## Evan Ditmars


**From:** Cove Britton <cove@matsonbritton.com>
**Sent:** Thursday, May 29, 2025 4:12 PM
**To:** Evan Ditmars
**Cc:** Manu Koenig; Kimberly De Serpa; Sheila McDaniel; Jocelyn Drake; Jamie Sehorn; Natalie Kirkish; Jason Heath; Carlos Palacios; Flynn, John J.; jvaudagna

**Subject:** Urgent 033-151-25



**Subject:** Formal Objection to Misapplication of SCCC 16.10
**(Application #241408 – APN 033-151-25 – June 6 Hearing)**

Dear Mr. Ditmars,

I am writing to formally object to Santa Cruz County staff's current interpretation of **SCCC § 16.10.040(c)**, as applied to **Application #241408 (APN 033-151-25)**, which is scheduled for hearing on **June 6, 2025**.

The interpretation in question — that the square footage of a **state-protected 800 sq ft ADU** may be counted toward the "development" threshold to trigger or limit otherwise lawful residential construction — is both **legally indefensible** and **administratively improper**. It reflects a **new and unvetted reinterpretation of County Code** with significant legal and practical consequences, enacted without public notice, formal policy direction, or appropriate legal review.

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### ⚖️ Conflict with State ADU Law

Under **Government Code § 65852.2(c)**, a local agency "**shall not impose**" any regulation that would have the effect of **physically precluding the construction of an ADU of up to 800 square feet**. The County's current application of the "development" definition:

- Triggers geologic setback enforcement against otherwise compliant ADUs,
- Limits the scope of allowable improvements to the primary residence, and
- Treats a state-mandated, by-right housing unit as a limiting factor in total site development.

This approach **violates both the letter and the purpose** of state housing law. State law treats ADUs as **additive**, not exchangeable. The County may not impose tradeoffs, offsets, or square footage caps that effectively diminish primary residence entitlements in response to a lawfully permitted ADU.

## 🚫 Regulatory Overreach and Circular Logic

Even if staff's interpretation of the 50% "development" threshold were valid — and it is not — the project at issue is **already classified as development** under SCCC 16.10 due to its location in a mapped hazard zone. Applying the 50% metric to then **impose a secondary size limitation** is arbitrary, circular, and serves no valid regulatory purpose. It imposes restrictions that **do not appear anywhere in adopted County Code** or ordinance.

This reinterpretation has been adopted and now being attempted to enforced **without transparency**, **without due process**, and **without Board direction**. It now appears to be applied administratively across multiple applications, including those outside the coastal zone, with no disclosed guidance or public notice. The potential impact — effectively disqualifying or penalizing thousands of residential properties countywide located in geologic hazard overlays — is severe and systemic.

Worse, based on the record and County conduct to date, it appears that this interpretation is being **attempted for the first time on my clients' application — effectively using them as a test case** for a newly conceived enforcement approach. If true, this is **fundamentally unlawful**. A new or novel regulatory standard cannot be enforced against individual applicants without formal ordinance amendment, public process, and advance notice. Imposing such a change through selective enforcement — especially where it alters development rights — is a direct violation of due process and exposes the County to significant legal risk.

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## 📋 Requested Actions

Accordingly, I respectfully request the following:

1. That **County Counsel provide a formal, written legal analysis** explaining the basis for using SCCC § 16.10.040(c) in a manner that limits ADUs or conditions otherwise lawful primary residence development, including a discussion of its consistency with **Government Code § 65852.2** and applicable state preemption.
2. That **staff immediately pause enforcement of this interpretation** and bring the matter before the **Board of Supervisors for formal review and policy direction**.
3. That the County publicly disclose:
    - **How many applications** (past or pending) have been affected by this interpretation;
    - **When and how** this interpretation was adopted;
    - And whether any form of **public guidance, ordinance, or notice** was issued to affected applicants.

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## 📢 Required Timing and Standing

**I expect County Counsel's written response well before the June 6 hearing**, so that the public — including the applicant — has a fair opportunity to review and respond to the County's legal justification for what appears to be a substantial abuse of regulatory authority.

