

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
WEB: WWW.COASTAL.CA.GOV

**June 5, 2025**

Nate MacBeth
Santa Cruz County Community Development and Infrastructure Department (CDID)
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
Sent via email to: Nathan.MacBeth@santacruzcountyca.gov


Subject: June 11, 2025 Planning Commission Hearing on CDP Application No. 241450 (22702 East Cliff Drive, APN 028-242-25)

Dear Planning Commission:

Please accept the following comments on the above-referenced Planning Commission item scheduled for hearing on June 11, 2025. Commission staff previously provided comments on the project when it was first routed to us for review on December 20, 2024, highlighting LCP consistency issues related to coastal hazards, shoreline armoring, large dwellings, and visual resources. Accordingly, we concur with County staff's LCP consistency analysis, particularly with respect to ensuring that all new development and newly created lots are set back from the bluff sufficiently without reliance on existing or proposed armoring, and thus concur with the denial recommendation.

Thank you for your consideration.

Sincerely,

DocuSigned by:

77591515633A40D...

Nolan Clark
Coastal Planner
California Coastal Commission

cc: Cove Britton, Applicant's Representative
Jocelyn Drake, Santa Cruz County CDID

Donovan Arteaga

From: Cove Britton <cove@matsonbritton.com>
Sent: Thursday, June 5, 2025 5:08 PM
To: Clark, Nolan@Coastal
Cc: Nathan MacBeth; Donovan Arteaga; Jocelyn Drake; Manu Koenig; Kimberly De Serpa; Jason Heath; Flynn, John J.
Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

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Hi Nolan-

While I understand that you have a personal opinion, you have no standing as a staff member of the CCC to comment until such time as TWO CCC COMMISSIONERS APPEAL.

Please provide CCC legal counsel opinion that supports your ability to comment as CCC staff or retract your comments. They are not lawfully applicable, they are merely your personal opinion in this circumstance and outside your role.

Too staff please note that Mr. Nolan has no legal standing to comment or provide legal counsel substantiated opinion that CCC staff does have a role.

Regards-

On Thu, Jun 5, 2025 at 5:00 PM Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov> wrote:

Hi Nate,

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Nolan Clark

Coastal Planner

Central Coast District

California Coastal Commission

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Cove Britton

Matson Britton Architects

O. (831) 425-0544

Donovan Arteaga

From: Cove Britton <cove@matsonbritton.com>
Sent: Thursday, June 5, 2025 5:16 PM
To: Clark, Nolan@Coastal
Cc: Nathan MacBeth; Donovan Arteaga; Jocelyn Drake; Manu Koenig; Kimberly De Serpa; Jason Heath; Flynn, John J.; James Vaudagna
Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

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I think that Mr. Clark's comments highlight that local CCC staff have interjected themselves in a manner that is not lawful and inappropriately influenced County staff positions that they are either naive about or support personally.

The CCC has been roundly criticized by those I do not politically agree with and those I do.

And Mr. Nolan interjecting here is an example of why. The CCC has NO JURISDICTION OVER THIS PROJECT YET.

Mr. Nolan (respectfully) had no particular expertise or standing to comment. He is merely an employee of the CCC. As such it should be clearly spelled out that he is expressing personal opinion that has not been supported by the CCC. This has been a continuance error by both CCC staff and County staff to give any difference to CCC staff opinion.

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From: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>
Sent: Friday, June 6, 2025 9:45 AM
To: Manu Koenig; Kimberly De Serpa; Jocelyn Drake; Nathan MacBeth; Donovan Arteaga; Jason Heath; jflynn@nossaman.com; jvaudagna@comcast.net; Clark, Nolan@Coastal; Graeven, Rainey@Coastal; Kahn, Kevin@Coastal; Tillema, Logan@Coastal
Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)
Attachments: Cove Britton response 3.17.2023.pdf

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Dan Carl

District Director
North Central Coast and Central Coast Districts
California Coastal Commission
Web: www.coastal.ca.gov
Email: dan.carl@coastal.ca.gov

North Central Coast District (Sonoma, Marin, San Francisco, and San Mateo Counties)
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Cc: Nathan.MacBeth@santacruzcountyca.gov; Donovan.Arteaga@santacruzcountyca.gov; jocelyn.drake@santacruzcountyca.gov; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; kimberly.deserpa@santacruzcounty.us; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Flynn, John J. <jflynn@nossaman.com>; James Vaudagna <jvaudagna@comcast.net>
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I inadvertently omitted Mr. Britton from the email recipients, he is added here.

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Date: Friday, June 6, 2025 at 9:44 AM
To: Manu.Koenig@santacruzcountyca.gov <Manu.Koenig@santacruzcountyca.gov>, kimberly.deserpa@santacruzcounty.us <kimberly.deserpa@santacruzcounty.us>, jocelyn.drake@santacruzcountyca.gov <jocelyn.drake@santacruzcountyca.gov>, Nathan.MacBeth@santacruzcountyca.gov <Nathan.MacBeth@santacruzcountyca.gov>, Donovan.Arteaga@santacruzcountyca.gov <Donovan.Arteaga@santacruzcountyca.gov>, Jason.Heath@santacruzcountyca.gov <Jason.Heath@santacruzcountyca.gov>, jflynn@nossaman.com <jflynn@nossaman.com>, jvaudagna@comcast.net <jvaudagna@comcast.net>, Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>, Graeven, Rainey@Coastal <Rainey.Graeven@coastal.ca.gov>, Kahn, Kevin@Coastal <kevin.kahn@coastal.ca.gov>, Tillema, Logan@Coastal <logan.tillema@coastal.ca.gov>
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455 MARKET STREET, SUITE 228
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400

**VIA ELECTRONIC MAIL**

March 17, 2023

Cove Britton
Matson Britton Architects

Subject: California Coastal Commission Staff Communications

Dear Mr. Britton:

This letter is in response to your recent e-mails alleging inappropriate communication between California Coastal Commission ("Commission") staff and Santa Cruz County ("County") staff. Specifically, in an e-mail to County staff, Evan Ditmars, on March 3, 2023:

Mr. Clark [Nolan Clark, Coastal Planner in the Commission's Central Coast District Office] has no role here other than as a private citizen. I.e. [sic] the CCC does not have jurisdiction over this project and the comments Mr. Clark is making are as a private citizen.

And on March 6, 2023, later in the same email string, you further stated:

I would suggest that a Commissioner be contacted if staff has an issue and that the Commissioner's [sic] contact applicants if they have an issue. I believe that is technically the appropriate process. Lacking an actual legal basis for CCC staff to be involved in the County administering their LCP...

And on March 15, 2023, also in the same email string, you stated:

I believe (though not standing practise [sic]) that the appropriate process for Coastal Commission staff to comment is to provide those comments to the Coastal Commissioners and have them comment. ...I believe in fact this is a statutory requirement that Coastal staff not comment unless as a private citizen unless, or until, the Coastal Commission takes jurisdiction [sic]. ...It is the applicant's right to decline Coastal staff direct involvement...

To be clear, Mr. Clark was acting in his official Commission staff capacity in providing comments to County staff – based upon County staff's prior explicit request for such comments – on a pending County coastal development permit (CDP) application (although Commission staff are free to comment regardless of whether they have been asked or not). And, in fact, there is nothing out of the ordinary in him providing those comments on a pending local CDP application especially because the Commission retains an oversight role over local government implementation of the Coastal Act through a certified Local Coastal Program ("LCP"; such as is the case in Santa Cruz

County), including as it relates to County review of County CDP applications. In providing such comments, Commission staff attempts to bring attention to important LCP (and in some cases where applicable, Coastal Act) coastal resource concerns and to help the County as it strives to approve LCP (and Coastal Act) consistent development. This can be particularly important in the case of CDP applications where certain decisions on the application are appealable to the Commission (like this subject case), where such comments can help lead to project changes to reach such consistency, and thereby to also help head off such appeals and/or to help to avoid the Commission taking up such appeals if appealed. Thus, such comments are in fact a critical component of the Commission's LCP oversight role.

You appear to suggest that an applicant can "decline" such Commission staff involvement, that Commission staff comments should be considered the same as a "private citizen" making such comments, that it is a "statutory requirement" that Commission staff comments be considered private citizen comments, and that in fact Coastal Commissioners themselves should be the ones to comments should the Commission choose to provide comments. None of that is accurate. In fact, although you refer to statutory requirements, I am unaware of any statute that would suggest and/or require any such consultation framework, nor, to me, would it make any logical sense. Can you please provide a citation to the statute, regulation, and/or case as to why you believe that is the law? Rather, and contrary to what you assert, under the California Environmental Quality Act ("CEQA") and the Coastal Act, Commission staff are well within their rights (and arguably required) to informally consult with local governments, here Santa Cruz County staff, in this manner.

