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October 21, 2022

Nathan MacBeth

Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
Nathan.MacBeth@santacruzcounty.us

Subject: County Coastal Development Permit Application Number 201302 (70 Geoffroy Drive, "Repair of Slump Slide")

Dear Mr. MacBeth:

This correspondence pertains to item no. 7 on the Planning Commission Agenda for December 14, 2022, namely Santa Cruz County Coastal Development Permit (CDP) Application Number 201302, under which a private property owner seeks permanent authorization for a temporary emergency bluff retention project installed pursuant to Santa Cruz County Emergency Coastal Development Permit 201227. This project is located at APN 028-143-35, 70 Geoffroy Drive, at the blufftop and on the bluff face above Black's Beach (also known as Twin Lakes State Beach) in the Live Oak area of the County.

The purpose of this letter is to formally object to the staff recommendation to approve this CDP; the Planning Commission should not approve this development application because the development does **not** conform to the standards set forth in Santa Cruz County's certified Local Coastal Plan (LCP), nor does it comply with the public access policies of the California Coastal Act.

I grew up during the 1970's and 80's on 14th Avenue, just inland from the site location. We frequently used to walk between Black's Beach and Sunny Cove via Geoffroy Drive and, more specifically, the bluff slope which is the subject of this CDP. I graduated from Soquel High in 1989 and moved away to enroll at Cal Poly that same year. When I left town, I was still able to move between the beach and Geoffroy Drive via the project site. Eventually I graduated in Civil Engineering and moved to the Bay Area to begin my career. In 2003 I moved home to work for a local agency and I was shocked and

dismayed to find that this access had been completely cut off.

The County should be working towards restoring this access. Sadly, it seems as if County staff do not share this goal, as the project as proposed does not maximize public recreational access opportunities. On the contrary, it would essentially block and preclude any form of access here by installing a fence and adding a reinforced slope, which would greatly complicate the construction of proper access. The LCP explicitly requires the County to maintain a neighborhood public accessway at the end of Geoffrey Drive, reference LUP Policy 7.7.18:

Chapter 7: Parks, Recreation and Public Facilities

NEIGHBORHOOD SHORELINE ACCESS DESIGNATIONS

Policies

7.7.18 Areas Designated for Neighborhood Public Access

(LCP) Maintain a system of neighborhood access points appropriate for access by local residents at the following locations and other accesses as determined by the Board of Supervisors, subject to policy 7.6.2 :

Live Oak

at the end of the following streets:

7th Avenue

12th Avenue

13th Avenue

Geoffrey Drive

Sunny Cove Avenue

18th Avenue

10th Avenue

Mid-County

end of Oakdale Drive

end of Beachgate Way

Cliff Drive between Lamanda Drive and Bayview Drive

Shore Trail at Seaview Drive

Sumner Avenue

Hidden Beach

Via Concha

Via Gavinta

Further the LCP explicitly calls for an overlook/vista point to be developed with benches and railings at this location (LUP Program 7.7(c)):

- (LCP) c. Develop and maintain vista points or overlooks with benches and railings at the end of Geoffrey Drive, and at various points along East Cliff Drive including Corcoran Lagoon, Moran Lake, the west end of Pleasure Point Drive, the promenade along East Cliff Drive between 32nd and 41st Avenues, at South Palisades, at the southern end of 41st Avenue, Seaview Drive and Baldwin Drive. (Responsibility: County Parks, Public Works, Board of Supervisors)

In place of these LCP-required provisions (none of which are addressed/provided for by the proposed project), the proposed project would block and otherwise prevent public access here. Accordingly, I do not believe that the proposed project can be found consistent with the Coastal Act or the LCP on these points.

