

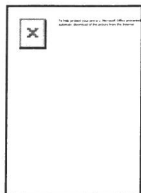
## Evan Ditmars

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**From:** Valerie Mishkin <vmishkin@baileyproperties.com>  
**Sent:** Monday, March 20, 2023 3:34 PM  
**To:** Evan Ditmars  
**Subject:** Item #6 Wed. Hearing

\*\*\*\***CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.\*\*\*\*

I am reaching out to you prior to Wednesday's Planning Commission Hearing regarding item # 6, 266 Cliff Court. Beach Dr and its homeowners need a retaining wall to protect homes from landslides behind them. As you well know what we saw this winter is a warning of what is to come over time repeatedly. We need to take actions now to plan and prepare for mitigating damage and cost to residential, commercial, and infrastructure. This sets a precedence and example of will we, or will not protect our community and tax base from our future environment. I know the Coastal Commission would like us all to move away from the coastal zone. In our case that is a Significant portion of our usable land in this county. I believe we have to protect our properties and do as much as we can before the "levee breaks". so to speak. Please continue to work with the community on retaining walls throughout the county, and sea walls as they are necessary if we are to keep our community intact.



Valerie Mishkin  
Bailey Properties  
DRE# 02092111  
VMishkin@BaileyProperties.com  
Office 831 426 4100

## Evan Ditmars

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**From:** Robert M Allen <boballen1948@sbcglobal.net>  
**Sent:** Friday, March 17, 2023 8:26 PM  
**To:** Evan Ditmars  
**Subject:** tem #6 266 Cliff Court

\*\*\*\***CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.\*\*\*\*

Hello,

I am a co-owner of a home at 405 Beach Drive, Aptos (Rio Del Mar Beach). We have a hill behind our home as do all the homeowners on our street. We have experienced two landslides when the hill became over-saturated with heavy rainfall that have damaged our home. There were landslides behind our home this January, but luckily it did not cause damage to our home (so far). Others on the street were not so lucky. We would like to have all options available to us to remediate the landslide problem, including the option of using gunite or similar material on the hillside to protect the ground from getting over-saturated by using a permitting process that is relatively simple and quick.

Bob Allen

Richard J. Andre  
310 Kingsbury Dr.  
Aptos, CA. 95003

March 17, 2023

Re.: Item #211316  
266 Cliff Court, Aptos, CA. 95003

County of Santa Cruz  
Planning Department  
701 Ocean St.  
Santa Cruz, CA. 95060

To Planning personnel:

Gravity is at work every moment of every day on bluff properties, not just during stormy weeks this winter. Ask the downhill neighbors on Beach Drive, Aptos. Most of those neighbors understand gravity and appreciate the efforts of uphill neighbors to prevent slides during heavy rains. The Planning Department will help both downhill and uphill neighbors by approving the pin pier retaining wall sought by the owners of 266 Cliff Court Drive.

As a neighbor of 266 Cliff Court, I share and understand the sensitivity of our properties above Beach Drive. Therefore, I understand completely the need to arm their property at the top of the bluff with the best armor they and their contractors/engineers can construct. As I understand the carefully-planned proposal, the wall they have sought for several years to build will protect the top of the bluff well. Approve it now to prevent a repeat of disastrous slides.

If the need is not obvious enough, a little history might make it unavoidably obvious. In 1981, we owned a unit in the condominiums just to the west/north of 266 Cliff Court. I came home from work one day to hear my wife tell me we must be having small earthquakes because she felt jolts many times during the day. I investigated and noticed an earth mover parked at the base of the bluff below 266 Cliff Court and 310 Kingsbury Drive. A large gouge in the bottom of the bluff made it obvious that the jolts had come from the earth mover causing the "earthquakes." Of course, I talked to the earth mover operator the next morning, but he insisted he would do no more because he had completed his work. Then, about a year later, heavy winter storms caused a huge slide from the two properties, destroying two houses at that location. Yes, the slide occurred right where the earth mover had gouged the bluff, creating a permanent weakness, which NEEDS man-made protection.

Of course, we stupidly purchased 310 Kingsbury several years later—before we put together the entire story, but I now KNOW that special attention/protection is needed at this location. My late wife would agree. Please approve this wall.

