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May 16, 2022

VIA EMAIL

Ms. Jocelyn Drake
Zoning Administrator
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
Jocelyn.Drake@santacruzcounty.us

Re: Coastal Development Permit, Residential Development Permit for Large Dwelling, and a Variance (Application #211155)
22702 E. Cliff Drive, Santa Cruz
Zoning Administrator Agenda for May 20, 2022

Dear Ms. Drake:

This law firm has been retained by the Walker Family with respect to the above referenced project and we submit this letter opposing this project on behalf of our client.

First, we appreciate staff's recommendation of denial of an Exception to the Pleasure Point residential development standards. The Exception is entirely unnecessary to construct a large home on the property. There are also remaining issues of noncompliance with the Local Coastal Program (LCP) and the California Environmental Quality Act (CEQA) that necessitate a denial of the entire application. We address each of these issues below.

A. The Coastal Bluff Setback Must be Calculated Without Riprap Since the Project Concerns New Development

County Code section 16.10.070(H)(1)(b) provides that

> For all development, including that which is cantilevered, and for nonhabitable structures, a minimum setback shall be established at least 25 feet from the top edge of the coastal bluff, or alternatively, the distance necessary to provide a stable building site over a 100-year lifetime of the structure, ***whichever is greater***. (Exhibit A, emphasis added.)

The Staff Report acknowledges this provision. However, the Staff Report, relying on the applicant's Geologic Report, states that "the coastal bluff/rip rap revetement on the property has remained essentially unchanged since the armoring refurbishment in 1983, it is anticipated that the top of the coastal bluff will remain relatively unchanged for the next 100 years." (Staff

Report, p. 6.) This determination, however, is not consistent with the LCP and the Coastal Commission staff's conclusions.

The Coastal Commission staff sent letters to County staff on September 1, 2021, and November 22, 2021. (See letters attached hereto as Exhibit A). Both of these letters express the same concerns and find that the project is inconsistent with the LCP. The Coastal Commission staff stated as follows:

> The minimum 100 years of stability must be established through the use of appropriate setbacks and siting, and shall "not [be] dependent on shoreline or coastal bluff protection structures" (see LUP Policy 6.2.15). Relatedly, LUP Policy 6.2.15 specifies that shoreline protection structures shall be limited to "protect existing structures from a significant threat" (LUP Policy 6.2.16)....
>
> In this case, the geologic setback line is predicated on the armoring (in this case a riprap revetment) being both maintained and remaining in place for the lifetime of the development. Specifically, the geology report notes, "it is safe to assume that the bluff retreat in the future will be nil, provided the existing armoring system is adequately maintained." However, the neighboring upcoast property, Casitas Del Mar, has open and unresolved violations (in addition to seacaves on either side of the natural headland including one near to the property line shared with the subject site that are due, in part, to work that was completed without the requisite geotechnical evaluation or coastal permit authorization. Because shoreline armoring may only protect existing structures in danger of erosion; and Casitas Del Mar is not "in danger of erosion," resolution of the violations at the Casitas Del Mar property may entail removal of all armoring fronting the property, particularly in light of the fact that the proposed project would render the MacDonell residence a redeveloped structure (i.e., revoking its "existing structure" status). Accordingly, the LCP's required 100-year geologic setback line should be determined without consideration to any armoring (i.e., without consideration to any armoring fronting both the Casitas Del Mar property and the MacDonell property). In other words, ***the geologic setback line should provide for 100 years of stability assuming the removal of the riprap revetment immediately upcoast and fronting the subject site.*** (Exhibit A attached hereto, emphasis added; see also letter from Coastal Commission Staff dated March 30, 2022 in agenda packet.)

In a letter dated May 9, 2022, counsel for the applicants asserts that the Commission's position ignores LCP policy 6.2.12. However, pursuant to LCP policies 6.2.15 and 6.2.16 new development is not afforded the ability to include shoreline protection measures. The applicants are proposing a new development because the current home is being demolished. Moreover, the applicants' counsel also ignores the fact that LCP policy 6.2.12 states that "A setback greater than 25 feet may be required based on conditions on and adjoining the site."