In terms of the Coastal Act, Section 30210 requires that public recreational access opportunities be maximized, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access to the sea (such as access to the beach here) if such rights were acquired through historical use. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway (here Geoffrey Drive downcoast of

the site) to the shoreline and along the coast (here to Black's Point Beach), save certain limited exceptions, such as when adequate access already exists (not the case from Geoffroy Drive to the beach). Section 30213 speaks to ensuring that free and low-cost options, such as the beach accessway in question here, are available to coastal visitors. And Sections 30220 through 30223 protect coastal areas suited for water-oriented activities, oceanfront land suitable for recreational use, and upland areas needed to support recreational uses, all of which are applicable in this case.

Similarly, the County's LCP also protects public recreational access including requiring maximized public use and enjoyment of coastal recreational resources, provision of shoreline and beach access to serve the public and coastal neighborhoods, encouraging access and connections between parks, and visual shoreline access (see, for example, LCP Land Use Plan (LUP) Objectives 7.7 a, b, and c, and LUP Policies 7.7.1, 7.7.6, 7.7.9, 7.7.10, and 7.7.11, Chapter 7 Land Use Programs a and b, and LUP Policies 7.7.18 and 7.7.19). Further, the LCP includes required CDP findings, and these include requiring that the project conform with the LUP's public access, recreation, and visitor-serving policies, that the project meets all other LCP provisions, and that project conform to the Chapter 3 policies of the Coastal Act.

Following is a summary of issues I have on this matter.

1. First and foremost, it is an absolute fact that I used the access from Black's Beach to Geoffroy Dr. countless times growing up on 14th Ave in the 1970's and 80's. We would regularly switch back and forth between Black's and Sunny Cove, and onward to Santa Mo's. **Thus historically access did exist at this location.**
2. The historic use of this coastal access is supported by a good deal of additional evidence, including, but not limited to, the following:
 - a. Other testimony from local residents, past and current.
 - b. The statements from previous owners (included in the packet material) who deliberately terminated public access purely out of perceived self interest.
 - c. The County General Plan / LCP, prepared in 1995, which lists this access way "to be **maintained**." Only an existing access way is maintained, thus it can be inferred that public access was open when this document was prepared.
 - d. The County General Plan / LCP, prepared in 1995 specifically designates this access way for improvement as a Coastal Overlook. If the access way was not in use, why would it be designated as such?
3. Beginning on page 40 of your staff agenda packet, please reference the detailed correspondence from Rainey Graeven, Coastal Planner with the Coastal Commission. I endorse and support the positions outlined in this correspondence which enumerate many instances where this permit should **not** be approved due to its non conformance with the LCP and the Coastal Act. It is very disappointing that to my understanding neither the property owner(s) nor County Staff engaged in serious discussion of the issues raised in this correspondence.

4. It is my belief that this access should be open to the public due to its historic use and associated vested rights. However, my overarching goal is simply to see access at this location open to the public. Therefore, it seems prudent to consider alternative means such as the procurement of a coastal access easement. Please reference County Code Chapter 15.05 TRAIL AND COASTAL ACCESS DEDICATION, STANDARDS AND REVIEW. I do not believe the requirements of this code have been properly followed with regard to this permit application. For instance, and as shown below, County Code Section 15.05.050 requires, as a condition of approval for any permit, the dedication of an easement "to implement the General Plan or the Local Coastal Program." County Code Section 15.05.070 specifically includes the dedication requirement at any "location appropriate for neighborhood shoreline access in the Local Coastal Program."

15.05.050 Trail and coastal access dedication.

 SHARE

Trail and Coastal Access Dedication. As a condition of approval for any permit for a residential, commercial, or industrial project, an owner shall be required to dedicate an easement for trail or coastal access if necessary to implement the General Plan or the Local Coastal Program Land Use Plan, and only if the requirement for dedication complies with California Government Code Sections [65909\(a\)](#) and [66475.4\(b\)](#), and 66478.1 et seq. for land divisions. [Ord. 5372 § 4, 2021].