If it is helpful to you, here are some principles under CEQA. Specifically, per CEQA the local government is generally the lead agency for CDP applications under a certified LCP (as was the case here), and the Commission is a responsible agency. And under CEQA, informal consultation is required (see CEQA Guidelines Section 15063), including that responsible agencies are required to respond to "consultation by the lead agency" (see CEQA Guidelines Section 15096). Informal consultation is an integral part of any environmental review as it allows both entities to identify important issues during the initial stage of the review process. If both entities' staff can work out LCP (and Coastal Act as applicable) coastal resource issues early on, with a focus on modifying projects as necessary to achieve LCP/Coastal Act consistency, Coastal Act objectives are better achieved (and the Commission is less likely to become involved through any appellate processes). Furthermore, the court in *Banning Ranch Conservancy v. City of Newport Beach 2* (Cal.5th 918, 938-42 (2017)) endorsed a consultation process. The court stated "[a]greement between the agencies is not necessary, as we have discussed, but conflicts may be avoided or reduced by consultation in early stages." In addition to the requirements under CEQA, the Coastal Act also requires the Commission to proactively protect coastal zone resources (see the Coastal Act generally and specifically Section 30001.5) and communication with local governments implementing the Coastal Act through their LCPs fits well within that framework.

In addition, to your assertions that Commission staff comments to outside entities (in this case to County staff) should be considered the same as "private citizen" comments, can you please provide a citation that supports those statements? A Coastal

Cove Britton, California Coastal Commission Staff Communications, Page 3

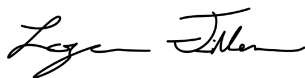
Commission employee that is acting in their official capacity as was happening here, *is* acting within their official capacity and not as a private citizen by virtue of following their duties. In fact, Commission staff comment on proceedings affecting California's coastal management program, including LCP implementation, routinely, both to help shape Coastal Act and LCP consistent development, and because it is required in some instances (for example, under CEQA and the Coastal Act). Coastal planners like Mr. Clark are subject to formal duty statement, and part of their duties include, among other things:

Monitor the coastal regulatory and planning programs of assigned cities and counties and participate through means such as commenting on proposed developments under review at the local level and assisting local government planners in interpretation of the California Coastal Act and Local Coastal Program (LCP) policies.

And that is precisely what Mr. Clark was doing in this instance. Again, if you have any relevant citations to accompany your assertions, please provide them. In the interim, the nature of Mr. Clark's (and other Commission employees') involvement in County CDP application review is as stated above, and Commission staff will continue to interact with County staff and other interested parties toward helping to implement the Coastal Act through the LCP in these ways. I would encourage you to continue to work with Commission staff in a professional and amicable matter.

Finally, it appears you are frustrated with the County's billing practices (as Commission staff do not bill County staff or County applicants for their time) and I recommend you take up that issue with County.

Sincerely,



Logan Tillema
Attorney, Legal Division
California Coastal Commission

cc: Carolyn Burke, Santa Cruz County Community Development and Infrastructure Department
Jocelyn Drake, Santa Cruz County Community Development and Infrastructure Department
Lezanne Jeffs, Santa Cruz County Community Development and Infrastructure Department
Evan Ditmars, Santa Cruz County Community Development and Infrastructure Department

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Thanks for for looping me in Dan!

Below is an analysis of you comments.

Analysis of Jurisdictional Authority and Procedural Standing in Mr. Carl's Email

1. Jurisdiction of the California Coastal Commission (CCC)

Under the **California Coastal Act of 1976**, the CCC has clearly defined jurisdiction over **coastal development permits (CDPs)** depending on the permit status and location of the project. For projects located in **areas with a certified Local Coastal Program (LCP)**, the initial CDP authority is delegated to the **local government**, not the CCC.

- **Public Resources Code § 30600(a):**

“Except as provided in subdivision (e), within the coastal zone, no person shall undertake any development unless a coastal development permit has been issued for such development by the commission or by a local government...”

- **PRC § 30519(a):**

“Except for appeals to the commission, after a local coastal program...has been certified...the authority for issuance of coastal development permits shall no longer be exercised by the commission, but shall instead be delegated to the local government...”

2. CCC Authority Over Local CDP Decisions — Appeals Only

Where a certified LCP is in place (as it is in Santa Cruz County), CCC authority over CDPs issued by the local government is **limited to the appellate function**.

- **PRC § 30603(a)** describes when a local CDP may be appealed to the CCC. If an application is **not under appeal**, then the CCC has **no legal authority** to intervene, comment, or otherwise oversee the project unless:
 - It is within a specific appealable area (e.g., tidelands, wetlands, or within 100 feet of a coastal stream), and
 - A proper appeal has been filed within the statutory time frame.

There is **no indication in Mr. Carl's email** that this application has been appealed, nor has he cited any Coastal Act provision or regulation granting CCC staff standing to review, comment, or influence the County's independent CDP process.

3. Implications of Mr. Carl's Position

Dan Carl's attempt to distance CCC staff from Mr. Britton's comments relies on a distinction between CCC authority and individual expression. However, in doing so, Mr. Carl fails to **articulate any legal basis** under the Coastal Act or CCC regulations that would:

- **Permit or require CCC staff to review or comment on an application not within CCC jurisdiction;**
- **Authorize CCC staff to disclaim others' commentary on legal or factual grounds absent an appeal or formal CCC involvement.**

Mr. Carl states:

"The CCC has been roundly criticized by those I do not politically agree with and those I do."

This appears to imply a **subjective rationale**, not grounded in law or regulation, for CCC staff engagement in an application **outside their formal jurisdiction**. This raises due process concerns if CCC staff are inserting informal influence into local permitting processes **without statutory authority**.

Conclusion: No Legal Basis for CCC Staff Role Absent Jurisdiction

Mr. Carl has not presented — and likely cannot present — any legal citation in the **California Coastal Act** or **Title 14 of the California Code of Regulations** that supports CCC staff involvement in CDP applications not formally under CCC jurisdiction or appeal.

Instead, **PRC §§ 30519 and 30603** collectively demonstrate that:

- CCC jurisdiction is limited to direct issuance (for uncertified areas) or appellate review (for certified areas);
- CCC staff have **no legal authority to evaluate, comment on, or intervene in** CDPs pending solely before certified local governments **unless formally appealed**.

Any implication that CCC staff commentary might be authoritative or dispositive in such cases **risks undermining** both the structure of the Act and the autonomy of local governments under certified LCPs.

On Fri, Jun 6, 2025 at 9:56 AM Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov> wrote:

I inadvertently omitted Mr. Britton from the email recipients, he is added here.

From: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>

Date: Friday, June 6, 2025 at 9:44 AM

To: Manu.Koenig@santacruzcountyca.gov <Manu.Koenig@santacruzcountyca.gov>, kimberly.deserpa@santacruzcounty.us <kimberly.deserpa@santacruzcounty.us>, jocelyn.drake@santacruzcountyca.gov <jocelyn.drake@santacruzcountyca.gov>, Nathan.MacBeth@santacruzcountyca.gov <Nathan.MacBeth@santacruzcountyca.gov>, Donovan.Arteaga@santacruzcountyca.gov <Donovan.Arteaga@santacruzcountyca.gov>, Jason.Heath@santacruzcountyca.gov <Jason.Heath@santacruzcountyca.gov>, jflynn@nossaman.com <jflynn@nossaman.com>, jvaudagna@comcast.net <jvaudagna@comcast.net>, Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>, Graeven, Rainey@Coastal <Rainey.Graeven@coastal.ca.gov>, Kahn, Kevin@Coastal <kevin.kahn@coastal.ca.gov>, Tillema, Logan@Coastal <logan.tillema@coastal.ca.gov>

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Central Coast District (Santa Cruz, Monterey, and San Luis Obispo Counties)

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Santa Cruz, CA 95060

831-427-4863

centralcoast@coastal.ca.gov

From: Cove Britton <cove@matsonbritton.com>

Sent: Thursday, June 5, 2025 5:16 PM

To: Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>

Cc: Nathan.MacBeth@santacruzcountyca.gov; Donovan.Arteaga@santacruzcountyca.gov; jocelyn.drake@santacruzcountyca.gov; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; kimberly.deserpa@santacruzcounty.us; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Flynn, John J. <jflynn@nossaman.com>; James Vaudagna <jvaudagna@comcast.net>

Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

Respectfully to all-

I think that Mr. Clark's comments highlight that local CCC staff have interjected themselves in a manner that is not lawful and inappropriately influenced County staff positions that they are either naive about or support personally.

The CCC has been roundly criticized by those I do not politically agree with and those I do.

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Please do not hesitate to contact me should there be any questions regarding these comments.