Therefore, the Staff Report applies the incorrect setback and the setback must be reevaluated using the correct standards.

B. The Staff Report Ignores Comments from the California Coastal Commission Related to the Geologic Setback and Construction of the Basement

The proposed basement for the project includes an approximately 2,250 square-foot garage, a 283 square-foot heated hallway and half bathroom, and an approximately 1,930 square-foot non-habitable storage room with a second half bathroom. The Staff Report states that pursuant to County Code section 16.20.040(C), "excavations below finished grade for basements and footings of a building are specifically exempted from the provisions of the County Grading Ordinance, Chapter 16.20." (Staff Report, p. 5.) The Staff Report then defers the problem until after project approval when it is too late to force modifications to the project.

> However, to ensure that construction activities and excavation related to the proposed basement will not cause adverse impacts to adjacent properties, prior to any site disturbance the property owner is required, as a condition of approval. To convene a preconstruction meeting attended by Environmental Planning Staff, including the County Geologist and Civil Engineer, the project contractor, project geotechnical engineer and geologist, to approve the proposed shoring plan and other work related to upcoming excavation. (Staff Report, p. 5.)

The Coastal Commission staff was clear that the construction of the basement violated the LCP. "The 'basement' component of the project should be eliminated from the proposed project including because the basement would represent substantial landform alteration of a coastal bluff, and the LCP requires site design to minimize grading (see LUP Policy 6.3.9)." (See Exhibit A, attached hereto.) Moreover, the County's Coastal Zone Regulations require that site disturbance shall be minimized. County Code section 13.20.130(B)(2).

C. The Staff Report Erroneously Concludes that the Project Complies with the LCP and that the Project Does not Impact View from the Beach

The Staff Report concludes that the

> the proposed dwelling would be visible from the adjacent beach; however, because of the constrained site, that portion of the structure that would be closest to the bluff would be relatively narrow in relation to the entire width of the parcel. This results in a reduced visual impact in view from the beach, particularly in relation to a similarly sized structure oriented across the entire width of the parcel. (Staff Report, p 7.)

This argument modifies an essential LCP policy that protects the visual quality of the coast. Nothing in the LCP allows a visual intrusion even though a greater visual intrusion cannot be constructed. This argument is nonsensical. As the Coastal Commission staff stated,

> 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", 5.10.4 "Preserving Natural Buffers", and 5.10.7 "Open Beaches and Blufftops". LUP Policy 5.10.2 acknowledges the importance of visual resources and requires that projects be evaluated against their unique environment (i.e., the surrounding projects and natural context), and LUP Policy 5.10.7 prohibits the placement of new permanent structures that would be visible from the public beach except where allowed on existing parcels of record and "where compatible with the pattern of existing development." These visual resource provisions are further codified in the requisite coastal permit findings (see IP Section 13.20.110(E). ***The proposed 6,000+ square foot residence set back only 25 feet from the coastal bluff would not be compatible with surrounding residential development and would represent a significant intrusion into the public viewshed***. (Exhibit A, emphasis added.)

It is clear that the Staff Report's conclusions regarding the visual impacts and compliance with the LCP are erroneous.

D. There is no Justification for the Variance From Vertical Clearance Requirements Since its Only Purpose is to Avoid Proper FAR Calculations

The Staff Report supports the applicants' request for a variance for parking spaces to reduce vertical clearance. However, it is clear that the variance is being requested to avoid a proper Floor Area Ratio (FAR) calculation and it should not be countenanced.

County Code section 13.10.554(A)(3) states "All parking spaces shall have a vertical clearance of not less than seven and one-half feet (2.3 meters)." The proposed variance reduces the vertical clearance by a half of an inch to avoid having the garage counted towards FAR. FAR does not include basements and under floor area less than seven feet six inches. See County Code § 13.10.323(B). This cynical ploy by the applicants cannot be approved because the findings for the variance cannot be made. Notably, if a portion of the basement is seven feet, six inches, then the entire basement must be included in FAR. "Basements, attics and under floor area which reach a ceiling height of seven feet six inches or higher, then all areas greater than five feet zero inches in height shall count as area for FAR calculations." County Code § 13.10.323(C); see also County Code § 13.10.700-B.