5. Note that such a public access easement would almost entirely overlap other existing easements. And where it does not - on the bluff slope - there is no possibility of developing anything. Thus a public access easement would not reduce the actual buildable area in any of the properties in question. The impact of this easement would be almost negligible on these properties.
6. The proposed emergency permit work would in fact make construction / development of access more difficult. This bluff repair created at least three work elements which conflict with the construction of public access down the bluff face:
 - a. The fence at the top of the bluff.
 - b. The at grade drainage pipe which travels down the face of the bluff.
 - c. The reinforced earth soil reinforcing grids which are included throughout the new embankment. These grids can complicate any required grading and the installation of any footings.
7. I have disagreements or concerns about some of the information presented in the County staff report for this application. It seems clear that the staff report is not objectively considering the public access issues. Instead the report advocates against any consideration of public access to the beach. In specific, please note the following:
 - a. Staff states unequivocally that public access exists 200 feet east of the project location. This is simply not true. There is an undeveloped access to the rocky shelf approximately 300 feet east of here, but this is not relevant as it does not provide access to Black's Beach. Therefore, it does not connect these beaches with lateral access. This statement is even included in the required findings for project approval and it should not be.
 - b. For some reason, the staff report attempts to muddy the waters by claimin there is uncertainty regarding the exact location of the neighborhood access point. Again, this is simply not true. Access at "the end of Geoffroy Dr" per County

GP/LCP is via the slope at this parcel. There is absolutely zero doubt about it because the access existed for many years. And there is no other way to reach the beach/

- c. Staff states multiple times that the scope of this project does not include public access. These statements are without merit. If this logic prevails, then no permit would ever include provisions for public access; property owners do not seek to include public access work in their project scope, yet sometimes they must include an offer to dedicate an easement, or even include work elements required to resolve an outstanding Coastal Commission violation. You can decide what the final scope includes.
8. I would like to make an honest plea to the County of Santa Cruz: join us and work to preserve / develop this important public coastal access. And let me draw your attention to an action of a recent owner which is quite illuminating. Mr. Skylar freely admits that he hired private security guards to enforce his termination of access. If public access was essentially non-existent at the time, as they claim, why would it be necessary to post private security guards? The reality is that this was a well used public access point and local folks were actively working to counteract the deplorable efforts of this property owner. They were only forced to concede due to the presence of these security forces.
9. Which leads to my final plea, this time to the relevant property owners. Please reconsider your course of action. Think about other local residents and the impact of the loss of this access. Join us and let's work together to develop safe and useful coastal access. Change course and embrace your neighbors and fellow residents, turn away from the path of intolerance, elitism, fear, and narrow minded self interest. Join our community and become good neighbors.

Thanks for your consideration in this matter.

Sincerely,

Elijah Mowbray, P.E.
RCE No. 70111

December 13, 2022

VIA EMAIL

Planning Commission
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
c/o Nathan Macbeth (Nathan.MacBeth@santacruzcounty.us)

Re: Coastal Development Permit
70 Geoffroy Drive, Santa Cruz (APN 028-143-35)
December 14, 2022 Planning Commission Meeting; Item #7

Dear Members of the Commission:

This law firm represents Thomas W. Mader with respect to the above referenced project and we submit this letter opposing this project on his behalf. For the reasons stated below, we respectfully request that you deny the above referenced Coastal Development Permit ("CDP").

First and foremost, it is important for the Commission to understand that the applicant, and the adjacent property owners at 60 Geoffroy Drive have not only excluded the public from access to a historic public access to Blacks Beach, but have maximized the use of the coastal bluff in the vicinity by covering their properties with impervious surfaces and installing gabion baskets along the bluff that cause significant visual impacts. This application is an attempt by the applicants to bootstrap additional work into an emergency bluff repair, such as the construction of a fence that is visible from Blacks Beach. Below are specific objections to the CDP.

