

**CALIFORNIA COASTAL COMMISSION**  
 CENTRAL COAST DISTRICT OFFICE  
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# Th12c



Appeal filed: 2/19/2008  
 49th day: 4/8/2008  
 Staff: DCarl  
 Staff report prepared: 2/21/2008  
 Hearing date: 3/6/2008

## APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

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**Appeal number** .....A-3-SCO-08-010, Vaden 23rd Avenue SFD

**Applicants** .....Val Vaden and Lilli Rey

**Appellant** .....Ralph Borelli

**Local government** .....Santa Cruz County

**Local decision** .....Coastal Development Permit (CDP) Application Number 02-0432 approved by the Santa Cruz County Planning Commission on January 9, 2007.

**Project location** .....Seaward end of 23rd Avenue fronting Corcoran Lagoon/Santa Maria Cliffs Beach in the Live Oak beach area of Santa Cruz County (APNs 028-232-15 and 028-232-16).

**Project description** .....Construct a single-family residence, and extend 23rd Avenue and public utilities to serve the residence.

**File documents** .....Final Local Action Notice for Santa Cruz County CDP Number 02-0432; Santa Cruz County certified Local Coastal Program (LCP); California Coastal Commission Monterey Bay ReCAP; CDP application (and appeal) files 3-97-027, A-3-SCO-99-056, and 3-03-036 (Filizetti and Filizetti/Hooper).

**Staff recommendation** ...**Substantial Issue Exists**

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### A. Staff Recommendation

#### 1. Summary of Staff Recommendation

The certified Santa Cruz County LCP requires a minimum 25-foot setback for blufftop development. The Appellant contends that the County's decision is inconsistent with this requirement. The County's CDP decision allows development within the required 25-foot setback (as close as 5 feet for the approved road extension), and it justifies this incursion based on an incorrect and novel interpretation of the LCP's bluff setback policies. **The appeal raises a substantial LCP conformance issue related to a core LCP coastal resource protection requirements, and staff recommends that the Commission take jurisdiction over the CDP application for this project.** Motions and resolutions to effect this recommendation are found on page 2 of the staff report.



**California Coastal Commission**  
 Staff: Dan Carl Approved by:  
 Th12c-3-2008

## 2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

**Motion.** I move that the Commission determine that Appeal Number A-3-SCO-08-010 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

**Staff Recommendation of Substantial Issue.** Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Resolution to Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-SCO-08-010 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

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Click on the link  
at left to go  
to the exhibits.



## B. Findings and Declarations

The Commission finds and declares as follows:

### 1. Project Location

The proposed project is located on the bluffs at Corcoran Lagoon/Santa Maria Cliffs Beach near Corcoran Lagoon in the unincorporated Live Oak beach area of Santa Cruz County.

#### Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties (see Exhibit A). The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to San Mateo County along the Pacific Ocean. The County's coastal zone resources are varied and oftentimes spectacular, including the Santa Cruz Mountains coastal range and its vast forests and streams; an eclectic collection of shoreline environments ranging from craggy outcrops to vast sandy beaches (in both urban and more rural locations); numerous coastal wetland, lagoon and slough systems; habitats for an amazing variety and number of endangered species; water and shore oriented recreational and commercial pursuits, including world class skimboarding, bodysurfing, and surfing areas; internationally renowned marine research facilities and programs; special coastal communities; vast State Park lands; and the Monterey Bay itself. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the Monterey Bay National Marine Sanctuary (MBNMS), the largest of the twelve such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, the County has seen extensive development and regional growth over the years that the CCMP has been in place. In fact, Santa Cruz County's population has more than doubled since 1970 alone with current State estimates indicating that the County is home to over one-quarter of a million persons.<sup>1</sup> This level of growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services, but also the need for park areas, recreational facilities, and visitor serving amenities. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and most significantly closer than that, coastal zone resources are a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems and destinations like Live Oak. With the Santa Cruz County shoreline and beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the large population centers of the San Francisco Bay area, San Jose, and the Silicon Valley nearby, this type of resource

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<sup>1</sup> Census data from 1970 shows Santa Cruz County with 123,790 persons; California Department of Finance estimates for 2007 indicate that over 264,125 persons reside in Santa Cruz County (*California Department of Finance, January 2007 Cities/Counties Ranked by Size, Numeric, and Percent Change*; Sacramento, California; May 2006).



pressure is particularly evident in coastal Santa Cruz County.