There is no hardship imposed on the applicants if they care required to build a garage one half of an inch taller. In fact, the difference is so minute that it is hard to imagine that the final

development will not be off by half of an inch in any event. (Despite our assertions here, the basement and garage should not be constructed in any event. There should be no excavation on this coastal bluff as argued *supra*.) The findings for the variance in the County Code are as follows:

> In granting a variance, the Zoning Administrator shall be guided by the following criteria:
>
> (1) That there are special circumstances or conditions affecting the property.
>
> (2) That the variance is necessary for the proper design and/or function of a reasonable project for the property.
>
> (3) That adequate measures will be taken to ensure consistency with the purpose of this section. (County Code § 13.10.554(L).)

Importantly, Government Code section 65906, the Planning and Zoning law applicable to the grant of a variance, provides as follows:

> Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
>
> Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.
>
> A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property... .

The special circumstances language of Government Code section 65906 has been interpreted to protect the integrity of the zoning code by emphasizing the propriety of a grant of variance when there are disparities between properties, not solely based on a property's characteristics. The Supreme Court in *Topanga Assn. For a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 520, held:

> courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party foregoes

> rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations]. If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.

Id. at 517-518; see also, *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 923-924.

Here, there is no special circumstance. A property owner's desire to expand development does not justify a determination that there is a hardship.

> No doubt continued use of the variance lot for these purposes would be of great benefit to the defendants, but the fact remains that the lot was purchased with full knowledge of its restrictions, and furthermore, the expansion program undertaken by the defendants was promulgated in the face of those same restrictions. ...

San Marino v. Roman Catholic Archbishop (1960) 180 Cal. App. 2d 657, 672-673. Special circumstance only exists "if this property cannot enjoy privileges enjoyed by other property in the vicinity." *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1167, emphasis in original. The *Orinda* Court made clear that

> [f]ocusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance, and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district.

Id. at 1166.

Avoidance of FAR is not a special circumstance or condition affecting the property, nor does a half of an inch of vertical clearance rectify some special circumstance or condition affecting the property. There is no possibility of demonstrating hardship on the applicants by requiring them to comply with the County Code regarding vertical clearance. The variance is unnecessary for proper design and/or function of a reasonable project for the property. The project is already immense. And there are no measures being taken to ensure consistency with the purpose of the section because the sole purpose is avoidance of the FAR calculations.

The proposed findings attached to the Staff Report for the variance likewise miss the mark. The proposed findings assert that there are special circumstances because strict

application of the Zoning Ordinance deprives the property of privileges of other property in the vicinity. The justification provided is that the half of an inch is needed "to comply with an existing view easement." This is completely illogical since an additional half of an inch would not provide any relief vis-a-vis the view easement.

Because the variance cannot be granted, FAR must be recalculated to ensure compliance with zoning standards.

E. The Project is Subject to 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 Supervisor*s (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 3 exemption for new construction or conversion of small structures. 14 Cal. Code Regs. 15303. 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 §15300.2 implements the exceptions to the categorical exemptions. The Notice of Exemption then 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. As stated *supra*, the Coastal Commission has expressed deep concern regarding geologic and visual impacts, and alteration of landforms, associated with the project. The Coastal Commission staff also concluded that

> in the event the basement becomes threatened (due to sea level rise, storm surge, tidal inundation, etc.), its removal would also result in damaging landform alteration. Furthermore, basements have the potential to impact the natural erosional processes of coastal bluffs and in some instances function as de facto upper bluff shoreline armoring.

> Finally, basements have consistently been denied by the Commission for the reasons stated above (see especially A-6-ENC-16-0060 [Martin SFD] and A-6-ENC-16-0068 [Hurst SFD]), and thus it is reasonable to assume that any future basements proposed to be excavated and constructed into a coastal bluff would also be denied by the Commission. (Exhibit A.)

