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August 31, 2023

VIA EMAIL

Zoning Administrator
c/o Nathan MacBeth
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
nathan.macbeth@santacruzcounty.us

Re: Coastal Development Permit (Application #211129)
181 Seacliff Drive, Aptos
Zoning Administrator Agenda for September 1, 2023; Agenda Item #2

Dear Zoning Administrator:

This law firm has been retained by Protect Seacliff, a group of residents opposed to the above referenced project and we submit this letter opposing this project on behalf of our client. The project does not comply with the Local Coastal Program (LCP) and the California Environmental Quality Act (CEQA), and notice of the hearing was defective. Therefore, the project should be denied.

A. The Staff Report Erroneously Concludes that the Project Complies with the LCP Because the Project Impacts View from Seacliff Beach

The Staff Report concludes that the proposed project is in conformance with the Local Coastal Program and compatible with the existing single family homes surrounding the project site. However, it would be the only two-story, single-family home on the bluff top. The two immediately adjacent homes and the other three blufftop homes on the other side of the public parking/viewing area along the ocean side of Seacliff Drive are all single-story.

The Project is inconsistent with the LCP's visual resource protections. The proposed project would substantially increase the visibility of the home from the beach, which raises LCP consistency issues including with respect to LUP Policies 5.10.2 "Development within Visual Resource Areas", 5.10.4 "Preserving Natural Buffers", and 5.10.7 "Open Beaches and Blufftops." LUP Policy 5.10.2 acknowledges the importance of visual resources and requires that projects be evaluated against their unique environment (i.e., the surrounding projects and natural context), and LUP Policy 5.10.7 prohibits the placement of new permanent structures 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, County Code section 13.20.110(E)). The proposed project would increase the visibility of the home on the project site

and would not be compatible with surrounding residential development and would represent a significant intrusion into the public viewshed. In fact, the Staff Report provides no analysis of views from Seacliff State Beach. Nonetheless, the existing home is currently not visible from the picnic areas at Seacliff Beach (see Exhibit A), and has a low profile even from the beach itself (see Exhibit B). It is clear that the Staff Report's conclusions regarding the visual impacts and compliance with the LCP are erroneous.

B. 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 1 exemption for existing facilities (14 Cal. Code Regs. Section 15301) and Class 3 exemption for new construction or conversion of small structures (14 Cal. Code Regs. section 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 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. The Staff Report even admits "that the project site is considered a 'sensitive site' as defined un SCCC 13.11.030 (Definitions) as it is located in a mapped scenic area and located on a coastal bluff." (Staff Report, p. 2.)

It is also noteworthy that the project is not within the scope of the claimed Class 1 exemption. "Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former

use." (14 Cal. Code Regs. § 15301.) The project results in an expansion of the existing use and the addition of a second story. Therefore, aside from the fact that an exception to an exemption applies, the proposed project is not within the scope of the Class 1 exemption because the exemption must be interpreted narrowly.

Importantly, this project is located above Seacliff Beach State Park. The project will be highly visible from the State Park and should remain a single-story structure to avoid impacts to views the public experiences from Seacliff Beach.

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.

C. Notice Was Not Properly Posted

In accordance with County Code section 18.10.223(A)(2), notice of the public hearing for this project shall be "Posted on the property in a ***conspicuous place*** at least 10 calendar days prior to the hearing." (Emphasis added.) The notice for this project was not posted in a "conspicuous place." The home shares what appears to be a driveway with two other homes and the project site has a home between it and the home directly on Seacliff Drive. However, the notice was not posted at the driveway entrance, but was instead posted on the specific project site. The driveway leading to the home appears to be a private driveway, and members of the public would not know or would feel discouraged from going down the driveway. Moreover, members of the public do not travel on the driveway. In fact, the sign related to the notice of development itself faced directly across the driveway in a manner that anyone on Seacliff Drive would not be able to read the sign (see Exhibit C). The notice of this public hearing was posted on the driveway door, which was completely obscured from Seacliff Drive and required someone to actually enter the applicant's property to read the text the notice. (See Exhibit D.) Therefore,

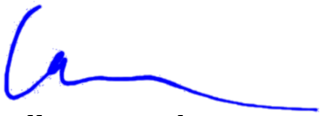
members of the public are not aware of this hearing because the posting is not visible from a public area, and the notice could not be read without trespassing. This not only violates the literal requirements of section 18.10.223(A)(2), but it violates the spirit of this notice provision which is to ensure that members of the public are aware of these proceedings. Therefore, the project should be denied and if the project is reconsidered, the notice must be properly posted so that members of the public are aware of these proceedings. It is noteworthy that the driveway entrance is adjacent to an area of Seacliff Drive where members of the public park their cars and congregate to view the ocean.

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

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EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D