#### Live Oak Beach Area

Live Oak is part of a larger urbanized area (along with the cities of Santa Cruz and Capitola) that is home to some of the best recreational beaches in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach recreation than the rest of the Monterey Bay area, but north bay beaches are generally the first beaches reached by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including from the San Francisco Bay Area, San Jose and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz Mountains (see Exhibit A). As such, the Live Oak beach area is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region.

Live Oak is the unincorporated segment of Santa Cruz County located between the City of Santa Cruz (upcoast) and the City of Capitola (downcoast). The Live Oak coastal area is well known for excellent public access opportunities for beach area residents, other Live Oak residents, other Santa Cruz County residents, and visitors to the area. Walking, biking, skating, viewing, skimboarding, bodysurfing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons. Live Oak also includes a number of defined neighborhood and special communities within it. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area (roughly three miles of shoreline) can provide different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access system.

Primarily residential with some concentrated commercial and industrial areas, Live Oak is a substantially urbanized area with few major undeveloped parcels remaining. Development pressure has been disproportionately intense for this section of Santa Cruz County. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live Oak's public infrastructure (e.g., streets, parks, beaches, etc.) as the remaining vacant parcels are developed and developed residential lots are re-developed with larger homes.<sup>2</sup> Given that the beaches are the largest public facility in and out of the Live Oak coastal zone, this pressure will be particularly evident along the shoreline.

#### Proposed Development Site

The proposed project is located on top of the bluffs fronting the beach known locally as Santa Maria Cliffs Beach or Corcoran Lagoon Beach. This broad beach extends from a narrow tidal shelf area

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<sup>2</sup> Live Oak is currently home to some 20,000 residents, and the LCP indicates that build-out would add approximately 10,000 Live Oak residents, and would require 150 to 180 acres of park acreage. Although Live Oak accounts for less than 1% of Santa Cruz County's total land acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.



adjacent to Sunny Cove (upcoast) through to the bluff promontory just seaward of the subject site. Corcoran Lagoon is located directly inland of this beach (across East Cliff Drive), and sometimes is also extends onto the beach itself between East Cliff and the ocean below the subject site (depending on water level fluctuations).<sup>3</sup> In contrast to this wide sandy beach/lagoon area fronting the project site, the beach configuration changes quite drastically as the beach extends downcoast. This connected beach area is extremely narrow, extending all the way down to the westernmost outcroppings of rock at Soquel (aka Pleasure) Point about a half-mile downcoast of the project site. This narrow beach is almost entirely backed by rip-rap revetments on its inland edge and is most often referred to as 26th Avenue Beach. 26th is an extremely popular recreational beach,<sup>4</sup> and a prime bodysurfing, skimboarding and surfing destination.<sup>5</sup> Although this beach has been impacted over time by rip-rap,<sup>6</sup> it remains a significant public access and recreation area. See air photo of the area in Exhibit A.

The site is located along that section of bluffs where 23rd Avenue extends directly seaward from East Cliff Drive. Given the orientation of the bluffs along 23rd Avenue, the subject site is located along a bluff area that is actually perpendicular to the ocean (i.e., historically, the area atop the bluffs where Rodeo Creek exited to the ocean through what is now Corcoran Lagoon). The site is located just inland of this bluff edge, and just seaward of the end of 23rd Avenue pavement (the 23rd Avenue right-of-way continues and extends through to the beach as a “paper” street past the pavement). The bluffs along 23rd Avenue are not currently armored, although there is a small amount of existing permitted rip-rap at the promontory nearest and fronting the ocean where the bluffs change direction and extend downcoast parallel to the shoreline. Although the County doesn’t maintain 23rd Avenue, and has equated this lack of maintenance to it being “private”, the Commission has historically considered 23rd Avenue to be

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<sup>3</sup> Historically, the lagoon formed a natural tidal estuary at the beach. The fill for East Cliff Drive partially severed this connection, and the lagoon now only intermittently meanders onto the ocean side of the fill under a bridge supporting East Cliff.