Sincerely,

Richard J. Andre

P.S.: Because I have macular degeneration, several typos may appear in this letter. Please overlook them.

enclosure - photo of slide





**ATTORNEYS AT LAW**

18101 Von Karman Avenue  
Suite 1800  
Irvine, CA 92612  
T 949.833.7800  
F 949.833.7878

Gregory W. Sanders  
D 949.477.7669  
gsanders@nossaman.com

Refer To File # 504443-0001

**VIA FEDERAL EXPRESS**

March 15, 2023

Judith Lazenby, Chair and  
Members of the Planning Commission  
County of Santa Cruz  
701 Ocean Street, Room 525  
Santa Cruz, CA 95060

Re: Planning Commission Appeal Hearing on Zoning Administrator Denial of  
Application No. 211316 (March 22, 2023)  
Owners: Kirk Kozlowski and Mary Lacerte  
Applicant: Matson Britton Architects  
APN: 043-081-13  
Address: 266 Cliff Ct., Aptos, CA

Dear Chair Lazenby and Members of the Planning Commission:

We represent the applicant, Matson Britton Architects ("Applicant") and the owners of the real property that is the subject of the above referenced application ("Application"), Kirk Kozlowski and Mary Lacerte ("Owners"), with regard to all matters pertaining to the Application, including this appeal from a denial of the Application by the Santa Cruz County Zoning Administrator. The purpose of this letter is to explain why the decision to deny the Application was erroneous, not supported by the incontrovertible evidence in support of the Application presented at two Zoning Administrator hearings and must be overturned by the Planning Commission.

This appeal is grounded in the following errors of law and fact in the Zoning Administrator's decision on the Application in that the decision: 1) relies on a serious misquote of the Santa Cruz County Code ("Code") requirements for approval of a "shoreline protection structure" as reported by the County's Planning Department staff that completely distorts its requirements; 2) is based, in part, on a misinterpretation of the provisions of the Santa Cruz County Code related to protection of "existing structures" and ignores the preemption of state law; 3) ignores the overwhelming facts and body of law clearly demonstrating that the pin pier wall that is the subject of the Application is not a shoreline protection structure and thus not subject to the requirements of the Code provisions related to such structures; and 4) is contrary to the prior advice and guidance of the County Planning Department staff given to the Owners that construction of the pin pier wall would be supported if it is demonstrated that there is a threat to the homes below the proposed wall. The threat to downslope homes was clearly demonstrated at the Zoning Administrator hearings.

Following is a discussion of each of the grounds for this Appeal:

## **1. The Code Provision Related to Approval of a Shoreline Protection Structure Was Misquoted by the County Planning Department Staff.**

In the undated Staff Report to the Zoning Administrator on the Application prepared by Evan Ditmars, Santa Cruz County Planning Department ("Staff Report"), the Zoning Administrator was advised that "the proposed [pin pier wall] must be evaluated under Chapter 16.10 as a 'shoreline protection structure' (an assertion to which we strenuously object, as discussed below, but for the sake of argument accept here) and is therefore subject to compliance with the permit conditions described in 16.10.070, which governs that shoreline protection is only permitted at sites where both adjacent structures are similarly protected **and** where a significant threat to the existing structure [exists]." (Emphasis added).

Code Section 16.10.070(H)(3) actually states that "Shoreline protection structures shall only be allowed on parcels where both adjacent parcels are already similarly protected, **or** where necessary to protect existing structures." (Emphasis added.) The substitution of "**and**" for "**or**" is very obviously a critical prejudicial error. While the Staff Report asserts that the Code provisions related to approval of shoreline protection structures require both that adjacent structures be similarly protected (in this case, with a pin pier wall) **and** that existing structures be threatened, **the applicable Code section actually requires that only one of the two conditions be present.** A copy of the pertinent page of the Staff Report in which Code Section 16.10.070 is misquoted is enclosed.

In his decision, the Zoning Administrator announced that "I am going to deny this application based on the findings and conditions insofar as they address the coastal bluff issues addressed by [Section 16.10]" and "So again, that's my decision today, is to deny this application based on the inconsistency with [Section 16.10]." A copy of the Zoning Administrator's decision taken from a certified copy of a transcription of the hearing on the Application is enclosed. In the case of the Application, it was amply demonstrated to the Zoning Administrator that there is a present threat of landslide from the property that is the subject of the Application to two existing downslope homes. The incontrovertible evidence of the threat to the two existing downslope homes posed by a landslide from the Owner's property is discussed below.

