducted by a qualified biologist indicates that initial restoration has failed. Written verification by a qualified biologist shall be submitted to the County that provisions have been identified and/or undertaken and a new timetable for monitoring has been established.
 - viii. Area: the total area of restored dune shall be equal to or greater than the area identified as dune habitat in the Dune Inventory.

(MM BIO-2)

9. DURING CONSTRUCTION AND PRIOR TO FOUNDATION INSPECTION, use vibration-reducing pile driving equipment, or select other method for ground improvement. During construction of the foundation for the proposed residence, the construction contractor shall use equipment and methods for ground improvement that will produce ground borne vibration with a maximum PPV of less than 0.30 inches/second at the property line if equipment is selected that generates continuous/frequent intermittent vibration, or less than 0.50 inches per second if equipment that generates transient vibration is selected. Vibratory equipment

capable of achieving the 0.30 inches/second standard may include, for example, a resonance-free vibrator or variable eccentric moment vibrator (Caltrans, 2020, section 8.2), or drilled piers.

If a construction method capable of producing substantial ground borne vibration is selected, the construction contractor shall conduct vibration monitoring at the property line during construction and shall conduct pre- and post-construction crack monitoring of all structures within 100 feet of the foundation footprint. Crack monitoring shall be accomplished by the use of photographs, video tape, or visual inventory. The purpose of the crack monitoring is to document pre-construction condition of nearby structures, so that any actual vibration damage from the construction operation may be accurately attributed. The construction contractor shall be bonded to cover any liability from damage of nearby structures.

(MM NOISE-2)

SECTION IV: VESTING

NOW THEREFORE, BE IT RESOLVED that unless conditions of approval establish a different time limit or an extension to vest has been granted, any permit or entitlement not vested within three years of the date of the approval, shall expire and become void. The permit shall not be deemed vested until the permit holder has actually obtained any required Building Permit or other construction permit and has substantially completed improvements in accordance with the approved permits, or has actually commenced the allowed use on the subject property, in compliance with the conditions of approval.

SECTION V: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 24th day of October, 2023 by the following vote to wit:

AYES: SUPERVISORS

NOES:

ABSENT:

STEPHANIE MOULTON-PETERS, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

ATTEST:

Matthew H. Hymel
Clerk of the Board of Supervisors