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.***

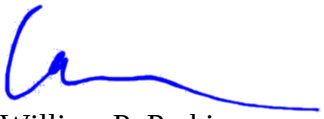
Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 392, emphasis added; see also *Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at 554; 14 Cal. Code Regs. § 15003.

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
Lezanne Jeffs

Encls

EXHIBIT A

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

09/01/2021

Lezanne Jeffs
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060

Subject: **Comments Re: Application 211155**

Dear Lezanne:

Thank you for the opportunity to review and comment on the above-referenced Coastal Permit application. Please include these comments as part of the administrative record for this project and distribute to the applicant and appropriate staff.

Project Description:
The project proposes to demolish an existing residence and replace it with an approximately 6,260-square foot two-story house with an additional approximately 4,463-square foot basement.

Comments:

Note that this project is appealable and does not appear consistent with Santa Cruz County's LCP in its current form. The below comments were sent previously and were not addressed by the applicant. Due to the complex nature of this project, Commission staff are continuing to discuss internally and may provide further comment, which will be forwarded to the applicant separately.

1. **Geologic Setback.** The LCP requires that a coastal bluff building site be stable for a minimum of 100 years in its pre-development application condition, and that any development be set back an adequate distance to provide stability for the development's lifetime, and at least 100 years. The minimum 100 years of stability must be established through the use of appropriate setbacks and siting, and shall "not [be] dependent on shoreline or coastal bluff protection structures" (see LUP Policy 6.2.15). Relatedly, LUP Policy 6.2.15 specifies that shoreline protection structures shall be limited to "protect existing structures from a significant threat" (LUP Policy 6.2.16). Thus, the LCP has a two-part minimum 100-year stability requirement: first, there must be a portion of the site in question that itself will be stable for at least 100 years in a pre-development (i.e., no project) scenario without reliance on structural development; and second, any development then introduced onto the site must also be stable for its lifetime measured for at least 100 years without reliance on engineering measures.

In this case, the geologic setback line is predicated on the armoring (in this case a riprap revetment) being both maintained and remaining in place for the lifetime of the development. Specifically, the geology report notes, "it is safe to assume that the bluff retreat in the future will be nil, provided the existing armoring system is adequately maintained." However, the neighboring upcoast property, Casitas Del Mar, has open and unresolved violations (in addition to seacaves on either side of the natural headland including one near to the property line shared with the subject site that are due, in part, to work that was completed without the requisite geotechnical evaluation or coastal permit authorization. Because shoreline armoring may only protect *existing structures* in danger of erosion; and Casitas Del Mar is not "in danger of erosion," resolution of the violations at the Casitas Del Mar property may entail removal of all armoring fronting the property, particularly in light of the fact that the proposed project would render the MacDonell residence a redeveloped structure (i.e., revoking its "existing structure" status). Accordingly, the LCP's required 100-year geologic setback line should be determined without consideration to any armoring (i.e., without consideration to any armoring fronting both the Casitas Del Mar property and the MacDonell property). In other words, the geologic setback line should provide for 100 years of stability assuming the removal of the riprap revetment immediately upcoast and fronting the subject site.

2. **Basement.** The "basement" component of the project should be eliminated from the proposed project including because the basement would represent substantial landform alteration of a coastal bluff, and the LCP requires site design to minimize grading (see LUP Policy 6.3.9). Moreover, in the event the basement becomes threatened (due to sea level rise, storm surge, tidal inundation, etc.), its removal would also result in damaging landform alteration. Furthermore, basements have the potential to impact the natural erosional processes of coastal bluffs and in some instances function as de facto upper bluff shoreline armoring. Finally, basements have consistently been denied by the Commission for the reasons stated above (see especially A-6-ENC-16-0060 [Martin SFD] and A-6-ENC-16-0068 [Hurst SFD]), and thus it is reasonable to assume that any future basements proposed to be excavated and constructed into a coastal bluff would also be denied by the Commission.