<sup>4</sup> Historic County analyses estimated average daily use of this beach at 848 persons, making it the second highest beach use area in Live Oak (after Twin Lakes State Beach located upcoast near the Santa Cruz Harbor) (Technical Appendix; Live Oak General Plan; Planning Analysis and EIR, October 1977). Similarly, background LCP reports completed in 1980 estimated annual visitor counts for this beach segment at 195,393 (1980 Public Access Working Paper for the County LCP). Given the doubling of the County’s population since 1970, and the increase in recreational use associated with that and population increases in surrounding areas, and the development of a parking area, restrooms, showers, and other park amenities inland at (just downcoast) Moran Lake County Park in the time since these surveys, these historic figures likely underestimate the current level of use at this location.

<sup>5</sup> Along with Aliso and Tenth Street Beaches in Laguna Beach, and the Wedge in Newport Beach, 26th Avenue Beach is known as one of the best skimboarding and bodysurfing locations in California. Professional and amateur contests are often held here, and recreational users pack the nearshore area at the project site. It is also home to a well-known surfing break that provides a high energy, if somewhat abrupt, rolling beach break known for its Pipeline-esque (but smaller scale) barrels often delivering surfers right to the sandy shore (“26<sup>th</sup> Avenue”), as well as other breaks such as “Little Wind-n-Sea” just downcoast where rolling waves form off of the first outcroppings of Soquel Point (better known as “Pleasure Point”), and such as “Santa Maria” coming off the back (downcoast) side of Black’s Point and the rocky tidal shelves surrounding the Sunny Cove inlet upcoast.

<sup>6</sup> The beach here is in most cases less than 50 feet wide in summer and completely disappears during parts of the winter. Rip-rap revetments armor the backshore and encroach onto areas that otherwise would provide sandy beach access. The Commission’s 1995 Monterey Bay ReCAP project, or Regional Cumulative Assessment Project, estimated that roughly 1¼ acres of sandy beach at 26th Avenue Beach was covered by rock revetments (based on a conservative footprint width estimate of 20 feet of sand beach coverage for such structures). This ReCAP revetment footprint estimate was a general estimate for revetment size over the entire ReCAP area. Because most of the revetments along this portion of the Santa Cruz coast have a footprint that is bigger than the assumed 20-foot width, the actual area of revetment coverage may actually be higher than that estimated in ReCAP.



public property and a public street.<sup>7</sup> A vertical public access trail extends from East Cliff Drive along 23rd Avenue (on the pavement where paved, and along a footpath where not paved) and down a bluff trail to the beach.<sup>8</sup> Although currently unsigned, the 23rd Avenue accessway provides vertical access to the beach, including the only vertical access to the forebeach when Corcoran Lagoon waters occupy the back beach and make dry passage from East Cliff Drive otherwise not possible.

The project site is located just inland of the “paper” portion of 23rd Avenue just past four existing residences all located on the inland side of 23rd Avenue and seaward of East Cliff Drive. The site is currently vacant, and covered with ruderal vegetation. The project site is made up of two APNs: APNs 028-232-15 and 028-232-16. The project site is prominently visible in seaward views from East Cliff Drive (the first through public road) heading downcoast at the bridge over Corcoran Lagoon, and is also visible, albeit less so, from inland Portola Drive across Corcoran Lagoon proper. These peek-a-boo views are all the more important in the Live Oak beach area given that the pattern of residential development seaward of the first through public road (and only through lateral trail route) has been such that the majority of through coastal views from it have been blocked other than at this site, the other coastal lagoon outlet locations,<sup>9</sup> and at the Pleasure Point surfing area.