A. A Coastal Development Permit May Be Granted Only When Outstanding Violations Have Been Resolved

As detailed in letters contained in your agenda packet from Rainey Graven and Patrick Veasart, Staff at the California Coastal Commission, the applicant has unresolved code violations on the property. County Code section 13.20.170, subsection (C), states as follows:

Development that is proposed for property on which there are existing unresolved coastal development permit violations shall only be approved and allowed if: (1) the approval resolves all such violations through its terms and conditions and (2) such resolution protects and enhances coastal resources, including that it results in a coastal resource condition that is as good or better than existed prior to the violations; or (3) the proposed development is necessary to ensure health and safety, in which case the approval for the

development shall specify that an application to resolve the unresolved coastal development permit violation(s) shall be made within 90 days of the approval.

Therefore, the CDP must be denied until the violations are resolved. Indeed, the applicant has been intransigent in resolving the violations. This Code provision requires resolution in order for any further CDPs to be issued.

B. The Project Does Not Comply With the Local Coastal Permit Because the Fence and Work Causes Significant Visual Impacts

The Project is inconsistent with the Local Coastal Program's visual resource protections. The proposed project would be substantially visible from the beach, which raises LCP consistency issues including with respect to LUP Policies 5.10.2 "Development within Visual Resource Areas", 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 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," and "Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform."

The development proposed to be sanctioned by the CDP adds to the existing unnatural condition that has been caused by retention structures at 60 and 70 Geoffroy Drive and should not be permitted here. While the fence is ostensibly for safety, the fence is unnecessary and adds to the visual impacts. There is no need for the fence, other than the applicants' desire to ensure that the public is excluded.

C. The Project is Not Exempt From CEQA

CEQA mandates that "the long term protection of the environment... shall be the guiding criterion in public decisions." Pub. Resources Code § 21001(d). The foremost principle under CEQA is that it is to be "interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) An agency's action violates CEQA if it "thwarts the statutory goals" of "informed decisionmaking" and "informed public participation." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.) While certain classes of projects that do not result in significant effects on the environment are categorically exempt from CEQA, "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language." (*Id.* at 125.) As such, "a categorical exemption should be interpreted narrowly to

afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Los Angeles Dept. of Water & Power v. County of Inyo* (2021) 67 Cal.App.5th 1018, 1040.)

The burden is on the County to demonstrate that the exemption applies.

“[A categorical] exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies.” (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386....) “[T]he agency invoking the [categorical] exemption has the burden of demonstrating” that substantial evidence supports its factual finding that the project fell within the exemption. (*Ibid.*)

(*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 710-712.)

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. (14 Cal. Code Regs. §15002(k); *Committee to Save Hollywoodland v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185 86; *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal. App. 4th 1356, 1372-1374 (*San Lorenzo Valley*).) First, if a project falls into an exempt category, no further agency evaluation is required. (*Id.*) Second, if there is a possibility a project will have a significant effect on the environment, the agency must perform a threshold initial study. (*Id.*; 14 Cal. Code Regs. § 15063(a).) If the initial study indicates that there is no substantial evidence that a project may cause a significant effect on the environment, then the agency may issue a negative declaration. (*Id.*; 14 Cal. Code Regs. §§ 15063(b)(2), 15070.) However, if a project may have a significant effect on the environment, an environmental impact report is required. (14 Cal. Code Regs. § 15063(b); *San Lorenzo Valley, supra*, 139 Cal. App. 4th at 1373-1374.) Thus, the analysis begins with whether the claimed exemptions apply.

Categorical exemptions are found in the CEQA Guidelines and include certain classes of projects which are exempt from CEQA based on the California Resources Agency’s determination that such projects do not have a significant impact on the environment. (Pub. Resources Code § 21084; 14 Cal. Code Regs. §§ 15300 - 15354.) However, “[t]he [Resources Agency’s] authority to identify classes of projects exempt from environmental review is not unfettered ... ‘[W]here there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper.’” (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster Azusa* (1997) 52 Cal.App.4th 1165, 1191 (quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-206).) Indeed, “a categorical exemption should be construed in light of the statutory authorization limiting such exemptions to projects with no significant environmental effect.” (Remy, et al., *Guide to CEQA* (11th ed. 2006) p. 136.)