As a **licensed architect in the State of California**, I have a professional obligation to ensure that my work complies with both state law and local regulation. I am not simply representing a private applicant — I am fulfilling a licensed duty to advise on legal risk and code compliance. Given the legal implications and the far-reaching consequences of this newly imposed interpretation, I must state clearly that an informal opinion or justification from a planner is **not sufficient**.

This is a matter of **statutory interpretation**, **regulatory authority**, and **due process**. It is exclusively within the jurisdiction of **County Counsel** to determine whether the County's current policy complies with state law. As such, I am asserting my **professional and stakeholder standing** to formally request a full legal response in writing — not an informal or verbal position — prior to any further hearing or enforcement action.

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Thank you for your attention to this matter. I look forward to a timely and substantive response.

Sincerely,

Cove Britton  Architect License No. C23616 Exp. 08/10/1962

Matson Britton Architects

O. (831) 425-0544

## Evan Ditmars

**From:** Cove Britton <cove@matsonbritton.com>
**Sent:** Friday, May 30, 2025 7:16 AM
**To:** Sheila McDaniel
**Cc:** Evan Ditmars; Manu Koenig; Kimberly De Serpa; Jocelyn Drake; Jamie Sehorn; Natalie Kirkish; Jason Heath; Carlos Palacios; Flynn, John J.; jvaudagna; Lezanne Jeffs; Riley Rhodes
**Subject:** Re: Urgent 033-151-25



**Subject:** New Misinterpretation of County Code Unfairly Restricts Remodels in Hazard Areas – LCP Reference is a Red Herring

Dear Supervisor Keonig and Supervisor DeSerpa,

As a follow up to my last email I am writing to raise urgent concerns about the recent policy shift by County Planning staff that is affecting thousands of homeowners across Santa Cruz County—well beyond the coast—and undermining both housing policy and fair application of local law.

At the center of this issue is a **new misinterpretation of Santa Cruz County Code §16.10.040(c)**—specifically the definition of "development" under the Geologic Hazards Ordinance. Unfortunately, staff is now also invoking the Local Coastal Program (LCP) as if it were a basis for these restrictions. **It is not. The LCP has nothing to do with it.**

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### What the Code Actually Says

Section 16.10.040 defines when a project qualifies as "development" and must comply with geologic hazard regulations. It states that an addition exceeding **50% of the existing habitable square footage** (or 500 sq. ft., whichever is greater) within five years is "development." That definition is—and has always been—a **trigger** for requiring geologic review, not a **limit** on what a homeowner can build.

Under long-standing interpretation, once triggered, geologic assessments, setbacks, and hazard mitigation would be required—but design solutions were still possible. Homeowners could build safely if they demonstrated conformance with Chapter 16.10's substantive safety standards.

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### What Staff Is Doing Now—and Why It's Wrong

Under a new internal policy pushed by **Jessica DeGrassi**, with the support of **Matt Machado** and **Matt Johnston**, staff is now treating the "development" threshold as an **automatic cap**:

- If the proposed addition exceeds 50% of the existing structure, the project is halted unless reduced.
- Even if the new area is **entirely outside the geologic setback**, staff will not allow more than a 50% expansion.
- This interpretation imposes a **hard square footage cap** that is **not supported by the ordinance language** and **not consistent with past practice**.

This is an inappropriate rewriting of County Code via internal memo.

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## LCP Reference Is a Red Herring

The staff report for 4570 Opal Cliff Drive states that the project is in conformance with the LCP **"as conditioned"**—i.e., only if the square footage is reduced to fall under the "development" threshold241408 Staff Report.

This is circular reasoning. Staff first imposes a novel cap via Chapter 16.10, and then cites the LCP as justification for requiring compliance with the cap. But the **LCP has no such limit**:

- The **LCP governs** design compatibility, public access, and natural resource protection—not square footage.
- There is **no policy or standard in the LCP** that mandates a 50% cap on additions.
- Staff is **using the LCP to validate a new policy choice** that originates entirely in the misapplication of the Geologic Hazards Ordinance.