Thank you,

Nolan Clark

Coastal Planner

Central Coast District

California Coastal Commission

(831) 427-4863

coastal.ca.gov

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Cove Britton

Matson Britton Architects

O. (831) 425-0544

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Donovan Arteaga

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Sent: Friday, June 6, 2025 1:53 PM
To: Carl, Dan@Coastal
Cc: Manu Koenig; Kimberly De Serpa; Jocelyn Drake; Nathan MacBeth; Donovan Arteaga; Jason Heath; jflynn@nossaman.com; jvaudagna@comcast.net; Clark, Nolan@Coastal; Graeven, Rainey@Coastal; Kahn, Kevin@Coastal; Tillema, Logan@Coastal
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Hi all-

To further clarify and address Dan's June 6, 2025, email regarding Coastal Development Permit (CDP) Application 241450 (22702 East Cliff Drive), and to raise serious legal and procedural concerns about the actions of California Coastal Commission (CCC) staff in this matter.

Despite Mr. Carl's attempt to characterize CCC staff communications as informal or advisory, it is essential to recognize that such actions—when taken prior to the Commission's assumption of jurisdiction—are both legally unsupported and procedurally improper. CCC staff have no independent authority to impose costs, issue directives, or influence local permitting decisions before a valid appeal has been filed and accepted. The record here reflects a clear overstep of that boundary.

1. Lack of Legal Authority for Pre-Appeal Staff Involvement

Mr. Carl's email offers no statute, regulation, or Commission precedent that authorizes CCC staff to insert themselves into a local government's discretionary CDP process prior to Commission jurisdiction. That silence is telling—because none exists.

The **California Coastal Act** governs the boundaries of Commission authority:

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- **§ 30625** provides that it is the *Commission*, not its staff, that hears and decides appeals.

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2. Procedural Costs Imposed Without Jurisdiction

Despite lacking jurisdiction, CCC staff have made statements and issued commentary that carry the practical effect of regulatory intervention. These staff communications have introduced both financial and procedural burdens on the applicants and have altered the character of the County's permit review. That is not a neutral advisory role—it is functional adjudication without authority.

This sort of informal but impactful intervention has been explicitly cautioned against. In **Friends of the Old Trees v. Department of Forestry** (1997) 52 Cal.App.4th 1383, the court warned that:

"Adjudicative bodies must observe procedural formalities. Informal influence from staff or third parties—particularly prior to jurisdiction—can render the process unfair."

3. Risk of Institutional Overreach and Due Process Harm

Mr. Carl's position—that staff are "merely commenting"—ignores the reality that such commentary is being interpreted and treated as binding or dispositive. That mischaracterization opens the door to unchecked institutional overreach, where unelected staff shape or derail projects before any public Commission review can occur.

This is not just a theoretical risk—it is happening here, and it is happening without statutory support, without a valid appeal, and without due process. The Commission's own regulations under **Title 14 of the California Code of Regulations** (see esp. §§ 13110–13120) contemplate staff involvement *after* an appeal is filed—not before.

4. County Authority Must Be Protected

The County of Santa Cruz is the primary permitting authority for CDP Application 241450. CCC staff should not be treated as a parallel or superior review body, nor should their unsolicited comments be permitted to reshape or delay the County's decision-making. The Coastal Act entrusts the County with first-instance authority, and Commission oversight is strictly limited to post-decision appeal.

We urge the County to clearly acknowledge this jurisdictional framework and reaffirm that:

- CCC staff comments have no formal status absent a valid appeal;
 - Local permitting authority must proceed unimpeded by extra-procedural staff assertions;
 - Procedural fairness must be preserved for all applicants and constituents.
-

Conclusion

Mr. Carl has failed to cite any legal basis for the CCC staff's pre-appeal intervention. His email, though framed as clarification, in fact underscores the very problem at issue: Commission staff are exerting unofficial but influential authority in a space where they have none. That practice is not supported by the Coastal Act, not condoned by case law, and not acceptable as a matter of administrative fairness.

I suggest that County legal counsel immediately prepare a public written analysis of this issue and also address how fees charged "at cost" that involve addressing CCC staff concerns can be applied to the applicant. I also suggest that County staff immediately desist from consulting or incorporating CCC staff comments lacking any legitimate legal basis for doing so. We would be pleased to meet to further discuss these concerns or submit formal documentation for the public record.

Sincerely,
Cove Britton

On Fri, Jun 6, 2025 at 10:52 AM Cove Britton <cove@matsonbritton.com> wrote:
Thanks for for looping me in Dan!

Below is an analysis of you comments.

Analysis of Jurisdictional Authority and Procedural Standing in Mr. Carl's Email

1. Jurisdiction of the California Coastal Commission (CCC)

Under the **California Coastal Act of 1976**, the CCC has clearly defined jurisdiction over **coastal development permits (CDPs)** depending on the permit status and location of the project. For projects located in **areas with a certified Local Coastal Program (LCP)**, the initial CDP authority is delegated to the **local government**, not the CCC.

- **Public Resources Code § 30600(a):**

“Except as provided in subdivision (e), within the coastal zone, no person shall undertake any development unless a coastal development permit has been issued for such development by the commission or by a local government...”

- **PRC § 30519(a):**

“Except for appeals to the commission, after a local coastal program...has been certified...the authority for issuance of coastal development permits shall no longer be exercised by the commission, but shall instead be delegated to the local government...”

2. CCC Authority Over Local CDP Decisions — Appeals Only

Where a certified LCP is in place (as it is in Santa Cruz County), CCC authority over CDPs issued by the local government is **limited to the appellate function**.

- **PRC § 30603(a)** describes when a local CDP may be appealed to the CCC. If an application is **not under appeal**, then the CCC has **no legal authority** to intervene, comment, or otherwise oversee the project unless:
 - It is within a specific appealable area (e.g., tidelands, wetlands, or within 100 feet of a coastal stream), and
 - A proper appeal has been filed within the statutory time frame.

There is **no indication in Mr. Carl’s email** that this application has been appealed, nor has he cited any Coastal Act provision or regulation granting CCC staff standing to review, comment, or influence the County's independent CDP process.

3. Implications of Mr. Carl’s Position

Dan Carl's attempt to distance CCC staff from Mr. Britton’s comments relies on a distinction between CCC authority and individual expression. However, in doing so, Mr. Carl fails to **articulate any legal basis** under the Coastal Act or CCC regulations that would:

- **Permit or require CCC staff to review or comment on an application not within CCC jurisdiction;**
- **Authorize CCC staff to disclaim others’ commentary on legal or factual grounds absent an appeal or formal CCC involvement.**

Mr. Carl states:

“The CCC has been roundly criticized by those I do not politically agree with and those I do.”

This appears to imply a **subjective rationale**, not grounded in law or regulation, for CCC staff engagement in an application **outside their formal jurisdiction**. This raises due process concerns if CCC staff are inserting informal influence into local permitting processes **without statutory authority**.

Conclusion: No Legal Basis for CCC Staff Role Absent Jurisdiction

Mr. Carl has not presented — and likely cannot present — any legal citation in the **California Coastal Act** or **Title 14 of the California Code of Regulations** that supports CCC staff involvement in CDP applications not formally under CCC jurisdiction or appeal.

Instead, **PRC §§ 30519 and 30603** collectively demonstrate that:

- CCC jurisdiction is limited to direct issuance (for uncertified areas) or appellate review (for certified areas);
- CCC staff have **no legal authority to evaluate, comment on, or intervene in** CDPs pending solely before certified local governments **unless formally appealed**.

Any implication that CCC staff commentary might be authoritative or dispositive in such cases **risks undermining** both the structure of the Act and the autonomy of local governments under certified LCPs.

On Fri, Jun 6, 2025 at 9:56 AM Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov> wrote:

I inadvertently omitted Mr. Britton from the email recipients, he is added here.

From: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>

Date: Friday, June 6, 2025 at 9:44 AM

To: Manu.Koenig@santacruzcountyca.gov <Manu.Koenig@santacruzcountyca.gov>, kimberly.deserpa@santacruzcounty.us <kimberly.deserpa@santacruzcounty.us>, jocelyn.drake@santacruzcountyca.gov <jocelyn.drake@santacruzcountyca.gov>, Nathan.MacBeth@santacruzcountyca.gov <Nathan.MacBeth@santacruzcountyca.gov>, Donovan.Arteaga@santacruzcountyca.gov <Donovan.Arteaga@santacruzcountyca.gov>, Jason.Heath@santacruzcountyca.gov <Jason.Heath@santacruzcountyca.gov>, jflynn@nossaman.com <jflynn@nossaman.com>, jvaudagna@comcast.net <jvaudagna@comcast.net>, Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>, Graeven, Rainey@Coastal <Rainey.Graeven@coastal.ca.gov>, Kahn, Kevin@Coastal <kevin.kahn@coastal.ca.gov>, Tillema, Logan@Coastal <logan.tillema@coastal.ca.gov>

Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

While many on this string will be familiar with these types of comments coming from Mr. Britton, and may be familiar with our past responses, some may not be. For those people, and as a refresher for others, I provide the attached letter from our legal counsel from two years ago that was sent in response to a similar series of inaccurate comments by Mr. Britton regarding Commission staff's role. Although this letter was provided to comments from Mr. Britton in a slightly different context, the same main themes are present here, including some of the same phraseology, and our opinion has not changed since. And, to be clear, Mr. Britton has not provided any citations to relevant law, nor even provided a rational reason, in response that would contradict our opinion, rather he simply appears to dislike Commission staff's comments.

