

**CALIFORNIA COASTAL COMMISSION**

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**April 21, 2023**

Evan Ditmars  
Santa Cruz County Community Development and Infrastructure Department (CDID)  
701 Ocean Street, 4<sup>th</sup> Floor  
Santa Cruz, CA 95060

**Sent Electronically to:** [Evan.Ditmars@santacruzcounty.us](mailto:Evan.Ditmars@santacruzcounty.us)

**Subject: April 26, 2023 Planning Commission Hearing on CDP Application Number 211316 (266 Cliff Court Retaining Wall)**

Dear Mr. Ditmar:

Please accept the following comments on the above-referenced Planning Commission item scheduled for hearing on April 26, 2023. As we understand it, the proposed project entails the construction of an approximately 110 linear foot subsurface retaining wall made up of individual piers along the blufftop edge that would extend approximately 40 feet deep into the coastal bluff along the seaward property line at 266 Cliff Court in Aptos. We concur with the County staff's denial recommendation, and we would like to reiterate the relevant Santa Cruz County Local Coastal Program (LCP) provisions necessitating denial of the project as proposed at this time.

First, the LCP defines shoreline protection structures as "any structure or material, including but not limited to riprap or a seawall, placed in an area where coastal processes operate."<sup>1</sup> The proposed retaining wall would be constructed in and along a coastal bluff where coastal processes operate, and thus it qualifies as a shoreline protection structure.

Second, as applicable here, the LCP limits the use of shoreline protection structures "to protect existing structures from a significant threat."<sup>2</sup> Importantly, the reference to protection of an "existing structure" does not mean a structure that exists and is extant as of today, rather the reference to "existing structure" in relation to shoreline protection is to structures that existed prior to the Coastal Act's effective date (January 1, 1977) and have not been redeveloped since.<sup>3</sup> In this case, it is not clear that there is an existing structure, and if there is, whether it is in danger from a significant threat to such a degree as to require shoreline protection, including in light of the coastal resource

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<sup>1</sup> See LCP (Implementation Plan) IP Section 16.10.040(59).

<sup>2</sup> See LCP Land Use Plan (LUP) Policy 6.2.16 and corresponding LCP IP Section 16.10.070(H)(3).

<sup>3</sup> See, for example, the Commission's 2015 Sea Level Rise Policy Guidance.

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impacts associated with such protection. Although the Applicant's attorney<sup>4</sup> indicates that that residences below the subject site were constructed prior to January 1, 1977, it is not clear whether these structures have been redeveloped since that time. If such structures have been redeveloped, then they would not qualify for shoreline protection.<sup>5</sup> Moreover, even if there are pre-1977 "existing" structures, it is not clear which structures may be at risk, and why they may be at risk. Although the project geologic report<sup>6</sup> notes that "future landslides have a high likelihood of striking the residences below that lie along Beach Drive", it is not clear whether past landslides or other events have endangered such downslope residences, whether they are endangered now, and/or whether future such instances may lead to a significant threat to such structures in such a way as to require shoreline protection. In short, the case has not been made that there are qualifying structures requiring shoreline protection to protect them from a significant threat, and thus the LCP does not allow for approval of the proposed retaining wall in this case.

Third, in the event one or more existing structures is deemed in danger from a significant threat, which does not appear to be the case currently, then the LCP requires an analysis of alternatives that can protect such structures with the least amount of coastal resource impact. Importantly, structural protection measures, such as the proposed retaining wall in this case, are only allowed "when nonstructural measures ... are infeasible" (see IP Section 16.10.070(H)(3)(c)). The LCP also requires, among other things, that "shoreline protection structures be placed as close as possible to the development requiring protection" (see IP Section 16.10.070(H)(3)(d)). In this case, it does not appear that an alternatives analysis has been completed, including one that evaluates the potential use of non-structural methods (e.g., landslide/debris removal, netting, drainage and landscaping improvements, etc.), let alone one that makes the case that the proposed retaining wall is the most LCP appropriate response.<sup>7</sup> Notably, and bracketing all of the other ways described above that LCP tests have not met here, it is also not clear how a retaining wall along the blufftop could be found consistent with the LCP's shoreline protection structure proximity requirement.