Here, the Notice of Exemption attached to the Staff Report claims that the project is exempt under the Class 2 exemption for replacement or reconstruction of existing facilities, and the Class 3 exemption for new construction or conversion of small structures. 14 Cal. Code Regs. §§ 15302, 15303. The Class 2 exemption does not apply and the exceptions to the exemptions applies to the Class 3 exemption.

With respect to the Class 2 exemption, the project is beyond the scope of the exemption. Because the exemption must be interpreted narrowly, the existing facilities exemption does not apply. The project does not involve an existing facility. The claimed exemption cannot be utilized to legitimize emergency work that did not previously exist. The project did not exist but for the emergency authorization. It is not existing and must be analyzed as part of the permanent CDP. Moreover, the fence was unnecessary with respect to the emergency. Therefore, the County has not met its burden to claim the exemption.

As to the Class 3 exemption, the exception to the exemptions applies. CEQA provides for several exceptions to categorical exemptions and, if an exception applies, the exemption cannot be used, and the agency must instead prepare an initial study and perform environmental review. (*McQueen v. Bd. of Dirs.* (1988) 202 Cal.App.3d 1136, 1149; *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles, supra*, 161 Cal. App. 4th at 1187.) CEQA Guidelines section 15300.2 implements the exceptions to the categorical exemptions. The Notice of Exemption erroneously claims that none of the conditions in 14 Cal. Code Regs. Section 15300.2 apply. However, pursuant to section 15300.2(a), the Class 3 exemption does not apply “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.” Coastal bluffs are precisely the type of resource so designated in the Local Coastal Program.

For the foregoing reasons, the project is not exempt from environmental review. The failure of the County to address environmental concerns is a violation of CEQA and thwarts the very purpose of the statute.

The EIR is also intended “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” [Citation]. Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citation]. ***The EIR process protects not only the environment but also informed self-government.***

Planning Commission
Re: 70 Geoffroy Drive, Santa Cruz
December 13, 2022
Page 5

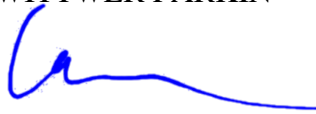
Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 392, emphasis added; see also *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at 554; 14 Cal. Code Regs. § 15003.

Finally, Pursuant to Public Resources Code § 21167(f), I am requesting that the County forward a Notice of Exemption to this office if the Project is approved. That section provides:

If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid.

For the foregoing reasons, we request that you deny approval of the Project. Thank you for your consideration.