Dan Carl

District Director

North Central Coast and Central Coast Districts

California Coastal Commission

Web: www.coastal.ca.gov

Email: dan.carl@coastal.ca.gov

North Central Coast District (Sonoma, Marin, San Francisco, and San Mateo Counties)

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San Francisco, CA 94105

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Sent: Friday, June 6, 2025 4:06 PM
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Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

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Mr. Britton:

We disagree with your assertions, and don't find your arguments persuasive. We will continue to review, coordinate, and offer insight on local coastal permit and LCP matters, including to help identify – and ideally resolve – any issues as early as possible, including for the reasons articulated in our letter. In fact, and although you clearly disagree, we believe that that kind of early engagement and coordination is good, transparent government, and that it can also help save time/resources for all parties. As always, we are available to coordinate with you and/or your clients should you wish to engage in a more productive dialogue on a specific project or issue, but don't intend to comment further about our role, as we believe that we have made our position on the matter clear, even should you continue to raise these types of objections.

Dan Carl

District Director
North Central Coast and Central Coast Districts
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To: Manu.Koenig@santacruzcountyca.gov <Manu.Koenig@santacruzcountyca.gov>, kimberly.deserpa@santacruzcounty.us <kimberly.deserpa@santacruzcounty.us>, jocelyn.drake@santacruzcountyca.gov <jocelyn.drake@santacruzcountyca.gov>, Nathan.MacBeth@santacruzcountyca.gov <Nathan.MacBeth@santacruzcountyca.gov>, Donovan.Arteaga@santacruzcountyca.gov <Donovan.Arteaga@santacruzcountyca.gov>, Jason.Heath@santacruzcountyca.gov <Jason.Heath@santacruzcountyca.gov>, jflynn@nossaman.com <jflynn@nossaman.com>, jvaudagna@comcast.net <jvaudagna@comcast.net>, Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>, Graeven, Rainey@Coastal <Rainey.Graeven@coastal.ca.gov>, Kahn, Kevin@Coastal <kevin.kahn@coastal.ca.gov>, Tillema, Logan@Coastal <logan.tillema@coastal.ca.gov>

Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

While many on this string will be familiar with these types of comments coming from Mr. Britton, and may be familiar with our past responses, some may not be. For those people, and as a refresher for others, I provide the attached letter from our legal counsel from two years ago that was sent in response to a similar series of inaccurate comments by Mr. Britton regarding Commission staff's role. Although this letter was provided to comments from Mr. Britton in a slightly different context, the same main themes are present here, including some of the same phraseology, and our opinion has not changed since. And, to be clear, Mr. Britton has not provided any citations to relevant law, nor even provided a rational reason, in response that would contradict our opinion, rather he simply appears to dislike Commission staff's comments.

Dan Carl

District Director

North Central Coast and Central Coast Districts

California Coastal Commission

Web: www.coastal.ca.gov

Email: dan.carl@coastal.ca.gov

North Central Coast District (Sonoma, Marin, San Francisco, and San Mateo Counties)

455 Market Street, Suite 300

San Francisco, CA 94105

415-904-5260

northcentralcoast@coastal.ca.gov

Central Coast District (Santa Cruz, Monterey, and San Luis Obispo Counties)

725 Front Street, Suite 300

Santa Cruz, CA 95060

831-427-4863

centralcoast@coastal.ca.gov

From: Cove Britton <cove@matsonbritton.com>

Sent: Thursday, June 5, 2025 5:16 PM

To: Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>

Cc: Nathan.MacBeth@santacruzcountyca.gov; Donovan.Arteaga@santacruzcountyca.gov; jocelyn.drake@santacruzcountyca.gov; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; kimberly.deserpa@santacruzcounty.us; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Flynn, John J. <jflynn@nossaman.com>; James Vaudagna <jvaudagna@comcast.net>

Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

Respectfully to all-

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been supported by the CCC. This has been a continuance error by both CCC staff and County staff to give any difference to CCC staff opinion.

Regards-

On Thu, Jun 5, 2025 at 5:07 PM Cove Britton <cove@matsonbritton.com> wrote:

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Please provide CCC legal counsel opinion that supports your ability to comment as CCC staff or retract your comments. They are not lawfully applicable, they are merely your personal opinion in this circumstance and outside your role.

Too staff please note that Mr. Nolan has no legal standing to comment or provide legal counsel substantiated opinion that CCC staff does have a role.

Regards-

On Thu, Jun 5, 2025 at 5:00 PM Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov> wrote:

Hi Nate,

Please find the attached comment letter on CDP application 241450, which is scheduled to be heard at the June 11, 2025 Planning Commission meeting.

Please do not hesitate to contact me should there be any questions regarding these comments.

Thank you,

Nolan Clark

Coastal Planner

Central Coast District

California Coastal Commission

(831) 427-4863

coastal.ca.gov

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Cove Britton

Matson Britton Architects

O. (831) 425-0544

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Matson Britton Architects

O. (831) 425-0544

Donovan Arteaga

From: Cove Britton <cove@matsonbritton.com>
Sent: Friday, June 6, 2025 4:26 PM
To: Carl, Dan@Coastal
Cc: Manu Koenig; Kimberly De Serpa; Jocelyn Drake; Nathan MacBeth; Donovan Arteaga; Jason Heath; jflynn@nossaman.com; jvaudagna@comcast.net; Clark, Nolan@Coastal; Graeven, Rainey@Coastal; Kahn, Kevin@Coastal; Tillema, Logan@Coastal
Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

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

Hi Dan-

Your recent response—addressed not only to me but to the Santa Cruz County Board of Supervisors and County Counsel—was issued in your official capacity as District Director of the California Coastal Commission. That context makes the absence of substantive legal justification in your reply all the more troubling.

You summarily dismiss my position as “not persuasive,” yet provide no legal citation, no policy reference, and no factual analysis to explain the Commission staff’s continued involvement in a local CDP matter governed under a certified LCP. This is not merely unresponsive; it reflects a broader institutional pattern in which Commission staff asserts influence through tone and posture, rather than through clearly articulated legal authority.

This pattern—of offering guidance, raising objections, or shaping local process without grounding such involvement in statute or regulation—is not new. But it is increasingly untenable, especially when directed not just at applicants, but at local governments empowered by certification under the Coastal Act.

If Commission staff wishes to involve itself in the ongoing review of CDP Application 241450, it must do so within the bounds of clearly defined legal authority. That has yet to be demonstrated. Vague allusions to early engagement or transparency are not substitutes for a defined jurisdictional basis. You have now had multiple opportunities to articulate that basis and have not done so.

Accordingly, I am requesting a formal, written response identifying the specific statutory or regulatory provision under which Commission staff claims authority to intervene, advise, or direct aspects of this local permitting process. That explanation should come from you, from Commission legal counsel, and ultimately be reviewed and affirmed by the California Attorney General’s Office.

Until and unless such a basis is produced and validated, I am formally requesting that Commission staff desist from further comment, influence, or procedural engagement in this matter or any other County of Santa Cruz CDP application. Continued participation in the absence of clear legal authority

risks misleading County decision-makers, undermining the certified LCP framework, and violating fundamental principles of administrative fairness and transparency.

Respectfully, your message exemplifies the core problem: a refusal to provide legal clarity while continuing to assert informal oversight. That posture is no longer acceptable and is not supported by the State legislature nor the Governor, let alone the public. We are all fed up (the public) with this type of disrespect and approach and it is well documented even with those I politically really disagree with. Get your act together respectfully, and procedurally correct, dismissive comments are unacceptable. If Commission staff wish to remain involved, it must do so with legal precision and procedural accountability—not institutional habit or presumption and arrogant self privilege.

I await your response.

Cheers!

On Fri, Jun 6, 2025 at 4:06 PM Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov> wrote:

Mr. Britton:

We disagree with your assertions, and don't find your arguments persuasive. We will continue to review, coordinate, and offer insight on local coastal permit and LCP matters, including to help identify – and ideally resolve – any issues as early as possible, including for the reasons articulated in our letter. In fact, and although you clearly disagree, we believe that that kind of early engagement and coordination is good, transparent government, and that it can also help save time/resources for all parties. As always, we are available to coordinate with you and/or your clients should you wish to engage in a more productive dialogue on a specific project or issue, but don't intend to comment further about our role, as we believe that we have made our position on the matter clear, even should you continue to raise these types of objections.

