

Santa Cruz County Planning Department
701 Ocean Street
Santa Cruz, CA 95060
November 6, 2023

Re: Application No. 211316
APN: 043-081-13
Position: DENY APPLICATION

Hearing Date: November 8, 2023

I am writing to express my opposition to approving this project. There is absolutely no evidence in the record to support Coastal Development Permit Finding 5. There has been no identification of a qualifying existing structure, nor that a qualifying structure is under substantial threat, as required in 16.10.040(H)(3)(a). If the unusual location of this project merits separate code for permitting, then such a process should be undertaken. One cannot simply ignore and/or violate the existing code.

It has appeared since the first hearing of the first appeal to the Planning Commission that a majority of the Commission desired to see this project approved, yet the path followed in this process will not lead to a quicker approval, but instead to a bogged down process.

The project location is above homes at the bottom of a coastal bluff. These downslope homes are an aberration relative to most development along the County coast, and this project's issues illustrate why such development is no longer allowed. What was once a potential future problem when the County allowed easier bluff top and bluff bottom development has come to fruition. Bluffs erode. Sandstone plateaus at the base of the bluffs erode back into the bluffs. The ocean moves inward. These processes ultimately cannot be stopped. The future is now. This is exactly why increased development is no longer allowed in these areas.

When County staff was questioned by the Planning Commission, at the first hearing of the second Planning Commission appeal, as to whether there have been any identified "existing" structures, the Commission was told that no such structures had been identified. Then, in a stunning statement, a Commissioner then stated that no evidence that a structure does not qualify as "existing" does not mean that it is not an "existing" structure. This turns the requirements for evidence in support of a finding exactly on its head. Such reasoning would not be upheld even under a relatively low "substantial evidence" standard on appeal. There is simply no evidence to support the requirement under 16.10.040(H)(3)(a) that "(s)horeline protection structures shall only be allowed on parcels ... where necessary to protect existing structures from a significant threat".

The standard for determination of an "existing structure" is clarified in the Coastal Commission comment letter of April 21, 2023, which is of record for this proceeding, which states, "Importantly, the reference to protection of an 'existing structure' does not mean a structure that exists and is extant as of today, rather the reference to 'existing

Michael A. Guth
Attorney at Law

structure' in relation to shoreline protection is to structures that existed prior to the Coastal Act's effective date (January 1, 1977) and have not been redeveloped since." No "existing structure" has been identified. The code requirements are not met.

With regard to safety, I have no reason to doubt the sincerity of the concerns expressed by the downslope owners. However, it was clear from the testimony at the first hearing of the second Planning Commission appeal that the major threat to the downslope homes is not mitigated by this proposed project, and that deflection structures behind the downslope homes, or the like, would be needed to protect those homes. This seemed to be a major disconnect between the expressed concerns of the downslope residents and the testimony of the experts.

The Planning Commission may not be aware of how County approvals of projects that fail to identify existing structures under substantial threat, or fail to require siting of new development behind the erosion line as calculated assuming no shoreline protection, have been faring on Coastal appeal. They are all being denied, although approved at the County level. The positions of the local Coastal staff on these topics, which have typically been submitted very early in the process, do not represent an outlying or aggressive position, but instead a balanced position which is being unanimously supported by the Coastal Commission. Some of these projects have been appealed directly to the Coastal Commission after Zoning Administrator approval, so Planning Commissioners may not be developing an awareness of current trends.

If these few areas in the County that have homes at the base of coastal bluffs merit different code protections, then the proper path is to develop that new code, hold hearings on it, and if approved locally send it to the Coastal Commission for review and hearing. What one cannot do is to ignore and/or violate the existing code. The statements by the Planning Commission that the project should be approved because it offers some protection, as opposed to the requirement that protection is to an existing structure under significant threat, is simply rewriting the code, and absolutely not allowed. This is a clear example of administrative usurpation of legislative authority.

This project should not be approved for at least the foregoing reasons.

Thank you for your consideration of these comments.

A handwritten signature in black ink that reads "Michael Guth". The signature is written in a cursive, flowing style.

Michael A. Guth