Very truly yours,
WITTWER PARKIN



William P. Parkin

cc: Client

Santa Cruz County Planning Department
701 Ocean Street
Santa Cruz, CA 95060

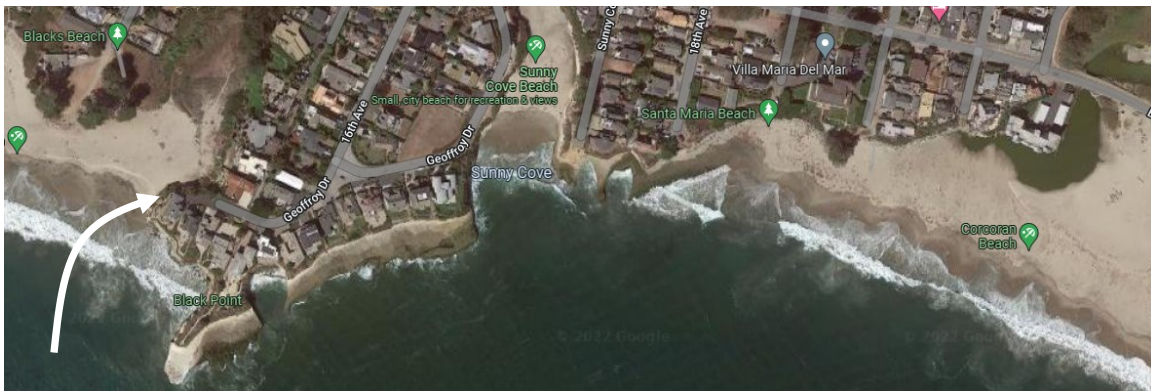
December 13, 2022

Re: Application No. 201302
APN: 028-143-35
Position: DENY

Hearing Date: December 14, 2022

I am writing to express my opposition to approving this project as submitted and reviewed. The Coastal Development Permit Findings cannot be made. The project is not exempt from CEQA. There are ongoing public pedestrian access issues at this location which are not given proper consideration in the County staff analysis.

Most neighborhoods in the mid-County coastal area enjoy a balance of public access, public viewing areas, and of course private properties. One can walk, at a very low tide and when sand is plentiful, from Capitola to the Santa Cruz Harbor. In a few locations one must climb up the bluff to walk along the first coastal road, and then back down to continue on. There is only one location that interferes with this trek: **Geoffrey Lane**. This is the one location where the Coastal Act mandates are flaunted. There used to be access here, and the County itself has identified the present parcel as that location.¹



Blockage location is at the west end of Geoffrey Lane at Black's Beach; Access up from Sunny Cove to east end of Geoffrey Lane, but then cannot rejoin beach at west end.

The community has been trying to regain its prior access at this end of Geoffrey Lane since its blockage.

Coastal Development Permit Findings

¹ County of Santa Cruz Staff Report to the Zoning Administrator; dated January 16, 2009; Agenda packet page 4

Coastal Development Permit Findings 2, 3, 5, and 6 cannot be made. These findings relate to easements (2), public access (4), other applicable LCP standards (5), and public access and public recreation (6).

During review of a proposed development on an adjacent parcel in 2008/9, the County itself stated that “(t)he pedestrian easement is most likely located on assessor’s parcel number 028-143-35”.² That is the parcel now being reviewed. The specific identification of this parcel as the location of a pedestrian easement is now ignored in the current analysis. This circumstance renders it impossible to make Coastal Development Permit Findings 2, 3, 5, and 6.

Applicant’s protestations at the Zoning Administrator Hearing about the finality of the access issue as a result of recent court cases should be disregarded. The court cases regarding the public access and easement issue should not be viewed as complete.

Outstanding Violations

The California Coastal Commission letter clearly identifies open and unresolved Coastal Commission enforcement cases against this parcel.³ It is simply impossible to reconcile the granting of a new Coastal Development Permit with the circumstance of these open violations.

CEQA

This project does not qualify for a CEQA exemption. The Notice of Exemption⁴ designates two categories of Categorical Exemption. Neither exemption withstands scrutiny. Class 2 does not apply as these are new facilities, not Existing Facilities. This is not an in-kind replacement of a bluff stabilization scheme. Class 3 might have applied, but due to the location of this project on the coastal bluff, an exception to the exemption applies. Coastal bluffs such as this project location are an environmental resource of critical concern – one need look no further than the years of coastal bluff resource work done on the recently proposed Santa Cruz County LCP amendments to substantiate that. Thus, a Class 3 exemption does not apply. The County must utilize at least an Initial Study under CEQA.

Summary

This project should not be approved as presented. The project must undergo CEQA review. The open violations must be addressed. The community has been waiting years for action on the blockage of the Geoffrey Lane beach access, and the access issue cannot be ignored in this present application review.

² County of Santa Cruz Staff Report to the Zoning Administrator; dated January 16, 2009; Agenda packet page 4

³ County of Santa Cruz staff report; dated December 1, 2022; Agenda packet page 227

⁴ County of Santa Cruz staff report; dated December 1, 2022; Agenda packet page 3

Michael A. Guth
Attorney at Law

Thank you for your consideration of these comments.

Michael A. Guth

A handwritten signature in black ink that reads "Michael Guth". The signature is written in a cursive, flowing style with a large initial 'M' and a stylized 'G'.