See Exhibit A for a location map and an air photo of the project area.

## 2. Project Description

The County approved project allows construction of a single-family dwelling (SFD) on APN 028-232-16, construction of an extension of 23rd Avenue and subsurface public utilities to serve the approved SFD on the 23rd Avenue right-of-way, and construction of a portion of the road extension, namely a paved fire safety turnaround, on APN 028-232-15. The residence on APN 028-232-16 would be constructed directly adjacent to the last residence currently existing along paved 23rd Avenue, and the fire safety turnaround would be constructed on the parcel just seaward of that. See project information in the County’s action notice attached as Exhibit B.

## 3. Santa Cruz County CDP Approval

On January 9, 2008, the Santa Cruz County Planning Commission approved Coastal Development Permit (CDP) Application Number 02-0432. This final action was preceded by a series of County hearings over several years involving the subject application (see discussion in County staff report in Exhibit B). In fact, the Zoning Administrator approved the project on October 5, 2007, and that approval was appealed by the current Appellant to the Planning Commission. Notice of the Planning Commission action on the CDP was received in the Coastal Commission’s Central Coast District Office on February

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<sup>7</sup> See, for example, CDP application files 3-97-027, A-3-SCO-99-056, and 3-03-036.

<sup>8</sup> Ibid; see noted files.

<sup>9</sup> Schwan Lagoon located upcoast, and Moran Lake located downcoast.



1, 2008. The Coastal Commission's ten-working day appeal period for this action began on February 4, 2008 and concluded at 5 p.m. on February 19, 2008. One valid appeal (see below) was received during the appeal period.

#### 4. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development that is located both seaward of the first public road and within 300 feet of the blufftop edge.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.



## 5. Summary of Appeal Contentions

The Appellant contends that the County's CDP decision is inconsistent with certified LCP policies requiring development to be set back a minimum of 25 feet from the top edge of the coastal bluff; that the County misinterpreted LUP Policy 6.2.15 in justifying a lesser setback distance; and that the County's CDP decision would set an inappropriate precedent for future blufftop development in the County. The Appellant concludes that "the project as conditioned violates LCP [LUP] Policy 6.2.12<sup>10</sup> and County Code [LCP IP] Section 16.10.070(h)(1)(ii)." Please see Exhibit C for the complete appeal document.

## 6. Substantial Issue Determination

### A. Applicable LCP Policies

The appeal is based on the interplay between LCP LUP Policy 6.2.12 (and related LCP IP Section 16.10.070(h)(1)(ii)) and LUP Policy 6.2.15.<sup>11</sup> These policies are also related to and understood in relation to other LCP policies, including LUP Policies 6.2.13 and 6.2.14, and IP Sections 16.10.070(h)(1)(i) and 16.10.070(h)(1)(iii). These policies state as follows:

***LUP Policy 6.2.12 (Setbacks from Coastal Bluffs).*** All development activities,<sup>12</sup> including those which are cantilevered, and non habitable structures for which a building permit is required, shall be set back a minimum of 25 feet from the top edge of the bluff. A setback greater than 25 feet may be required based on conditions on and adjoining the site. The setback shall be sufficient to provide a stable building site over the 100-year lifetime of the structure, as determined through geologic and/or soil engineering reports. The determination of the minimum 100-year setback shall be based on the existing site conditions and shall not take into consideration the effect of any proposed shoreline or coastal bluff protection measures.

