

December 11, 2023

VIA EMAIL

Santa Cruz County Planning Commission
c/o Nathan MacBeth, Project Planner
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Santa Cruz, CA 95060
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Re: Appeal of Coastal Development Permit (Application #211129)
181 Seacliff Drive, Aptos
Zoning Administrator Agendas for October 6, 2023; Agenda Item #1

Dear Members of the Commission:

This law firm represents Protect Seacliff concerning the above referenced appeal. While your packet includes our previous letters to the Commission and the Zoning Administrator regarding the project, we wish to provide the following responses to the Staff Report regarding the appeal.

A. The Project's Compliance with the LCP

The Staff Report ignores one of the salient contentions in our appeal. Staff Report focuses on the project's compliance with the County Geologic Hazards Ordinance and setbacks from the bluff. However, our other basis for the appeal was the fact that the project will be visible from Seacliff State Beach in violation of the Local Coastal Program (LCP) and that this will be the first two-story home on the bluff top in the vicinity. These arguments are simply ignored.

The two homes immediately adjacent to the project, and the other three blufftop homes on the other side of the public parking/viewing area along the ocean side of Seacliff Drive, are all single-story. (See Exhibit A attached hereto.) The only two-story homes in this neighborhood are not directly on the bluff top. Unlike the project, the two-story homes are set farther back from the bluff on the opposite side of Seacliff Drive.

The project is inconsistent with the LCP's visual resource protections. The proposed project would substantially increase the visibility of the home from the beach, which raises LCP consistency issues including with respect to LUP Policies 5.10.2 "Development within Visual Resource Areas", 5.10.4 "Preserving Natural Buffers", and 5.10.7 "Open Beaches and Blufftops." LUP Policy 5.10.2 acknowledges the importance of visual resources and requires that projects be evaluated against their unique environment (i.e., the surrounding projects and natural context), and LUP Policy 5.10.7 **prohibits the placement of new permanent structures**

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that would be visible from the public beach except where allowed on existing parcels of record and “where compatible with the pattern of existing development.” These visual resource provisions are further codified in the required coastal permit findings (see, County Code section 13.20.110(E)). The proposed project would increase the visibility of the home on the project site and would not be compatible with surrounding residential blufftop development and would represent a significant intrusion into the public viewshed. The existing home has a low profile from the beach itself. (See Exhibit B attached hereto.) The applicant provided simulations to the Zoning Administrator attempting to show that the home will not be visible from Seacliff State Beach. However, the simulations and accompanying photo were taken near the picnic areas along Seacliff Beach, which are nearer to the bluff, which mischaracterizes the visibility of the project from the beach. (See attachment to Staff Report at pp. 23-27 (Ex. 1D)) (See also, Exhibit C which shows that the homes on the bluff are not visible from the picnic area due to its close proximity to the bluff, while views from the Beach (Exhibit B) proves that adding a second story to a low profile building on the bluff will become more visible from the beach.) Moreover, once there is a two-story home on the bluff, findings for future projects will state that other two-story homes proposed on the bluff are consistent with surrounding homes. This will result in a cumulative visual impact, which cannot be ignored.

B. The Staff Report Misconstrues the Meaning of the Exception to the Exemptions Under CEQA

Despite the Staff Report’s assertions to the contrary, the Class 3 exemption (14 Cal. Code Regs. section 15303) for new construction or conversion of small structures does not apply to the project because the project site is within “an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.” Thus, the exception to the exemption pursuant to CEQA Guidelines section 15300.2(a) applies.

The Staff Report argues that this exception to the exemption does not apply because the scenic resource being protected “will not be impacted by the project.” (Staff Report, p. 3.) However, the County’s bald conclusion that there is no impact is not relevant.

Section 15300.2(a) states:

Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located--a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, **except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.** (Emphasis added.)

“May” in this context does not give the County the ability to make its own environmental determination. Instead, this means that there “may” be an environmental impacts due to the fact that it is in a mapped scenic resource area and it is presumed there may be a significant impact. Therefore, the exception applies.


Under 15 Cal. Code Regs §15300.2(a), a determination that an activity may impact a resource of hazardous or critical concern **precludes use of one of the designated categorical exemptions. The possibility of a significant impact is presumed; the agency cannot sidestep the exception by finding that an impact on a resource of hazardous or critical concern will not be significant.”**

Kostka & Zischke, *Practice Under the Environmental Quality Act* (CEB), §5.74, emphasis added. Crucially, the Staff Report agrees that the project site is within a mapped scenic resource designation. Thus, the Class 3 exemption does not apply.