## **2. The Staff Report Erroneously Reported That a Threatened Existing Structure Must Be "On-Site."**

The Staff Report provides that "Where a structure is determined to be threatened, the protection structure must be located as close as possible to the development or structure requiring protection . . . and the provided geologic report . . . does not state that there is a significant threat to the **existing structure on-site.**" (Emphasis added.) This statement appears on the same enclosed page of the Staff Report in which Code Section 16.10.070 is misquoted.

The interpretation of the location of a threatened existing structure results in a requirement that such structure be located on the same property as the pin pier wall. Nowhere in Code Section 16.10.070 is there a definition of "existing structure" that limits such a structure to the property on which a shoreline protection structure to be constructed. The Staff Report simply sidesteps the fact that the pin pier wall is designed and is necessary to protect the two downslope existing homes from erosion and a potential landslide, as evidenced by the attached

opinion letter from Pacific Crest Engineering, Inc. by certified professional geologist Erik Zinn dated March 15, 2022, which reports that as much as 1,000 cubic yards of dirt and other material may landslide onto the two homes. In addition to being enough material to destroy the two existing homes, the potential for a landslide presents a clear threat of serious bodily injury or death to occupants of the homes as well.

Even if the Planning Department staff interpretation of existing structures in Code Section 16.10.070 is correct (which it is not), that section is preempted by Public Resources Code Section 30235 which provides, in pertinent part, "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other such construction that alters natural shoreline processes **shall be permitted** when required to serve coastal dependent uses or **to protect existing structures.**" (Emphasis added.) As with the term "existing structure" used in Code Section 16.10.070 is not anywhere limited to "on-site" structures as the County Planning Department staff asserts, neither is the scope of "existing structures" as used in Public Resources Code Section 30235 so limited.

Historically, the California Coastal Commission interpreted Public Resources Code Section 30235 to apply to all structures requiring protection from natural shoreline processes regardless of when constructed. More recently, the Coastal Commission has attempted to interpret Section 30235 to apply only to structures that existed as of the date of enactment of the original Coastal Act in 1972. Either way, the existing structures (which are situated directly below the property that is the subject of the Application) the pin pier wall is designed to protect were constructed well in advance of the Coastal Act – one in 1936 (307 Beach Drive), the other in 1964 (309 Beach Drive) as evidenced by the attached records or the Santa Cruz County Assessor's office. If the Code is inconsistent with Section 30235, the Code is preempted by that Section. Accordingly, as a matter of law in accordance with Public Resources Code Section 30235, the Planning Commission must grant the appeal from the Zoning Administrators decision to deny the Application.

### **3. The Pin Pier Wall That Is the Subject of the Application is Not a Shoreline Protection Structure.**

The Staff Report erroneously characterized the pin pier wall that is the subject of the Application as a shoreline protection structure as defined in Code Section 16.10.040. The pin pier wall will not be constructed at the "shoreline" under any commonly accepted definition of that term. Further, the Code definition of shoreline protection structure requires that such structures be "placed in an area where coastal processes operate" in order to be so defined.

In her letter of November 16, 2022 submitted to the Zoning Administrator in support of the Application, Elizabeth Mitchell, the licensed geotechnical engineer retained by the Applicant and Owners to review the Staff Report, opined that the pin pier wall will not provide any protection to the shoreline and that the area where the wall will be placed and the bluff it is designed to buttress is not exposed to coastal processes. In addition, in his letter of January 12, 2022 submitted to the Zoning Administrator, Richard Irish, the registered professional engineer retained by the Applicant and Owners to design the pin pier wall, noted that the bottom of the pin piers supporting the pin pier wall will be nearly 60 feet above the mean high tide line and opined that "Were coastal erosion processes to progress to the location of the wall, it would be due to the undermining of the bluff below . . . ." There has been no opinion of a licensed professional

engineer or geologist (or opinion or any other relevant licensed professional) to refute these expert opinions.