3. **Visual Resource Protection.** 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", 5.10.4 "Preserving Natural Buffers", and 5.10.7 "Open Beaches and Blufftops". LUP Policy 5.10.2 acknowledges the importance of visual resources and requires that projects be evaluated against their unique environment (i.e., the surrounding projects and natural context), and LUP Policy 5.10.7 prohibits the placement of new permanent structures that would be visible from the public beach except where allowed on existing parcels of record and "where compatible with the pattern of existing development." These visual resource

provisions are further codified in the requisite coastal permit findings (see IP Section 13.20.110(E). The proposed 6,000+ square foot residence set back only 25 feet from the coastal bluff would not be compatible with surrounding residential development and would represent a significant intrusion into the public viewshed. However, reducing the size of the residence and setting the house back landward of the 100-year setback line without reliance on shoreline armoring (including to meet other LCP consistency issues—see Items #4 and #1, respectively) would, however, help address inconsistencies with the LCP's visual resource protection standards.

4. **Large Dwelling Permit Findings.** Finally, any proposed residence over 5,000 square feet in size must also meet the required large dwelling permit findings including that the proposed structure is compatible with the surroundings/locational/environmental context; that the project meets the coastal permit findings of 13.20 including that it is consistent with all other LCP provisions including those identified above; and that the project include mitigations such as re-siting/FAR reduction to meet the large dwelling permit findings. Given the significant LCP compliance issues discussed in more detail above and that the resident directly overlooks the beach, it does not appear that the findings necessary to approve a residence over 5,000 square feet in size can be made, and thus the project should be reduced below 5,000 square feet in addition to relocated landward as is discussed in more detail above.

Please let me know if you have any questions on the above comments.

Rob Moore
Coastal Planner
California Coastal Commission
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(949) 613-3309 cell

CALIFORNIA COASTAL COMMISSION
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11/22/2021

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Comments:

Note that this project is appealable and does not appear consistent with Santa Cruz County's LCP in its current form. Our goal is to inform applicants of a project's conformity with the County's Local Coastal Program (LCP) to aid in the application process. The below comments were sent for the first and second application routings and were not addressed by the applicant.

1. **Geologic Setback.** The LCP requires that a coastal bluff building site be stable for a minimum of 100 years in its pre-development application condition, and that any development be set back an adequate distance to provide stability for the development's lifetime, and at least 100 years. The minimum 100 years of stability must be established through the use of appropriate setbacks and siting, and shall "not [be] dependent on shoreline or coastal bluff protection structures" (see LUP Policy 6.2.15). Relatedly, LUP Policy 6.2.15 specifies that shoreline protection structures shall be limited to "protect existing structures from a significant threat" (LUP Policy 6.2.16). Thus, the LCP has a two-part minimum 100-year stability requirement: first, there must be a portion of the site in question that itself will be stable for at least 100 years in a pre-development (i.e., no project) scenario without reliance on structural development; and second, any development then introduced onto the site must also be stable for its lifetime measured for at least 100 years without reliance on engineering measures.

In this case, the geologic setback line is predicated on the armoring (in this case a riprap revetment) being both maintained and remaining in place for the lifetime of the development. Specifically, the geology report notes, "it is safe to assume that the bluff retreat in the future will be nil, provided the existing armoring system is adequately maintained." However, the neighboring upcoast property, Casitas Del Mar, has open and unresolved violations (in addition to seacaves on either side of the natural headland including one near to the property line shared with the subject site that are due, in part, to work that was completed without the requisite geotechnical evaluation or coastal permit authorization. Because shoreline armoring may only protect *existing structures* in danger of erosion; and Casitas Del Mar is not "in danger of erosion," resolution of the violations at the Casitas Del Mar property may entail removal of all armoring fronting the property, particularly in light of the fact that the proposed project would render the MacDonell residence a redeveloped structure (i.e., revoking its "existing structure" status). Accordingly, the LCP's required 100-year geologic setback line should be determined without consideration to any armoring (i.e., without consideration to any armoring fronting both the Casitas Del Mar property and the MacDonell property). In other words, the geologic setback line should provide for 100 years of stability assuming the removal of the riprap revetment immediately upcoast and fronting the subject site.