This is a distraction from the real issue, and it creates a false impression that the restriction is required by state law. **It is not.**

---

## Countywide Impact: Not Just a Coastal Issue

This reinterpretation doesn't just apply to blufftop parcels. It affects **any home** located in a mapped geologic hazard zone:

- **Landslide areas** in the Santa Cruz Mountains (Felton, Ben Lomond, Soquel).
- **Liquefaction zones** in Watsonville, Live Oak, and Capitola.
- **Fault zones** near the San Andreas and Zayante Faults.
- **Expansive soils** in Scotts Valley and Aptos.
- **Debris flow hazard areas** in post-fire uplands.

GIS data suggests that **over 20,000 homes** are located on parcels affected by geologic hazard mapping. These homeowners are now restricted from expanding more than 50%—even if their plans are safe, well-supported by engineering, and located outside the hazard footprint.

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## Board Oversight Is Needed

This new interpretation:

- **Contradicts decades of County precedent.**
- **Rewrites the function of §16.10.040(c)** from a hazard trigger to a hard design constraint.
- **Misrepresents the role of the LCP**, which does not mandate this outcome.
- **Disproportionately harms ordinary homeowners** seeking to improve their homes responsibly.

I urge the Board to initiate an immediate review and clarification of this policy. The definition of "development" must be restored to its proper role—as a gateway to safety review, not a prohibition on building. And the LCP should no longer be used as a post hoc justification for local overreach.

Thank you for your attention. I would be glad to provide additional documentation or meet to discuss this matter.

Cove Britton

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On Thu, May 29, 2025 at 4:17 PM Sheila McDaniel <Sheila.McDaniel@santacruzcountyca.gov> wrote:

> Cove,
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> Thank you for your input. It will be forwarded to the Zoning Administrator for consideration during the public hearing and added as late correspondence online.
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**Subject:** Re: Urgent 033-151-25



**Subject:** Formal Objection to Unsupported Use of "Elevated Risk" in Staff Report for Application #241408 – Broader Countywide Implications

Dear Mr. Ditmars,

This message follows up on prior correspondence concerning the staff report for Application #241408 (4570 Opal Cliff Drive). I must again register serious objections regarding the staff report, in this case specifically the statement that the project site is anticipated to "experience an elevated level of risk from slope instability over the next 100 years."

As you are aware, the County-accepted geologic and geotechnical reports (REV241206 and REV251047) fully assessed site stability consistent with the requirements of County Code Chapter 16.10 and established a 100-foot setback to ensure 100-year stability. Those reports—prepared, signed, and stamped by licensed professionals—explicitly support development landward of that line. They do **not** assert that the addition area carries "elevated risk," nor do they suggest the proposed improvements would be inconsistent with slope stability policies. In fact they determine that the area of the addition is stable for 100 years. The existing residence is irrelevant.

The "elevated risk" language in the staff report is neither quoted from nor supported by any of those licensed conclusions. It does not cite:

- A licensed geologist or geotechnical engineer,
- Any applicable section of County Code,
- Any policy adopted by the Board of Supervisors or Planning Commission.

Its inclusion is a **subjective and unsupported opinion offered by an unlicensed individual**—and as such, it exceeds the authority permitted under California law regulating the practice of geology and engineering.

Furthermore, this is not merely a matter isolated to one coastal bluff project. The **policies and code sections cited—General Plan Objective 6.2 and SCCC 16.10—apply countywide** to all development in areas subject to geologic hazards. If County staff are allowed to make their own unauthenticated hazard

declarations beyond what licensed professionals have determined, that sets a dangerous and legally untenable precedent for all future development, regardless of location.

If you intend to stand by this language, I ask you to confirm that you, as an unlicensed planner, are personally assuming responsibility for issuing a geologic "elevated risk" determination for the addition without expert attribution or code authority—and that you are prepared to see that approach applied consistently to other hazard determinations Countywide.

Absent such confirmation, I respectfully demand that the unsupported “elevated risk” language be retracted or corrected prior to the hearing. The final staff report must accurately reflect the findings of the licensed geologists and engineers—nothing more, and certainly nothing less.

Please confirm receipt and inform me of how you plan to address this issue.