In addition to the foregoing, the United States Supreme Court and California appellate courts have routinely held that the shoreline is the point of the mean high tide line, not a point on a bluff that is several hundred feet landward of and significantly above the mean high tide line as is the location of the pin pier wall. In *Borax Consolidated v. Los Angeles* (296 U.S. 10, 22-23 (1935)), the Supreme Court held that “by the common law, the shore is ‘confined to the **flux and reflux of the sea at ordinary tides**’” and that “**it [shoreline] is the land ‘between ordinary high and low water mark, the land over which tides ebb and flow.**” (Emphasis added.) The Supreme Court further held in *Borax* that this common law definition will prevail whenever the sea or bay is “named as a boundary.” Accordingly, to be properly characterized as a shoreline protection structure, its placement must be within the boundary area described in *Borax* – that is, “between the ordinary high and low water mark, land over which the tides ebb and flow.” Accordingly, the pin pier wall that is the subject of this appeal cannot be characterized as a shoreline protection device as defined in the Code.

The California appellate court cases on the subject of the location of the shoreline follow the common law definition of shoreline set forth in the *Borax* case. In *Lechuza Villas West v. California Coastal Commission* (60 Cal App. 4<sup>th</sup> 218, 242 (1997)), for example, the court held that the boundary line between the [owner’s] property and the public tidelands is “an ambulatory line which moves . . . and that the **shoreline is the line where the plane of the ordinary mean high tide meets the shifting sand from time to time.**” (Emphasis added.) Again, the pin pier wall is several hundred feet landward of the mean high tide line, which is the shoreline, and therefore does not fall within any reasonable definition of shoreline protection structure.

In addition to the foregoing, in *Littoral Development Co. v. San Francisco Bay Conservation and Development Commission* (24 Cal. App. 4<sup>th</sup> 1050 (1994)), the court held that “**the shoreline of the bay shall be set with reference to the specified level of mean high tide.**” (Emphasis added.) Thus, the California appellate court decisions on the subject of the definition of shoreline are consistent with the *Borax* decision.

California regulatory agencies have followed in lockstep with the commonly accepted definition of shoreline consistent with the above cited decisions of the courts. For example, in the Shoreline Protective Structures Staff Report to the California State Lands Commission, dated April, 2001, the shoreline boundary is defined as “generally a moving boundary identified as the Ordinary High Water Mark.” In addition, in the California Coastal Commission in LUP Update Guide Part 1, Section 9 (Shoreline Erosion and Protective devices), dated July 31, 2013, “**coastal structure**,” which is described essentially as a shoreline protection structure, is defined to mean a “**structure located at the base of the bluff, such as a seawall, revetment, or riprap that is located at, or is seaward of the bluff dripline.**” (Emphasis added.) As discussed above, in the case of the pin pier wall, its location is well above the base of the bluff and is several hundred feet landward of the ordinary high water mark or mean high tide line and nowhere near the bluff dripline. Accordingly, the pin pier wall cannot be characterized as a shoreline protection structure.

#### **4. The County Planning Department Staff Supported Submission of the Application.**

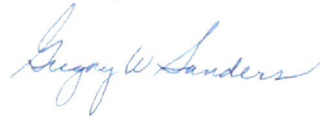
Prior to submitting the Application, the Owners sought the guidance of the Planning Department staff regarding construction of the pin pier wall and relied on the guidance given. As the attached email from Jessica deGrassi, Resource Planner IV, to Mr. Kozlowski states, **"we would be able to support a retaining wall [pin pier wall] at the bluff face**, only if it's **demonstrated that there is a threat to the home(s) below."** As demonstrated above and repeatedly to the Planning Department staff and the Zoning Administrator, there is a threat of landslide to two homes below the Owners property that endangers both life and property.

Following the guidance provided by the Planning Department staff and in reliance on the guidance, the Applicant and Owners submitted the Application. Now, the Planning Department staff has pulled the rug out from under the Applicant and Owners by opposing the same pin pier wall that it supported prior to submission of the Application. This abrupt and dramatic change on the part of the Planning Department staff has caused the Owners to incur considerable time and added expense. Had the Planning Department staff adhered to the guidance it provided to the Owners, the pin pier wall would have been constructed by now, avoiding the heightened danger to life and property brought on by the recent severe storms.