2. **Basement.** The "basement" component of the project should be eliminated from the proposed project including because the basement would represent substantial landform alteration of a coastal bluff, and the LCP requires site design to minimize grading (see LUP Policy 6.3.9). Moreover, in the event the basement becomes threatened (due to sea level rise, storm surge, tidal inundation, etc.), its removal would also result in damaging landform alteration. Furthermore, basements have the potential to impact the natural erosional processes of coastal bluffs and in some instances function as de facto upper bluff shoreline armoring. Finally, basements have consistently been denied by the Commission for the reasons stated above (see especially A-6-ENC-16-0060 [Martin SFD] and A-6-ENC-16-0068 [Hurst SFD]), and thus it is reasonable to assume that any future basements proposed to be excavated and constructed into a coastal bluff would also be denied by the Commission.

3. **Visual Resource Protection.** 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", 5.10.4 "Preserving Natural Buffers", and 5.10.7 "Open Beaches and Blufftops". LUP Policy 5.10.2 acknowledges the importance of visual resources and requires that projects be evaluated against their unique environment (i.e., the surrounding projects and natural context), and LUP Policy 5.10.7 prohibits the placement of new permanent structures that would be visible from the public beach except where allowed on existing parcels of record and "where compatible with the pattern of existing development." These visual resource

provisions are further codified in the requisite coastal permit findings (see IP Section 13.20.110(E). The proposed 6,000+ square foot residence set back only 25 feet from the coastal bluff would not be compatible with surrounding residential development and would represent a significant intrusion into the public viewshed. However, reducing the size of the residence and setting the house back landward of the 100-year setback line without reliance on shoreline armoring (including to meet other LCP consistency issues—see Items #4 and #1, respectively) would, however, help address inconsistencies with the LCP's visual resource protection standards.

4. **Large Dwelling Permit Findings.** Finally, any proposed residence over 5,000 square feet in size must also meet the required large dwelling permit findings including that the proposed structure is compatible with the surroundings/locational/environmental context; that the project meets the coastal permit findings of 13.20 including that it is consistent with all other LCP provisions including those identified above; and that the project include mitigations such as re-siting/FAR reduction to meet the large dwelling permit findings. Given the significant LCP compliance issues discussed in more detail above and that the resident directly overlooks the beach, it does not appear that the findings necessary to approve a residence over 5,000 square feet in size can be made, and thus the project should be reduced below 5,000 square feet in addition to relocated landward as is discussed in more detail above.

Please let me know if you have any questions on the above comments.

Rob Moore
Coastal Planner
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
(949) 613-3309 cell

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
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05/17/2022

Jocelyn Drake, Zoning Administrator
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
Subject: **Application 211155 (APN 028-242-25)**

Dear Ms. Drake:

We are aware that Coastal Development Permit application 211155 (APN 028-242-25) was continued at the Zoning Administrator's hearing on April 1 and is now scheduled for hearing with the Zoning Administrator on May 20. I am writing to reiterate comments we provided throughout the application process for this project that have gone unaddressed. Below please find our routing comments, which were provided for each routing on this application without response. In short, this project presents a number of inconsistencies with the County's Local Coastal Program. A Coastal Development Permit should either not be approved or should, at minimum, contain conditions alleviating each of the issues enumerated in our comments, below.

Comments:

1. **Geologic Setback.** The LCP requires that a coastal bluff building site be stable for a minimum of 100 years in its pre-development application condition, and that any development be set back an adequate distance to provide stability for the development's lifetime, and at least 100 years. The minimum 100 years of stability must be established through the use of appropriate setbacks and siting, and shall "not [be] dependent on shoreline or coastal bluff protection structures" (see LUP Policy 6.2.15). Relatedly, LUP Policy 6.2.15 specifies that shoreline protection structures shall be limited to "protect existing structures from a significant threat" (LUP Policy 6.2.16). Thus, the LCP has a two-part minimum 100-year stability requirement: first, there must be a portion of the site in question that itself will be stable for at least 100 years in a pre-development (i.e., no project) scenario without reliance on structural development; and second, any development then introduced onto the site must also be stable for its lifetime measured for at least 100 years without reliance on engineering measures.