Dan Carl

District Director

North Central Coast and Central Coast Districts

California Coastal Commission

Web: www.coastal.ca.gov

Email: dan.carl@coastal.ca.gov

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725 Front Street, Suite 300

Santa Cruz, CA 95060

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centralcoast@coastal.ca.gov

From: Cove Britton <cove@matsonbritton.com>

Date: Friday, June 6, 2025 at 1:53 PM

To: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>

Cc: Manu.Koenig@santacruzcountyca.gov <Manu.Koenig@santacruzcountyca.gov>, kimberly.deserpa@santacruzcounty.us <kimberly.deserpa@santacruzcounty.us>, jocelyn.drake@santacruzcountyca.gov <jocelyn.drake@santacruzcountyca.gov>, Nathan.MacBeth@santacruzcountyca.gov <Nathan.MacBeth@santacruzcountyca.gov>, Donovan.Arteaga@santacruzcountyca.gov <Donovan.Arteaga@santacruzcountyca.gov>, Jason.Heath@santacruzcountyca.gov <Jason.Heath@santacruzcountyca.gov>, jflynn@nossaman.com <jflynn@nossaman.com>, jvaudagna@comcast.net <jvaudagna@comcast.net>, Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>, Graeven, Rainey@Coastal <Rainey.Graeven@coastal.ca.gov>, Kahn, Kevin@Coastal <kevin.kahn@coastal.ca.gov>, Tillema, Logan@Coastal <logan.tillema@coastal.ca.gov>

Subject: Re: CCC Comments on CDP Application 241450 (22702 East Cliff Drive)

Hi all-

To further clarify and address Dan's June 6, 2025, email regarding Coastal Development Permit (CDP) Application 241450 (22702 East Cliff Drive), and to raise serious legal and procedural concerns about the actions of California Coastal Commission (CCC) staff in this matter.

Despite Mr. Carl's attempt to characterize CCC staff communications as informal or advisory, it is essential to recognize that such actions—when taken prior to the Commission's assumption of jurisdiction—are both legally unsupported and procedurally improper. CCC staff have no independent authority to impose costs, issue directives, or influence local permitting decisions before a valid appeal has been filed and accepted. The record here reflects a clear overstep of that boundary.

1. Lack of Legal Authority for Pre-Appeal Staff Involvement

Mr. Carl's email offers no statute, regulation, or Commission precedent that authorizes CCC staff to insert themselves into a local government's discretionary CDP process prior to Commission jurisdiction. That silence is telling—because none exists.

The **California Coastal Act** governs the boundaries of Commission authority:

- **Public Resources Code § 30603(a)** states that *only after a final local decision* may a project be appealed to the Commission.
- **§ 30625** provides that it is the *Commission*, not its staff, that hears and decides appeals.

Staff are not granted independent adjudicatory or enforcement powers. Absent an appeal, they may neither dictate conditions nor functionally override local government authority.

This principle has been confirmed in case law. In **City of Chula Vista v. Superior Court** (1982) 133 Cal.App.3d 472, the court held:

"Jurisdiction over coastal development decisions rests first with the local government, with the Commission's role commencing only upon the occurrence of a statutory trigger—typically, an appeal or direct permit authority in limited areas."

Similarly, in **McAllister v. California Coastal Commission** (2008) 169 Cal.App.4th 912, the court emphasized that proper jurisdictional process and procedural safeguards are essential before Commission authority can attach. Staff involvement prior to that point undermines these protections.

2. Procedural Costs Imposed Without Jurisdiction

Despite lacking jurisdiction, CCC staff have made statements and issued commentary that carry the practical effect of regulatory intervention. These staff communications have introduced both financial and procedural burdens on the applicants and have altered the character of the County's permit review. That is not a neutral advisory role—it is functional adjudication without authority.

This sort of informal but impactful intervention has been explicitly cautioned against. In **Friends of the Old Trees v. Department of Forestry** (1997) 52 Cal.App.4th 1383, the court warned that:

"Adjudicative bodies must observe procedural formalities. Informal influence from staff or third parties—particularly prior to jurisdiction—can render the process unfair."

3. Risk of Institutional Overreach and Due Process Harm

Mr. Carl's position—that staff are “merely commenting”—ignores the reality that such commentary is being interpreted and treated as binding or dispositive. That mischaracterization opens the door to

unchecked institutional overreach, where unelected staff shape or derail projects before any public Commission review can occur.

This is not just a theoretical risk—it is happening here, and it is happening without statutory support, without a valid appeal, and without due process. The Commission’s own regulations under **Title 14 of the California Code of Regulations** (see esp. §§ 13110–13120) contemplate staff involvement *after* an appeal is filed—not before.

4. County Authority Must Be Protected

The County of Santa Cruz is the primary permitting authority for CDP Application 241450. CCC staff should not be treated as a parallel or superior review body, nor should their unsolicited comments be permitted to reshape or delay the County’s decision-making. The Coastal Act entrusts the County with first-instance authority, and Commission oversight is strictly limited to post-decision appeal.

We urge the County to clearly acknowledge this jurisdictional framework and reaffirm that:

- CCC staff comments have no formal status absent a valid appeal;
 - Local permitting authority must proceed unimpeded by extra-procedural staff assertions;
 - Procedural fairness must be preserved for all applicants and constituents.
-

Conclusion

Mr. Carl has failed to cite any legal basis for the CCC staff’s pre-appeal intervention. His email, though framed as clarification, in fact underscores the very problem at issue: Commission staff are exerting unofficial but influential authority in a space where they have none. That practice is not supported by the Coastal Act, not condoned by case law, and not acceptable as a matter of administrative fairness.

I suggest that County legal counsel immediately prepare a public written analysis of this issue and also address how fees charged "at cost" that involve addressing CCC staff concerns can be applied to the applicant. I also suggest that County staff immediately desist from consulting or incorporating CCC staff comments lacking any legitimate legal basis for doing so. We would be pleased to meet to further discuss these concerns or submit formal documentation for the public record.

Sincerely,
Cove Britton

On Fri, Jun 6, 2025 at 10:52 AM Cove Britton <cove@matsonbritton.com> wrote:

Thanks for for looping me in Dan!

Below is an analysis of your comments.

Analysis of Jurisdictional Authority and Procedural Standing in Mr. Carl's Email

1. Jurisdiction of the California Coastal Commission (CCC)

Under the **California Coastal Act of 1976**, the CCC has clearly defined jurisdiction over **coastal development permits (CDPs)** depending on the permit status and location of the project. For projects located in **areas with a certified Local Coastal Program (LCP)**, the initial CDP authority is delegated to the **local government**, not the CCC.

- **Public Resources Code § 30600(a):**

“Except as provided in subdivision (e), within the coastal zone, no person shall undertake any development unless a coastal development permit has been issued for such development by the commission or by a local government...”

- **PRC § 30519(a):**

“Except for appeals to the commission, after a local coastal program...has been certified...the authority for issuance of coastal development permits shall no longer be exercised by the commission, but shall instead be delegated to the local government...”

2. CCC Authority Over Local CDP Decisions — Appeals Only

Where a certified LCP is in place (as it is in Santa Cruz County), CCC authority over CDPs issued by the local government is **limited to the appellate function**.

- **PRC § 30603(a)** describes when a local CDP may be appealed to the CCC. If an application is **not under appeal**, then the CCC has **no legal authority** to intervene, comment, or otherwise oversee the project unless:

- It is within a specific appealable area (e.g., tidelands, wetlands, or within 100 feet of a coastal stream), and
- A proper appeal has been filed within the statutory time frame.

There is **no indication in Mr. Carl's email** that this application has been appealed, nor has he cited any Coastal Act provision or regulation granting CCC staff standing to review, comment, or influence the County's independent CDP process.

3. Implications of Mr. Carl's Position

Dan Carl's attempt to distance CCC staff from Mr. Britton's comments relies on a distinction between CCC authority and individual expression. However, in doing so, Mr. Carl fails to **articulate any legal basis** under the Coastal Act or CCC regulations that would:

- **Permit or require CCC staff to review or comment on an application not within CCC jurisdiction;**
- **Authorize CCC staff to disclaim others' commentary on legal or factual grounds absent an appeal or formal CCC involvement.**

Mr. Carl states:

"The CCC has been roundly criticized by those I do not politically agree with and those I do."

This appears to imply a **subjective rationale**, not grounded in law or regulation, for CCC staff engagement in an application **outside their formal jurisdiction**. This raises due process concerns if CCC staff are inserting informal influence into local permitting processes **without statutory authority**.

Conclusion: No Legal Basis for CCC Staff Role Absent Jurisdiction

Mr. Carl has not presented — and likely cannot present — any legal citation in the **California Coastal Act** or **Title 14 of the California Code of Regulations** that supports CCC staff involvement in CDP applications not formally under CCC jurisdiction or appeal.

Instead, **PRC §§ 30519 and 30603** collectively demonstrate that:

- CCC jurisdiction is limited to direct issuance (for uncertified areas) or appellate review (for certified areas);
- CCC staff have **no legal authority to evaluate, comment on, or intervene in** CDPs pending solely before certified local governments **unless formally appealed**.