For the foregoing reasons, we urge that the Planning Commission grant the appeal from the decision of the Zoning Administrator and approve the Application. We will be present at the appeal hearing to discuss the issues raised in this appeal and respond to your questions.

Thank you for your attention to this matter.

Sincerely,



Gregory W. Sanders  
Nossaman LLP

Enclosures

GWS:jg



## Staff Report to the Zoning Administrator

Application Number: **211316**

**Applicant:** Matson Britton Architects

**Owner:** Mary Lacerte and Kirk Kozlowski

**APN:** 043-081-13

**Site Address:** 266 Cliff Ct, Aptos

**Agenda Date:** 11/18/22

**Agenda Item #:** 1

**Time:** After 9:00 a.m.

**Project Description:** Proposal to construct an approximately 110 linear foot pin pier retaining wall, on-site with an existing single-family dwelling.

**Location:** Property is located on the south side of Cliff Court, approximately 150 feet south of the intersection of Cliff Court and Rio Del Mar Blvd (266 Cliff Court)

**Permits Required:** Coastal Development Permit

**Supervisory District:** 2<sup>nd</sup> District (District Supervisor: Zach Friend)

### Staff Recommendation:

- Determine that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Denial of Application 211316, based on the attached findings and conditions.

### Project Description & Setting

The subject property is located on an ocean bluff overlooking Rio Del Mar and the Beach Drive neighborhood, in Aptos. Access to the property is via a private road, Cliff Court, which is located on the south side of Rio Del Mar Boulevard, approximately 1000 feet east of the intersection of Rio Del Mar Boulevard and Aptos Beach Drive. The property slopes gently from northeast to southwest, with a portion of land extending onto the steep hillside and bluff. Existing development on the property includes an approximately 2,500 square foot dwelling which was originally developed in the early to mid-1900's as part of the Aptos Beach Inn. Except for a variance to construct an attached garage and bedroom expansion (78-113-V), permit history at the site is limited. The home is presently configured with three bedrooms, an attached garage, and an expansive backyard patio overlooking Beach Drive.

The geologic and geotechnical investigations (Exhibit H and Exhibit I) submitted with the project describe a history of slope failures at the site, some of which can be attributed to natural geological occurrences and some exasperated by runoff generated from stormwater runoff; surface and subsurface drainpipes can be seen on the face of the bluff.

The owners have expressed interest in protecting themselves from liability from future slope failures through the installation of a 110-foot pin-pier retaining wall, which would span the south property line. The wall would consist of 19, 30-inch diameter concrete piers driven 40-feet into the hillside, backed by an eight-foot, sub-surface concrete and steel wall. The project would also include the collection of surface drainage on-site, via a two-foot swale above the wall which would divert water to the east side of the property then northward along the property line into a private storm drain system which drains westward towards the Del Mar Shores condominium development.

### **Zoning & General Plan Consistency**

The subject property is a 9,844 square foot lot, located in the R-1-6 (single family residential - 6,000 square feet) zone district, a designation which allows residential uses. The existing dwelling on-site is a principally permitted use in the zone district and the zoning is consistent with the site's R-UL (Urban Low Density Residential) General Plan designation.

### **Geologic Hazards Ordinance Consistency**

In the project completeness letter, dated June 15, 2022 (Exhibit G), County Environmental Planning staff identified conflicts between the proposed project and the County Geologic Hazards Ordinance (Santa Cruz County Code Chapter 16.10). The proposed retaining wall is evaluated under Chapter 16.10 as a "shoreline protection structure" and is therefore subject to compliance with the permit conditions described in 16.10.070, which governs that shoreline protection is only permitted at sites where both adjacent structures are similarly protected and where a significant threat to the existing structure. Where a structure is determined to be threatened, the protection structure must be located as close as possible to the development or structure requiring protection and an alternatives analysis of the project must be provided. The provided geologic report (Exhibit H) does not provide an alternatives analysis and does not state that there is a significant threat to the existing structure on-site.

### **County Design Criteria for Construction of Storm Drains**

The proposed project would direct stormwater into a swale behind the retaining wall (and from downspouts across the site) into a private storm drain system at the northwest corner of the site. The Public Works Design Criteria, which details the acceptable construction methods for streets, storm drains, sanitary sewers, water systems, and driveways in the unincorporated County, states that the altering of drainage patterns from their natural flow path ("diversion") is disallowed without approval by the Director of Public Works.