***LUP Policy 6.2.13 (Exception for Foundation Replacement and/or Upgrade).*** Foundation replacement and/or foundation upgrades that meet the definition of development activity shall meet the 25-foot minimum and 100-year stability setback requirements. An exception to those requirements may be granted for existing structures that are located partly or wholly within the setback if the Planning Director determines that: (1) the area of the structure that is within the

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<sup>10</sup> The submitted appeal document indicates that the inconsistency is with LCP Policy 6.5.1 (see Exhibit C). However, Policy 6.5.1 is not an LCP Policy. On February 21, 2008, the Appellant's attorney clarified that the appeal document mis-cites Policy 6.5.1, and the actual citation intended (and the appeal allegation) is with respect to LCP LUP Policy 6.2.12 (personal communication between Dan Carl of Commission staff and the Appellant's attorney William Parkin).

<sup>11</sup> Ibid; the reference to Policy 6.5.1 in the appeal document is understood to be to LUP Policy 6.2.12.

<sup>12</sup> Including by LCP LUP definition (i.e., the LUP Glossary section) "an addition of any size to a structure that is located on a coastal bluff, dune, or in the coastal hazard area, that extends the structure in a seaward direction," "grading activities of any scale in the ... coastal hazard area, and any grading activity which requires a permit (pursuant to Chapter 16.20) elsewhere," "construction of roads, utilities, or other facilities," and "any other project that is defined as development under Section 13.20.040, and that will increase the number of people exposed to geologic hazard, or that may create or exacerbate an existing geologic hazard, shall be determined by the Planning Director to constitute development for the purposes of geologic review."





*setback does not exceed 25% of the area of the structure, or (2) the structure cannot be relocated to meet the setback due to inadequate parcel size.*

**LUP Policy 6.2.14 (Additions to Existing Structures).** *Additions, including second story and cantilevered additions, shall comply with the setback requirements of 6.2.12.*

**LUP Policy 6.2.15 (New Development on Existing Lots of Record).** *Allow development activities in areas subject to storm wave inundation or beach or bluff erosion on existing lots of record, within existing developed neighborhoods, under the following circumstances: (a) A technical report (including a geologic hazards assessment, engineering geology report and/or soil engineering report) demonstrates that the potential hazard can be mitigated over the 100-year lifetime of the structure. Mitigations can include, but are not limited to, building setbacks, elevation of the structure, and foundation design; (b) Mitigation of the potential hazard is not dependent on shoreline or coastal bluff protection structures, except on lots where both adjacent parcels are already similarly protected; and (c) The owner records a Declaration of Geologic Hazards on the property deed that describes the potential hazard and the level of geologic and/or geotechnical investigation conducted.*

**IP Section 16.10.070(h) (Coastal Bluffs and Beaches).**

**1. Criteria in Areas Subject to Coastal Bluff Erosion:** *Projects in areas subject to coastal bluff erosion shall meet the following criteria:*

- (i) for all development and for non-habitable structures, demonstration of the stability of the site, in its current, pre-development application condition, for a minimum of 100 years...*
- (ii) for all development, including that which is cantilevered, and for non-habitable 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.*
- (iii) the determination of the minimum setback shall be based on the existing site conditions and shall not take into consideration the effect of any proposed protection measures, such as shoreline protection structures, retaining walls, or deep piers.*
- (iv) foundation replacement and/or foundation upgrades that meet the definition of development per Section 16.10.040(s) and pursuant to Section 16.10.040(r), shall meet the setback described in Section 16.10.070(h)(1), except that an exception to the setback requirement may be granted for existing structures that are wholly or partially within the setback, if the Planning Director determines that: (a) the area of the structure that is within the setback does not exceed 25% of the total area of the structure, or (b) the structure cannot be relocated to meet the setback because of inadequate parcel size.*
- (v) additions, including second story and cantilevered additions, shall comply with the minimum 25 foot and 100 year setback.*



...

- (viii) *service transmission lines and utility facilities are prohibited unless they are necessary to serve existing residences.*

...