Any implication that CCC staff commentary might be authoritative or dispositive in such cases **risks undermining** both the structure of the Act and the autonomy of local governments under certified LCPs.

On Fri, Jun 6, 2025 at 9:56 AM Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov> wrote:

I inadvertently omitted Mr. Britton from the email recipients, he is added here.

From: Carl, Dan@Coastal <Dan.Carl@coastal.ca.gov>

Date: Friday, June 6, 2025 at 9:44 AM

To: Manu.Koenig@santacruzcountyca.gov <Manu.Koenig@santacruzcountyca.gov>, kimberly.deserpa@santacruzcounty.us <kimberly.deserpa@santacruzcounty.us>, jocelyn.drake@santacruzcountyca.gov <jocelyn.drake@santacruzcountyca.gov>, Nathan.MacBeth@santacruzcountyca.gov <Nathan.MacBeth@santacruzcountyca.gov>, Donovan.Arteaga@santacruzcountyca.gov <Donovan.Arteaga@santacruzcountyca.gov>, Jason.Heath@santacruzcountyca.gov <Jason.Heath@santacruzcountyca.gov>, jflynn@nossaman.com <jflynn@nossaman.com>, jvaudagna@comcast.net <jvaudagna@comcast.net>, Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>, Graeven, Rainey@Coastal <Rainey.Graeven@coastal.ca.gov>, Kahn, Kevin@Coastal <kevin.kahn@coastal.ca.gov>, Tillema, Logan@Coastal <logan.tillema@coastal.ca.gov>

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District Director

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Sent: Thursday, June 5, 2025 5:16 PM

To: Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>

Cc: Nathan.MacBeth@santacruzcountyca.gov; Donovan.Arteaga@santacruzcountyca.gov; jocelyn.drake@santacruzcountyca.gov; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; kimberly.deserpa@santacruzcounty.us; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Flynn, John J. <jflynn@nossaman.com>; James Vaudagna <jvaudagna@comcast.net>

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Please do not hesitate to contact me should there be any questions regarding these comments.

Thank you,

Nolan Clark

Coastal Planner

Central Coast District

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Donovan Arteaga

From: Sheila McDaniel
Sent: Monday, June 9, 2025 1:37 PM
To: Donovan Arteaga
Subject: FW: Planning commission hearing June 11th 241450
Attachments: Staff Report (1).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please load onto the webpage and provide to PC members.

Thank you,

Sheila

From: Cove Britton <cove@matsonbritton.com>
Sent: Monday, June 9, 2025 1:35 PM
To: Nathan MacBeth <Nathan.MacBeth@santacruzcountyca.gov>; Sheila McDaniel <Sheila.McDaniel@santacruzcountyca.gov>; Nicholas Brown <Nicholas.Brown@santacruzcountyca.gov>
Cc: Flynn, John J. <jflynn@nossaman.com>; Natalie Kirkish <Natalie.Kirkish@santacruzcountyca.gov>; James Vaudagna <jvaudagna@comcast.net>; Kimberly De Serpa <Kimberly.DeSerpa@santacruzcountyca.gov>; Manu Koenig <Manu.Koenig@santacruzcountyca.gov>; Jamie Sehorn <Jamie.Sehorn@santacruzcountyca.gov>
Subject: Planning commission hearing June 11th 241450

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

Hi Nate and Shiela-

Please provide the below letter and attached report from Baker Tilly as soon as possible to the Planning Commissioners.

Thanks!

June 9, 2025

Santa Cruz County Planning Commission
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: Formal Objection to Agenda Item 8 – Application No. 241450 – June 11, 2025 Hearing

Dear Commissioners,

I write on behalf of the applicants, Alexander and Judi MacDonell, to formally object to the scheduled hearing for Application No. 241450. As currently agendized, the hearing is legally unauthorized under **Santa Cruz County Code** and **State law**, procedurally defective, and emblematic of systemic flaws documented in the County's own **Baker Tilly organizational assessment**.

Planning staff's own record affirms that the application remains incomplete and the geologic reports remain unaccepted—yet staff proceeds as if a project-level denial is ripe for action. This approach not only contravenes applicable statutes, it reveals a procedural sleight of hand aimed at evading the **Permit Streamlining Act (PSA)**.

1. The Hearing Is Legally Unauthorized – No Action May Be Taken Without a Complete Application and Accepted Geologic Reports

Under Santa Cruz County Code § 16.10.060, which governs all development subject to geologic hazards review:

(A) Timing of Geologic Review. Any required geologic, soil, or other technical report shall be completed, reviewed and accepted pursuant to the provisions of this section **before any public hearing is scheduled** (emphasis added) and before any discretionary or development application is approved or issued.

This language is unambiguous: no discretionary action—approval or denial—may proceed until the County has accepted the technical reports required under Chapter 16.10. This includes accepted geologic and geotechnical reports that demonstrate compliance with SCCC § 16.10.070(H)(7)(a), which requires:

“Demonstration by a full geologic report that each proposed building site on the parcel is not subject to any potential hazards and that each site meets the minimum setback...”

In this case, the County has explicitly refused to accept the required geologic and geotechnical reports, asserting in its March 4, 2025 letter that reliance on existing shoreline protection structures violates its current interpretation of the code. There has been no acceptance of the reports, and no factual basis for concluding that the parcel meets blufftop setback standards.

Moreover, the application as a whole has never been deemed complete—as affirmed in the County's March 6, 2025 Final Written Determination. That status alone precludes a public hearing.

California case law makes clear that acting on an incomplete application—particularly in a setting where statutory prerequisites have not been satisfied—renders any resulting action void.

The Planning Commission has no lawful basis to conduct a denial hearing while the application remains incomplete and technical reports remain unaccepted. The hearing is, legally speaking, a nullity—an exercise in process without jurisdiction, without evidence, and without statutory foundation.

To proceed would be to engage in a performative action untethered from governing law—a hearing in name only, manufactured solely to create a record of denial in violation of state and local process requirements.

2. Rejection of Updated Geologic Reports Is Legally Invalid – No Changed Conditions, No New Evidence

Under **Santa Cruz County Code § 16.10.070(H)(7)(a)**:

“Demonstration by a full geologic report that each proposed building site on the parcel is not subject to any potential hazards and that each site meets the minimum setback...”

The County **previously accepted** geology and geotechnical reports for this project site under an earlier application with **substantially identical conditions**. The 2024 *update (only required for reports over 3 years)* letters submitted by licensed geologist and geotechnical engineers reaffirm those conclusions—finding the site suitable for development.

There have been **no new geologic events, no material change in site conditions, and no updated mapping or hazard information**. Nonetheless, the County *self admittedly* rejected the 2024 updates based solely a new policy that created a **NEW reinterpretation of County Code**, stating in its **March 4, 2025 rejection letter**:

“The geologic and geotechnical reports fail to comply with SCCC 16.10.070(H)(7)(a) because they rely upon the continued maintenance of existing shoreline protection structures, which is not permitted for the creation of new parcels and building sites.”

This rejection is not grounded in fact or science—it is a **policy reversal**, applied retroactively, without any formal code amendment or intervening physical change. Under well-established principles of administrative and constitutional law:

- **Interpretive shifts** must be explained and applied prospectively;
- **Consistency and predictability** are required for fair application of permitting rules;
- **Technical conclusions** by licensed professionals cannot be discarded based on **unstated internal policy changes**;
- And where an application is denied based on a new policy, **the agency bears the burden to justify its departure from past practice**.

The County has offered no evidence that the prior reports were flawed or that current physical conditions differ. It has simply **changed its mind**, and **elevated interpretation over fact**—in direct conflict with the **Permit Streamlining Act**, the **Geologic Hazards Ordinance**, and basic due process. This rejection

cannot serve as a lawful basis to block application processing. These types of NEW, interpretations must be overseen by the Planning Commission and the Board of Supervisors as they have vast implications that the whole community should be aware of.

3. LORI Item 14 Cannot Be Used to Deny the Application – PSA Violation

Staff continues to cite the neighborhood meeting (LORI Item 14) as grounds for incompleteness. But **Gov. Code § 65943(a)** mandates that any required items be identified within **30 days of application receipt**.

Because the neighborhood meeting was not identified within that window, it is legally unenforceable. The PSA’s language is mandatory: failure to timely identify requirements **“shall be deemed complete.”**

4. Staff’s Strategy Is Designed to Preempt Deemed Approval – Gov. Code § 65956

By recommending denial of an application they claim remains incomplete, staff seeks to **game the PSA timelines**—manufacturing a procedural defense against automatic approval, without complying with either statutory or local process.

This tactic exploits process to obstruct rather than facilitate review. It is exactly the type of maneuver the PSA was enacted to prevent, and it casts doubt on the Planning Department’s procedural good faith.