In the project 30-day evaluation (Exhibit F) and later in the completeness letter (Exhibit G), Public Works Stormwater Management staff requested additional documentation needed to evaluate an exception to the Design Criteria. The evaluation would include analysis of whether the downstream storm drain system is adequate to support the additional drainage proposed to be diverted with the project. The requested information included topographic maps, watershed maps, an engineer's analysis evaluating the adequacy of the condition, stability, and capacity of the entire downstream diversion path, and written certification that the applicant has the legal right to utilize the entire diversion path.

Audio Transcription

December 16, 2022

Zoning Administrator Hearing on Application No. 211316

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go by.

So I'm going to have to -- I'm going to find that this project is exempt from further environmental review under the California Environmental Quality Act. I am going to deny this application based on the findings and conditions insofar as they address the coastal bluff issues, the issues addressed by Chapter 1610.

The drainage issues, my understanding is that those are no longer an issue because as long as the self-certification takes place and so forth.

So again, that's my decision today, is to deny this application based on the inconsistency with Chapter 1620.

The project is appealable to the Planning Commission, and if the applicant, applicant's representative need any assistance on how to do that, which they probably are very familiar with how to do that, but they should check with Evan and he can deal with that, handle that.

So that concludes the hearing on this first item. And so we will here in just a minute move on to the second item. Thank you all for your attendance and comments.

MR. DITMARS: Thank you.



## Santa Cruz County Assessor's Office

### Parcel Info

APN	Situs Address	Class
04308204	309 BEACH DR, APTOS , 95003-5103	020-SINGLE RESIDENCE

### Site Information

<b>Parcel #</b>	04308204	<b>General Plan</b>	R-UL URBAN LOW RESIDENTIAL	<b>Zone</b>	R-1-6
<b>View</b>	NO VIEW	<b>Parcel Size (sqr-ft)</b>	4,792	<b>Water</b>	PUBLIC WATER
<b>Topography</b>	LEVEL	<b>Parcel Size (acres)</b>	0.1100	<b>Sanitation</b>	PUBLIC SEWER
<b>Other Buildings</b>	N/A				

### Building 1 ▾

<b>Year Built</b>	1964	<b>Main Area</b>	1776	<b>Deck</b>	0
<b>Effective Year</b>	1980	<b>Room Count</b>	6	<b>Porch</b>	0
<b># of Units</b>	1	<b>Bedrooms</b>	4	<b>Pool</b>	N
<b>Condition</b>	N/A	<b>Bathrooms (F/H)</b>	2 / 1	<b>spa</b>	N
<b>Concrete</b>	800	<b>Roof</b>	COMP SHINGLE	<b>Garage</b>	0
<b>Fireplaces</b>	0	<b>Heat</b>	OTHER	<b>Carport</b>	0



## Santa Cruz County Assessor's Office

### Parcel Info

APN	Situs Address	Class
04308203	307 BEACH DR, APTOS , 95003-5103	020-SINGLE RESIDENCE

### Site Information

<b>Parcel #</b>	04308203	<b>General Plan</b>	R-UL URBAN LOW RESIDENTIAL	<b>Zone</b>	R-1-6
<b>View</b>	NO VIEW	<b>Parcel Size (sqr-ft)</b>	6,316	<b>Water</b>	PUBLIC WATER
<b>Topography</b>	N/A	<b>Parcel Size (acres)</b>	0.1450	<b>Sanitation</b>	PUBLIC SEWER
<b>Other Buildings</b>	N/A				

### Building 1 ▼

<b>Year Built</b>	1936	<b>Main Area</b>	1407	<b>Deck</b>	0
<b>Effective Year</b>	2019	<b>Room Count</b>	0	<b>Porch</b>	0
<b># of Units</b>	1	<b>Bedrooms</b>	3	<b>Pool</b>	N
<b>Condition</b>	N/A	<b>Bathrooms (F/H)</b>	2 / 0	<b>spa</b>	N
<b>Concrete</b>	0	<b>Roof</b>	SHAKE / WOOD SHINGLE	<b>Garage</b>	0
<b>Fireplaces</b>	0	<b>Heat</b>	N/A	<b>Carport</b>	0