Regards-

Cove Britton

Matson Britton Architects

On Fri, May 30, 2025 at 7:16 AM Cove Britton <cove@matsonbritton.com> wrote:

> **Subject:** New Misinterpretation of County Code Unfairly Restricts Remodels in Hazard Areas – LCP Reference is a Red Herring
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## Evan Ditmars

**From:** Michael Guth <mguth@guthpatents.com>
**Sent:** Tuesday, June 3, 2025 4:20 PM
**To:** Evan Ditmars
**Subject:** Opal Cliffs project



Hi Evan,

**241408** 4570 Opal Cliff Dr, Santa Cruz CA, 95062 APN: 033-151-25**

At a recent hearing for the ZA on east cliff there was a project that was below the threshold for new development, but was dependent on an existing shoreline protection structure - no setback study was provided. The shoreline protection structure had been permitted in 2008 (or something like that) with a requirement for a maintenance report every five years, which had not been done. So the project could not really then rely on that shoreline protection structure, and the 25 foot offset was not an appropriate default. At that hearing I questioned why this hadn't all been reviewed as part of the new CDP project review. There was no good answer.

With that in background, I am asking you to please let me know whether or not you have, as part of the review of this proposal, reviewed and confirmed that any shoreline protection structure on this lot is properly permitted and that all permit conditions for such a shoreline protection structure have been met and are current. Review of the status of and compliance to permit conditions of any shoreline protection structure on the parcel needs to be part of the review for any further CDP on the parcel.

If there is a shoreline protection structure on this parcel and it has not been confirmed that all permit conditions on that shoreline protection structure have been followed and are current, or if the shoreline protection structure on this parcel does not have a CDP, or if it is known that the shoreline protection structure is not in compliance, please then consider this a letter of formal opposition to approval of this project.

I do see a 100 year setback line in some of the drawings but I do not see the geo report.

I look forward to hearing back from you on this.

Thank you!

Mike

--
Yours Sincerely,
Michael A. Guth
Attorney at Law

## Evan Ditmars

**From:** Clark, Nolan@Coastal <nolan.clark@coastal.ca.gov>
**Sent:** Wednesday, June 4, 2025 3:24 PM
**To:** Evan Ditmars
**Subject:** CDP Application 241408 -ZA Hearing



Hi Evan,

I am emailing regarding CDP application 241408, which is going to the Zoning Administrator for a hearing this Friday, June 6th. The project description is:

*Public hearing to consider a proposal for a remodel and addition to an existing 1,950 square foot single-family dwelling. Project includes a 739 square foot addition, a 618 square foot basement, and a 675 square foot ADU, resulting in a 3,282 square foot dwelling with 3 bedrooms, 3.5 bathrooms, and 675 square foot attached ADU. Requires a Variance to construct an enclosed stairway within the front yard setback, Coastal Development Permit, Site Development Permit with Design Review, and a Preliminary Grading Review.*

I think you did an excellent job on the analysis and conditions that require conformance with the County's Geologic Hazards Ordinance, and I have one recommendation for you to consider taking to the Zoning Administrator. Recommended Condition of Approval II says "prior to issuance of a Building Permit…" I would recommend that this be "prior to issuance of this Coastal Development Permit…" It seems that the reason COA II is included is to require conformance with 16.10, which is part of the LCP and thus the standard of review for CDPs, not building permits, and thus meeting this condition should be an enforceable component that must be complied with prior to CDP issuance. Further, I would note that any change orders down the road that do not comply with COA II would be disallowed and/or require a CDP amendment, which also speaks to making this a prior to issuance of CDP condition.

Let me know if you have any questions, thanks,

**Nolan Clark**
*Coastal Planner*

Central Coast District
California Coastal Commission
(831) 427-4863
coastal.ca.gov

## Evan Ditmars

**From:** Cove Britton <cove@matsonbritton.com>
**Sent:** Wednesday, June 4, 2025 6:51 PM
**To:** Sheila McDaniel
**Cc:** Evan Ditmars; Manu Koenig; Kimberly De Serpa; Jocelyn Drake; Jamie Sehorn; Natalie Kirkish; Jason Heath; Carlos Palacios; Flynn, John J.; jvaudagna; Lezanne Jeffs; Riley Rhodes
**Subject:** Re: Urgent 033-151-25



Hi Evan-

I am not seeing my emails in the staff report and of course, no response.

Please at a minimum add my comments into the current on line staff report so the public and the ZA may review prior to the hearing.

Thanks!

On Fri, May 30, 2025 at 4:27 PM Cove Britton <cove@matsonbritton.com> wrote:

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