5. Misrepresentation of Project History and Misapplication of State Housing Laws – Brown Act and Housing Accountability Act Violations

Most egregiously, staff has failed to disclose that this project is **nearly identical to a previous version that was deemed complete and recommended for approval**. That version was processed on the same parcel, with the **same geologic and geotechnical baseline**, and under the **same County Code provisions**.

The only substantive change between that approved version and the current application is that the applicants, in direct alignment with **state and County housing policy**, **modified the project to include two below-grade housing units**, increasing density while **reducing visible massing** and view impact.

This change was intended to:

- Advance both **local and state housing objectives**,
- Increase affordability and availability,
- And **eliminate the basis for staff’s prior subjective design criticisms** by ensuring compliance with objective standards under **SB 478**.

Yet now, Planning staff asserts—without explanation—that this updated application is “incomplete,” despite:

- **Fewer discretionary design impacts** (due to subterranean units),
- **The same technical studies**, prepared by the same licensed consultants,
- And **SB 478’s explicit limitations** on the types of subjective or arbitrary development standards the County can impose.

Worse still, under **AB 330 (Gov. Code § 66300(b)(1))**, the County is **barred from applying more restrictive standards** to a housing project than it did to a prior version of the same project, **on the same parcel**. As AB 330 provides:

“A local agency shall not impose a ... design standard ... that was not imposed or enforced at the time the previous housing development application was approved for the same parcel.”

By any measure, the County’s treatment of this revised housing project violates that mandate. As the previous project was deemed **complete and approvable**, they cannot lawfully:

- Invent new completeness criteria now barred by SB 478;
- Retroactively reinterpret accepted technical documents;
- Or claim that **adding housing** renders a project **less complete**.

This contradiction not only **undermines the Permit Streamlining Act**, it exposes the County to **Housing Accountability Act violations**, potential **constitutional equal protection claims**, and further **litigation under AB 330 and SB 478**.

Additionally, staff’s failure to provide this material context in the public hearing notice, the staff report, and in prior Planning Commission proceedings constitutes a **violation of the Brown Act (Gov. Code § 54957.5)**. The Commission has a right to know that:

- The original project was complete and moving toward approval;
- The new version was revised in furtherance of **state housing policy**; and
- The procedural and legal basis for denying the current application is a **manufactured end run** around the constraints of SB 478 and AB 330.

6. This Case Exemplifies Baker Tilly’s “Culture of No”

This matter embodies the very systemic failures Baker Tilly documented in its **March 25, 2025 assessment**:

- **Inconsistent code interpretation**
- **Obstruction by process**
- **Discretionary rigidity without recourse**
- **Lack of early, consistent coordination**

The report urges the County to abandon its adversarial posture and implement reforms ensuring fairness, predictability, and lawful outcomes. This case is a poster child for the need.

7. County Counsel’s Inaction Undermines Transparency and Violates the Brown Act

In a May 22, 2025 letter, County Counsel Natalie Kirkish/Jason Heath responded to a Brown Act complaint by stating:

“The Brown Act does not mandate that County Counsel answer questions in a specific manner or require that County Counsel support any specific individual’s perspective or arguments related to legal matters.”

This dismissive statement reflects a troubling pattern. County Counsel has declined to clarify the legal issues raised by this hearing, even as staff misapplies statutory law. That posture is incompatible with the Brown Act’s mandate for transparent and informed public deliberation.

A Brown Act complaint regarding Mr. Heath’s conduct remains active. The Commission now has the opportunity to break from that pattern—by restoring the proper role of law in the permitting process.

Choosing to diverge from staff in this case is not only legally justified—it would be a **public service to the County**. It would send a clear message that the culture of rigid, opaque decision-making identified in the Baker Tilly report will no longer be tolerated.

This is your opportunity to demonstrate that the Planning Commission is a deliberative, independent body capable of restoring lawful process and public confidence.

Requested Actions

Given the factual record, statutory framework, and systemic findings of the County’s own consultants, we respectfully request the Commission take one of two lawful paths:

A. Preferred Relief – Bold but Lawful

Deem the application complete and **overturn staff’s rejection** of the geologic reports and approve the project.

- This is within the Commission’s discretion under SCCC §§ 18.10.320–.340.
- The reports are certified by licensed professionals.
- The geologic conditions are unchanged from those that supported prior approval.
- Denial is based on a **misapplication of SCCC § 16.10.070(H)** inconsistent with long-standing interpretation and practice.
- Baker Tilly recommends discretion to resolve staff inconsistency and ensure lawful treatment of applicants.

This is the legally and morally correct path.

B. Alternative Relief – Procedural Cure

If the Commission declines to exercise its authority as outlined above, we request:

1. **Immediate cancellation of the June 11 hearing** as procedurally unauthorized;
2. Alternatively, a finding of **no action** due to the application's pending status;
3. Direction to staff to provide a **corrected completeness determination**, removing time-barred items and applying consistent geological standards.

The Planning Commission should not be asked to participate in an unlawful procedural end-run. To do so would implicate the Commission in a denial unsupported by science, statute, or policy.

Thank you for your time and commitment to principled governance. We are available to provide further documentation or present expert testimony as needed.

Sincerely,

Cove Britton

Principal, Matson Britton Architects

cove@matsonbritton.com

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Cove Britton

Matson Britton Architects

O. (831) 425-0544



County of Santa Cruz Board of Supervisors

Agenda Item Submittal

From: County Administrative Office

Subject: Presentation on the Organizational Assessment of the Building Permit Process

Meeting Date: March 25, 2025

Formal Title: Consider report and presentation on the Organizational Assessment of the Building Permit Process from Baker Tilly, and take related actions

Recommended Actions

1. Accept and file report and presentation on the Organizational Assessment of the Building Permit Process from Baker Tilly; and
2. Direct the County Administrative Office to return on or before June 24, 2025, with a workplan for the Community Development and Infrastructure Department to implement recommendations from the organizational assessment.

Executive Summary

The State of California (State) and County of Santa Cruz (County) enforce stringent building codes and protections for the natural environment that are intended to protect human life and maintain natural diversity. In June 2024, the County Administrative Office (CAO) engaged Baker Tilly to complete an organizational assessment of the County's building permit process with the goal to gain an understanding of insights from internal and external sources and to develop recommendations for moving forward with improved processes and customer experience. Baker Tilly's work included a review of current and past process improvement efforts, operational data, interviews with employees and customers, stakeholder meetings, and an employee survey. By the end of June 2025, the CAO, in conjunction with Baker Tilly and the Community Development and Infrastructure (CDI) Department, will develop a workplan to implement near and longer-term improvements to the development and building permit approval process based on the assessment.

Discussion

The Board has prioritized improving the operational efficiency of the development and building permit approval process of the County. Staff began assessing the complexities of the development and building permit process and targeting improvements in late 2018 through an effort entitled PRIMO Pie; however, these efforts were sidelined in early 2020 due to the COVID-19 pandemic and the CZU fire response. The Board's interest in this has not waned, and community members have continued to express a desire to see changes and improvements in this area of County operations.

To address the Board and community interest, the CAO engaged an independent consultant to assess the County's building permit process. Baker Tilly was selected to complete an organizational assessment of the permit center process based on their unique qualifications and direct experience working in and with planning departments throughout the State to improve customer experience, process improvement as well as engage in effective staff, customer, and stakeholder outreach activities. The project scope included regularly scheduled coordination meetings with the County Project Team, including staff from the CAO and CDI, to provide context and background, help ensure critical path progress, and troubleshoot and resolve issues as they arise.

Baker Tilly's objectives for this engagement included:

- Completing information and data collection to identify operational efficiencies, inefficiencies, delays, areas of duplication, and identify where conflicting permitting requirements, processes or practices currently exist.
- Developing an understanding of operations and staffing within the Unified Permit Center, including reporting relationships, communication and the use of technology.
- Identifying process roadblocks, understanding customer service issues, and assessing satisfaction and/or dissatisfaction with permitting and development processes.
- Evaluating operations as they are meant to work based on policies, codes and regulations compared to daily operations.

To meet these objectives, Baker Tilly completed the following outreach activities as part of their scope of work:

- 15 internal interviews
- 2 stakeholder advisory group meetings (13 attendees each)
- 8 development community member interviews
- 16 stakeholder interviews
- 89 employees completed a survey

The CAO engaged a consultant to complete this work to provide an outside unbiased, expertise, a statewide perspective and knowledge of planning department operations, benchmarks, and best practices. Having Baker Tilly complete this work ensured that the County would receive an arms-length objective assessment.

Highlights of Organizational Assessment Observations

The assessment includes three distinct themes: 1) organizational culture, 2) sources of complexity in the unincorporated area that impact development, and 3) areas for process improvement. Process improvement generally covers most of the observations, which surround work standardization, optimization, and coordination.