15 March 2023

Project No. 2008.1-SZ70-B45

Kirk and Mary Kozlowski  
139 Vineyard Court  
Los Gatos, CA 95032

Re: **Supplemental Geologic Analysis**  
266 Cliff Court  
Aptos, California  
County of Santa Cruz, A.P.N. 043-081-13

**References:**

*"Site Improvements For Kirk & Mary Kozlowski - 266 Cliff Court - Aptos, CA 95003 - APN # 043-081-13", sheets C-1 and C-2, dated August 2021, prepared by R.I. Engineering.*

*"Subject: Review of the Focused geologic investigation of coastal bluff erosion and landsliding, 266 Cliff Court, Aptos, California, County of Santa Cruz/APN 043-081-13, dated 1 September 2021 by Zinn Geology, Project #2020001-G-SC; and the Review of the Geotechnical Investigation - Design Phase for 266 Cliff Court, Aptos, California/APN 043-081-13, dated 22 April 2021, Project #2008-SZ70-B45", review letter published by the County of Santa Cruz Planning Department, dated 17 March 2022.*

*"Re: Focused geologic investigation of coastal bluff erosion and landsliding - 266 Cliff Court - Aptos, California - County of Santa Cruz APN 043-081-13", dated 1 September 2021 by Zinn Geology, Project #2020001-G-SC.*

Dear Kirk and Mary,

This letter provides geological follow up on the above referenced Zinn Geology 1 September 2021 letter (written by the author of this letter) as well as further geological input for the proposed pin pier retaining wall designed by R.I. Engineering. We have written this letter at the request of your counsel, Greg Sanders of Nossaman LLP.

**BACKGROUND**

The 1 September 2021 letter by Zinn Geology was a distilled geological analysis of the process of terrestrial landsliding that is driving landward at the top of the bluff in front of your property. It is important to note that the seaward edge of your property lies almost entirely along the top of the bluff and NOT on the bluff itself which lies seaward.

Zinn Geology made findings in the 2021 letter regarding the landsliding out of the coastal bluff at this location, including the following:

- 2. The coastal bluff below their property has repeatedly failed incrementally in the form of debris flows and shallow landslides, some of which have struck the residences below the property.*
- 3. The coastal bluff will continue to retreat in the future via continued incremental, piecemeal landslide events.*
- 6. The package of artificial fill, marine terrace deposits, Purisima Formation and colluvium will fail incrementally and repeatedly until overall the slope reaches a **conservative** slope angle of approximately 30 degrees. We have drawn this future projected bluff configuration line on our geological cross sections (Plate 2).*

Zinn Geology also noted in their 2021 letter: “Since the Kozlowskis do not really own the bluff face and do not have permission from the “buffer” property owner to work on that property, any system installed for this project will need to stop at the Kozlowski property line, right at the top of bluff or slightly below it.”

The most important recommendation from the Zinn Geology 2021 letter was:

- 1. The Project Geotechnical Engineer and Project Civil Engineer should design a retention system that lies on the property and will prevent the soil and weathered bedrock owned by Kirk and Mary from failing as the coastal bluff retreats, as least as much as practicable.*

The Zinn Geology letter was accepted by the County of Santa Cruz peer reviewing geologist, Jeffrey Nolan on 17 March 2022. In their acceptance letter they stipulated:

- “1. All project design and construction shall comply with the recommendations of the reports;”*

Plans for the bluff top pin pier wall that complied with the recommendations from the 2021 Zinn Geology letter and the 2021 Pacific Crest Engineering geotechnical report were issued by R.I. Engineering in August 2022.

## **SUPPLEMENTAL GEOLOGICAL ANALYSIS**

We have calculated the total approximate amount of soil and weathered bedrock that the currently proposed pin pier wall would potentially prevent from striking the houses that lie below the Kozlowski property along Beach Drive. We used the finding issued in the original 2021 Zinn Geology letter that the bluff would lay back over time to an angle of 30 degrees and superimposed that plane on several cross sections. We also plotted the proposed pin piers designed by R.I. Engineering, to be placed on or adjacent to the seaward property line, on our cross sections and assumed that the soil that lies behind them would be retained.