In this case, the geologic setback line is predicated on the armoring (in this case a riprap revetment) being both maintained and remaining in place for the lifetime of the development. Specifically, the geology report notes, "it is safe to assume that the bluff retreat in the future will be nil, provided the existing armoring system is adequately maintained." However, the neighboring upcoast property, Casitas Del Mar, has open and unresolved violations (in addition to seacaves on either side of the natural headland including one near to the property line shared with the subject site that are due, in part, to work that was completed without the requisite geotechnical evaluation or coastal permit authorization. Because shoreline armoring may only protect *existing structures* in danger of erosion; and Casitas Del Mar is not "in danger of erosion," resolution of the violations at the Casitas Del Mar property may entail removal of all armoring fronting the property, particularly in light of the fact that the proposed project would render the MacDonell residence a redeveloped structure (i.e., revoking its "existing structure" status). Accordingly, the LCP's required 100-year geologic setback line should be determined without consideration to any armoring (i.e., without consideration to any armoring fronting both the Casitas Del Mar property and the MacDonell property). In other words, the geologic setback line should provide for 100 years of stability assuming the removal of the riprap revetment immediately upcoast and fronting the subject site.

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Please contact me at Robert.Moore@coastal.ca.gov if you have any questions or would like to discuss these issues further.

Sincerely,

Robert Moore
Coastal Planner
Central Coast District Office
California Coastal Commission

cc: Cove Britton (Matson Britton Architects)

Attn: Santa Cruz County Planning Office/Lezanne Jeffs
Re: Application 211155

We are writing to express our opposition to Application #211155, the demolition and building of a structure at 22702 East Cliff Drive. While we support the ability of homeowners to remodel their coastal homes, the proposed development raises safety, environmental, and aesthetic concerns that should disqualify the application from approval.

We do not believe that the proposed development is consistent with our neighborhood in style or substance. In size alone, the plans would outstrip any other house visible from the 26th Street Beach. There is no attempt to fit into "a compatible community aesthetic," as required by the Santa Cruz County code. The Application seeks to maximize the size of the house in every dimension, with significant code exemptions unsupported by any rationale. It also raises concerns about visual impacts and sightline for residents and the public alike, given the dramatic increase in height and plans to build up to the Applicant's property lines.

The demolition of the house at 22702 East Cliff may also have significant implications for the Coastal Development Permits of its neighbors. The Coastal Commission has already indicated the proposed demolition could result in the loss of a CDP, and the removal of the adjoining riprap. This would adversely impact the structure of the bluff, upon which many of our homes rely—especially given the sea caves on the adjacent parcels. We also have significant concerns about the implications of the proposed basement, which may impact the structure, stability, and safety of the East Cliff bluff and the 26th Street Beach, an issue also raised by the Coastal Commission.

The Applicant has not shown that the project justifies a setback exemption or that the plan is consistent with the structure of the homes around it. As a community, we had no knowledge of this project for the many months it has been under development. We would have expected that the Applicant and the architect involved would have considered the feelings and wishes of the community. We urge you to take a second look at this project and deny Application #211155.

Signed,

Rebecca DiManto	22727 East Cliff Drive
Jay Wilkerson	22727 East Cliff Drive
Cheri Sacks	22735 E. Cliff Dr
Sabine Prather	155 26th Ave.

Attn: Santa Cruz County Planning Office/Lezanne Jeffs
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Signed,

Marion Morris; 22680 East Cliff Dr., Unit 4, Santa Cruz CA 95062
Dennis Morris; 22680 East Cliff Dr., Unit 4, Santa Cruz CA 95062
Laura Milligan; 22670 East Cliff Drive, Santa Cruz, CA 95062