Organizational Culture

The organizational cultural theme was captured in multiple observations noted by Baker Tilly. They noted an apparent cultural divide among more and less tenured staff, from both staff and the community members. They also noted a general perception that a "culture of no", or resistance to approval, is rooted in development processes. Baker Tilly recommends implementing a customer service training program that targets our customers' needs and creates cohesion in our internal interactions.

Sources of Complexity

Sources of complexity that impact development revolve around processes that are not under the direct control of CDI. Santa Cruz County has a diverse ecosystem. It is also

geomorphically very young and riddled with active earthquake faults. Sections of County Code are meant to protect ecosystems and human safety. The protection of human safety is also a pillar of the State Building Code. Together, these protections are a significant source of complexity for community members attempting to navigate the permit process to develop on land near these natural resources. Additionally, some development codes are not under the purview of CDI such as fire regulations, septic and water sources, which are regulated by other agencies/departments.

Baker Tilly recommends the County develop a robust pre-clearance process to inform applicants of all requirements they will be subject to as part of the project submittal process. This will improve transparency into County Code, addressing a concern shared by the development community. They further recommend that the County pursue opportunities to improve collaboration and review processes across internal (CDI) and external (Environmental Health and Fire) reviewing entities and evaluate further integrating development-related functions into CDI.

Enhancing communication and coordination should be pursued with a multi-departmental advisory committee that includes customers and stakeholders. The County should also develop a communications plan to convey new requirements, interpretations and changes to processes for both internal and external stakeholders. This includes enhancements to the CDI webpage.

Process Improvement

Needed process improvements include updating policies to ensure clarity and consistency in County Code, evaluating opportunities to introduce flexibility to facilitate cohesion and consistency among reviewers, and improving clarity and thoroughness of comments in the plan review process. To address these observations, Baker Tilly identified several recommendations that could be impactful.

One recommendation is to focus plan review efforts on the first staff review to provide applicants with a detailed response that thoroughly identifies deficiencies and a clear path to approval on the second routing (or round of review). This will reduce the need for third routings and review.

To assist in fulfilling the Unified Permit Center (UPC) vision as a one-stop shop, Baker Tilly recommends that CDI define a single staff person with the organizational authority to review and revise staff comments on all third routings of a project submittal and that this staff person consistently exercises this power. This will ensure consistency with State and local standards, support metric tracking, and enhance customer service.

To ensure clarity, both in County Code and department policies, CDI should consult and work with County Counsel to update County Code to enhance permitting efficiency while aligning policies with Board objectives and staff's discretionary authority. To further this, CDI administrative policies and operational procedures must be well documented in a clear manner. Once completed, CDI must continually assess that County Code and department policies are being applied consistently.

The UPC, staff of Building Permit Technicians, is the gateway to application review. Building Permit Technicians are a critical filter to assessing development plan conformance with County systems and development requirements. Baker Tilly recommends that the County add two Building Permit Technicians to facilitate efficient

plan review. Currently, the workload for the Building Permit Technicians is at maximum capacity, with any disruptions (such as mandatory training, staff illness or vacation) creating an increased backlog.

The CDI Management Team recommends the addition of one Building Permit Technician to test how the additional staff improves workflow. This position has not yet been requested as part of the 2025-26 Budget. If supported by the Board, CDI will request the position as part of the supplemental budget.

Baker Tilly also recommends that the County explore new technology solutions, such as Artificial Intelligence (AI)-assisted plan review. The Planning Division has been working closely with the Information Services Department (ISD) to evaluate this option. Several programs have been reviewed with vendors; however, they are not yet ready for deployment.

In the interim, ISD and the Planning Division are collaborating on a new work program aimed at enhancing our current ePlan system. This initiative will improve the user interface and clearly outline pre-permit application requirements. The new system will also be designed with the framework for future integration of AI tools as they become more robust and available.

Next Steps CAO and CDI Planning Division

The CAO and CDI are collaborating to develop a detailed workplan to implement select recommendations from Baker Tilly's assessment and will present the workplan to the Board for consideration at the June 24, 2025 meeting. As the workplan is being developed, the CDI team is committed to pursue the following quick wins to begin addressing the recommendations:

30-Day Timeline to Completion

- Create walk-in hours for the UPC (Monday – Thursday 8 AM – 9 AM)
 - Stakeholder interviews have indicated that walk-in customers are not always accommodated in a timely manner. Currently, walk-in customers are assisted between scheduled appointments or in place of missed appointments; however, this can result in wait times. Contractors have reported that these delays significantly impact their workday, as they often require immediate assistance before heading to job sites—whether for over-the-counter permit pickups or code inquiries. To better serve customers with urgent needs, morning walk-in hours will be added for the UPC, enhancing service efficiency. Scheduled appointments will remain available throughout the day, Monday through Thursday.
- Provide same day intakes for discretionary permits.
 - Certain projects require discretionary permit approval before a building permit application can be submitted and approved, making the discretionary permit process a critical component of the overall permitting process for these project types. Stakeholders have reported that delays in the discretionary permit intake process, particularly through the current submittal appointment system, significantly impact the overall timeline for

obtaining a building permit. To address this issue, the discretionary permit submittal process will be restructured to allow same-day submittals during business hours. This operational change is expected to reduce discretionary permit processing times, thereby expediting the overall building permit process.

- Enhance the Appointment Scheduler to request customer satisfaction feedback after each appointment.

60-Day Timeline to Completion

- Streamlined CZU permit process (remote eplan intakes, automated Deficiency Letter, etc.)
 - Stakeholder interviews with design professionals assisting CZU property owners, along with input from department staff, have identified inefficiencies in the current CZU rebuild process. Unlike non-CZU rebuilds, the ePlan submittal system and permit tracking and reporting measures have not been fully implemented for CZU rebuilds, resulting in additional time required for both submission and review. To eliminate these unnecessary delays, the department is actively implementing ePlan and Infor (permit tracking software) program updates to streamline the permit submittal and review processes, improving efficiency and reducing processing times.
- Increasing staff in-office time to support more in-person service
 - Stakeholder meetings and staff surveys have highlighted challenges in inter-departmental coordination, largely due to the majority of review staff working remotely three days per week. To enhance inter-agency communication, collaboration, and in-person availability for customers, CDI management will work with staff to increase their in-office schedules to support customer service improvements.

90-Day Timeline to Completion

- Continued quarterly Stakeholder meetings
 - A critical component of Baker Tilly's engagement involved collecting feedback from customers of the building permit process through a series of stakeholder meetings. These meetings brought together key industry professionals, including architects, designers, and developers. The insights gathered provided valuable input on counter service, permit submission and review, and inspection processes. Moving forward, CDI will work with the CAO to establish facilitated, quarterly stakeholder meetings to ensure ongoing dialogue and continuous improvement, with the goal of fostering a direct channel for collaboration and feedback, strengthen the partnership between the department and its customers, and tailor services to better meet customer needs.
- Inspection module and streamlined inspection scheduling to improve customer experience

- The current inspection request system is outdated and lacks user-friendly functionality, as inspections are scheduled in fixed time blocks. To enhance efficiency and customer experience, new inspection software will be implemented, enabling real-time communication between inspectors and customers. This upgrade will reduce the inspection time window, allowing customers to better plan and manage their day.

The workplan will address the implementation details, phasing, and resources requirements for the longer duration, more complex recommendations. This includes work with other departments, such as County Counsel, to update the County Code to enhance permitting efficiency and provide clarity on Code interpretations. This will lead to additional work on standardizing permit processing. Other interdepartmental work to be addressed includes evaluating the potential to consolidate septic and water programs into CDI as well as the remainder of the Baker Tilly recommendations. Due to the complexity of this consolidation and other recommendations, there will be phased decision points that require Board consideration.

In support of the overall workplan, the CAO, CDI and Information Services will finalize a project charter, implementation workplan, and budget for a multi-faceted process and technology integration project. This project goal is to develop an online permit system integrating pre-application support, fee estimation, completeness review, and submission, with AI or other technology-based tools to improve pre-intake and review components included as the new technology comes online. Due to budget considerations, this work will be included for the Boards consideration with the larger workplan and also will be implemented in phases if approved and resourced.

County staff will lead development and implementation of the workplan, but staff foresee the need to retain Baker Tilly to provide guidance and objectivity throughout workplan development and implementation.

Financial Impact

Staff anticipates expanding the scope of services for Baker Tilly to include advising on the workplan and specifics of implementation. The County Administrative Office is recommending a budget of \$50,000 for this expanded engagement in 2025-26 (GL Key 181000/62381). The annual cost of adding a Building Permit Technician is approximately \$118,000 (GL Key 541500).

Strategic Initiatives

Operational Plan - Dynamic Economy, Operational Excellence

Submitted By:

Carlos Palacios, County Administrative Officer

Recommended By:

Carlos J. Palacios, County Administrative Officer

Artificial Intelligence Acknowledgment:

Artificial Intelligence (AI) did not significantly contribute to the development of this agenda item.