Using the analysis described above, the calculated total volume of soil that would be retained by the proposed pin pier retaining wall is approximately 1000 cubic yards. In our opinion this volume is unlikely to fail all at once, but will likely happen incrementally over decades, primarily in the form of debris flows.

## DISCUSSION

It is puzzling to us as to why the issuance of a permit for this project is being delayed. In 2021 Zinn Geology identified an existing landsliding hazard with an unacceptably high risk to the residents below the Kozlowski property. The Kozlowskis want to mitigate that risk as well as their liability with respect to that hazard by retaining the soil that they own. They do not own the bluff below the top and do NOT have permission from that property owner to construct any retaining structures.

The County of Santa Cruz accepted the 2021 Zinn Geology letter. R.I. Engineering designed an embedded retaining wall system that complies with the Zinn Geology recommendations. The permitting of the project appears to be frozen in the administrative process downstream from the geology, geotechnical engineering and civil engineering.

It is important to note that this project started out to address an existing life and safety issue that revolves around the soil owned by the Kozlowskis. In our opinion, it should continue to be viewed through this lens and should not be delayed for other bureaucratic reasons. Unnecessary delays in the permitting and construction of the proposed pin piers only brings the residences below closer to the day when a debris flow from the soil owned by Kozlowskis strikes them. **If the pin piers are not constructed, than the residences below may be struck repeatedly by debris flows issuing from Kozlowski's property over the long term, with a total aggregate volume of approximately 1000 cubic yards.**

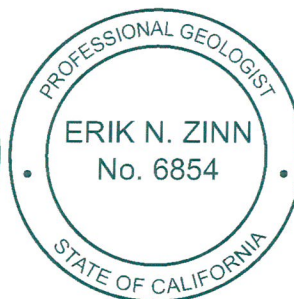
This concludes our geological input letter. Please do not hesitate to contact us if you have any questions about this letter or our work or need further assistance.

Sincerely,

PACIFIC CREST ENGINEERING INC.



Erik N. Zinn  
Principal Geologist  
P.G. #6854, C.E.G. #2139



**From:** Jessica deGrassi <[Jessica.deGrassi@santacruzcounty.us](mailto:Jessica.deGrassi@santacruzcounty.us)>  
**Sent:** Monday, July 1, 2019 2:20 PM  
**To:** Kirk Kozlowski <[kkozlowski@scisj.net](mailto:kkozlowski@scisj.net)>  
**Cc:** Moses Cuprill <[mcuprill@harokasunich.com](mailto:mcuprill@harokasunich.com)>; Jeff Nolan <[Jeff.Nolan@santacruzcounty.us](mailto:Jeff.Nolan@santacruzcounty.us)>; Rick Parks <[Rick.Parks@santacruzcounty.us](mailto:Rick.Parks@santacruzcounty.us)>  
**Subject:** RE: 266 Cliff Court Aptos, CA Landslide

Hi Kirk,

Thank you for your patience while we have been discussing the subject property and current situation. We discussed the recent slide on your property at our staff meeting last week, and have the following recommendations/considerations: since your home doesn't appear threatened (at this time), and there is a sufficient setback from the bluff face, we wouldn't be able to support an Emergency Coastal Permit (E-CDP) to construct a retaining wall, but we can issue an E-CDP to install soft, erosion control type measures to remove the existing loose, cracked soil from the bluff face, which would ultimately be required prior to construction of a blufftop shotcrete wall with tiebacks or similar type structure (to be designed by your engineer and geologist). However, we would be able to support a retaining wall at the bluff face, only if it's demonstrated that there is a threat to the home(s) below. Also, the useful life of the blufftop home(s) can be extended with a bluff face retaining wall system.

I also discussed the site and the recent failure with Rainey Graeven at the Coastal Commission, and she seemed to agree with our stance. I suggest that once draft plans are drawn up, you send them to me and I will communicate with our staff and Rainey again, to determine what permit(s) you will need and how to move forward.

Please let us know if you have any questions or concerns,

*Jessica deGrassi*

Resource Planner IV

Environmental Planning

County of Santa Cruz

Phone (831)454-3162

Email [Jessica.degrassi@santacruzcounty.us](mailto:Jessica.degrassi@santacruzcounty.us)