Likewise, the Class 1 exemption for existing facilities (14 Cal. Code Regs. Section 15301) does not apply, albeit for different reasons. The Staff Report relies on the fact that the project is an “addition.” However, it is much more than that as shown in the plans. 100% of the roof is being modified, and 41% of the exterior walls are being modified or demolished, and the total weighted demolition of the structure is 45%. Therefore, in reality, this is not the simple addition of 960 square feet, it is the demolition and reconstruction of significant portions of a structure. (See, Staff Report, p. 51-52.) Therefore, the Class 1 exemption does not apply here.

For the foregoing reasons, we request that you grant the appeal and reverse the Zoning Administrator’s approval of the project. Thank you for your consideration.

Very truly yours,
WITTWER PARKIN



William P. Parkin

cc: Client

EXHIBIT A

Layers



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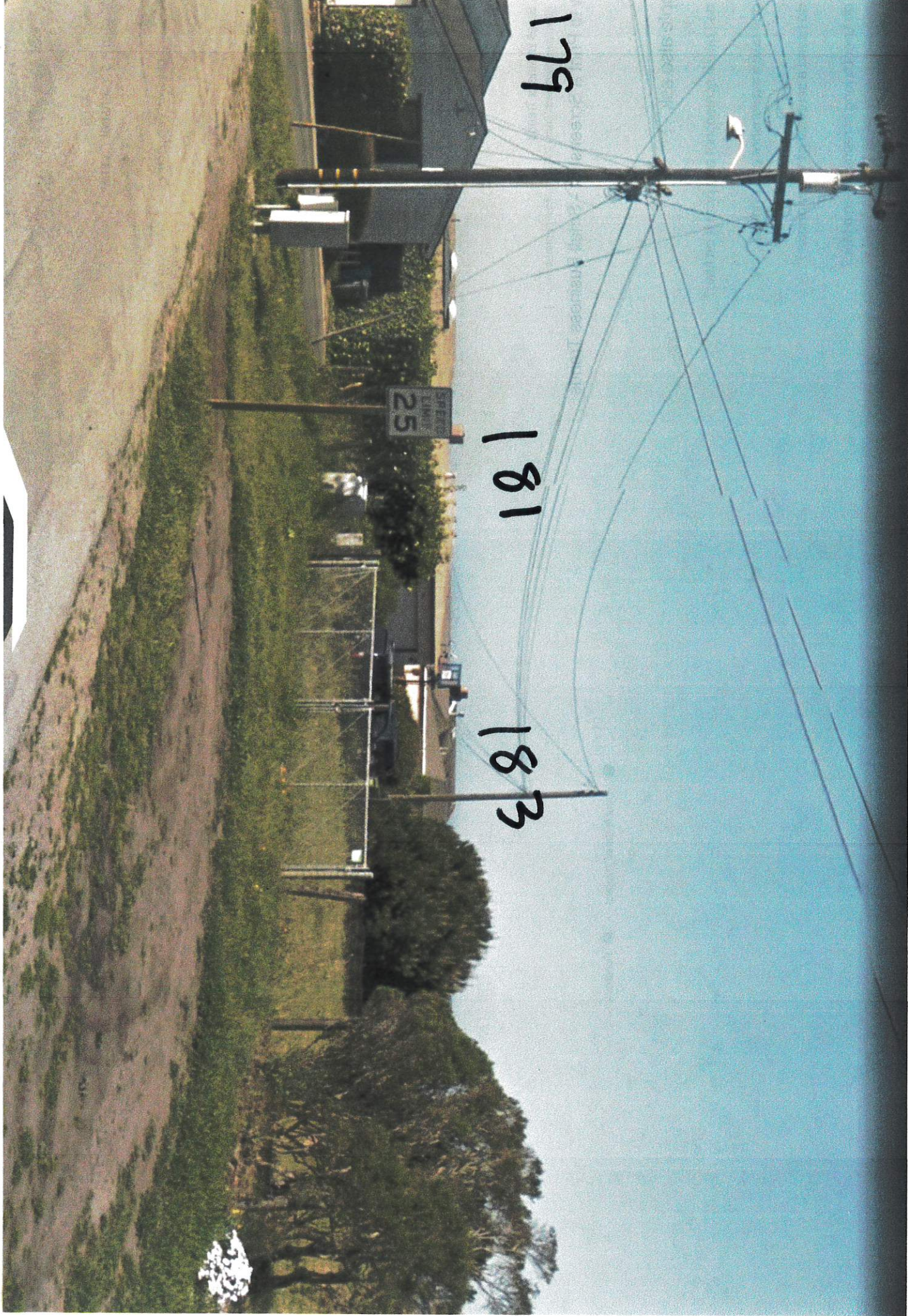


EXHIBIT B





EXHIBIT C