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<sup>4</sup> "Appeal of Zoning Administrator Decision of December 16, 2022; Application No. 211316" dated December 22, 2022.

<sup>5</sup> And available historical aerial imagery from the California Coastal Records Project appears to indicate that, at a minimum, the detached garage at 307 Beach Drive and the 311 Beach Drive residence are new structures and/or have been redeveloped.

<sup>6</sup> "Focused Geologic Investigation of Coastal Bluff Erosion and Landsliding" by Erik Zinn dated September 1, 2021.

<sup>7</sup> And any proposed alternatives must also be evaluated against IP Section 16.10.070(H)(3)(e), which states, "shoreline protection structures shall not reduce or restrict public beach access, adversely affect shoreline processes and sand supply, adversely impact recreational resources, exacerbate erosion on adjacent property, create a significant visual intrusion, or cause harmful impacts to wildlife or fish habitat, archaeological or paleontological resources. Shoreline protection structures shall minimize visual impact by employing materials that blend with the color of natural materials in the area." It does not appear that any such LCP requirements have yet to be addressed in this proposed project.

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Fourth, it does not appear that the proposed retaining wall is meant to protect the downslope residences in the first place. In fact, the project geotechnical investigation<sup>8</sup> concludes that:

*It must be understood that the soldier piles will **not** stabilize the hillside downslope of the piers and that it should be anticipated that the area downslope of the piers will continue to fail.” (Emphasis included in the original report).*

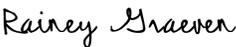
In other words, the proposed project, which is ostensibly proposed to protect downslope structures from landslide threats, will not perform that function. Rather, it appears that the purpose of the project is to protect 266 Cliff Court development, which raises similar LCP consistency questions including whether there it is an existing structure in danger from a significant threat, whether non-structural measures are feasible, etc.

And finally, the project geologic report acknowledges that the applicants (Kirk and Mary Kozlowski) “do not really own the bluff face” from which potential landslide materials would originate, and the project geotechnical investigation includes similar findings, noting that “the majority of the bluff face is owned by the downslope (Beach Drive properties; the seaward (southwest edge of the subject property (Kozlowski) occupies [only] a small portion of the bluff top.”<sup>9</sup> In other words, even if the downslope properties are ultimately deemed existing structures requiring shoreline protection to protect against a significant threat, as is required by the LCP to allow for shoreline protection, then such a project would appear to be misplaced, and would actually need to be located on a different property (i.e., not on the Kozlowski’s property), only further suggesting that this proposal cannot be found LCP consistent.

In sum, there are significant outstanding LCP consistency questions and issues with the project as currently proposed, and the necessary findings to approve any shoreline protection structure, including the proposed retaining wall, cannot be made at this time. Accordingly, we support staff’s denial recommendation, and would encourage resolution of all of the above-identified issues and questions if the applicants pursue a new CDP application for a similar project in the future.

Please provide this letter to the Planning Commission prior to their hearing on this item. And please feel free to contact me if you have any questions or would like to discuss this matter further. Thank you for your consideration.

Sincerely,

DocuSigned by:  
  
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Rainey Graeven  
District Supervisor  
Central Coast District  
California Coastal Commission

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<sup>8</sup> “Geotechnical Investigation—Design Phase” by Pacific Crest Engineering dated April 22, 2021.

<sup>9</sup> And Plates 1 and 2 of the geologic investigation similarly depict that much of the bluff including the landslide masses are not on the Kozlowski’s property.

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cc (sent electronically):  
Cove Britton, Applicant's Representative  
Carolyn Burke, Santa Cruz County CDID