## **2. Exemption:**

- (i) *Any project which does not specifically require a building permit pursuant to Section 12.10.070(b) is exempt from Section 16.10.070(h)1, with the exception of: non-habitable accessory structures that are located within the minimum 25 foot setback from the coastal bluff where there is space on the parcel to accommodate the structure outside of the setback, above-ground pools, water tanks, projects (including landscaping) which would unfavorably alter drainage patterns, and projects involving grading.*

*For the purposes of this Section, the unfavorable alteration of drainage is defined as a change that would significantly increase or concentrate runoff over the bluff edge or significantly increase infiltration into the bluff. Grading is defined as any earthwork other than minor leveling, of the scale typically accomplished by hand, necessary to create beneficial drainage patterns or to install an allowed structure, that does not excavate into the face or base of the bluff.*

*Examples of projects which may qualify for this exemption include: decks which do not require a building permit and do not unfavorably alter drainage, play structures, showers (where run-off is controlled), benches, statues, landscape boulders, benches, and gazebos which do not require a building permit.*

- (ii) *If a structure that is constructed pursuant to this exemption subsequently becomes unstable due to erosion or slope instability, the threat to the exempted structure shall not qualify the parcel for a coastal bluff retaining structure or shoreline protection structure. If the exempted structure itself becomes a hazard it shall either be removed or relocated, rather than protected in place.*

...

## **B. Analysis**

Pursuant to LUP Policy 6.2.12, the LCP requires that development be set back at least 25 feet or as far as is necessary to ensure at least 100 years of stability for such development. This LUP requirement is also identified in, and implemented by, IP Section 16.10.070(h)(1)(ii). In other words, the LCP requires a minimum 25-foot setback, and the required setback distance might be more depending on site-specific facts. This setback requirement is designed to avoid bluff stability problems, including avoiding the need for future shoreline armoring and its attendant impacts, and it also serves to help avoid public viewshed impacts (by moving development away from bluff edges to minimize visibility from beaches



and related areas below) and to help allow for public access along blufftops where applicable (such as the subject case where an existing public access trail route exists).

In this case, the 25-foot minimum bluff setback would apply to development at the proposed development site based on the Applicant's geotechnical consultant's analysis indicating that, due to a lack of discernable erosion over time, 100 years of stability does not require a setback beyond 25 feet.<sup>13</sup> The County's CDP decision acknowledges the LCP's minimum 25-foot setback requirement, including stating that this requirement would appear to disallow development in this area (see page 3 of Exhibit B), but then allows a lesser setback. The approved road and utilities would be sited approximately 5 feet from the bluff edge, and the approved driveway and related development (utility connections, driveway apron, paths and steps) would be as close as 20 feet from the bluff edge; the residence itself would be set back about 40 feet from the bluff edge.<sup>14</sup>

To justify allowing development within the minimum required 25-foot setback area in this case, the County decision relies on LUP Policy 6.2.15, a policy that refers to allowing development in some hazardous areas when confronted with existing lots of record. Among other things, LUP Policy 6.2.15 refers to allowing development in such areas on such lots if the potential hazard can be mitigated over the 100-year lifetime of a structure. In other words, the County relied on this policy and its reference to 100-year mitigation of the hazard to supersede the LCP's 25-foot minimum bluff setback requirement (see County findings in this respect in Exhibit B).

To the Commission's knowledge, the County's interpretation that LUP Policy 6.2.15 overrides the 25-foot bluff setback requirement of LUP Policy 6.2.12 (and related policies) represents the first time this interpretation has been applied. Historically, it has been clear that the certified LCP requires a 25-foot minimum blufftop setback, and it has been long practice on CDP decisions in Santa Cruz County to apply a minimum 25-foot blufftop setback. The LCP provides for limited exceptions to this minimum requirement (e.g., LUP Policy 6.2.13 and IP Section 16.10.070(h)(2)), but these exceptions are clearly to the 25-foot/100-year requirement applied together, including that the minimum bluff setback standard is explicitly restated in these exception policies, and they are for very specific types of development, none of which apply to the current case. In sum, LUP Policy 6.2.12 is the LCP's primary bluff setback policy from which all others derive their context and implementation authority.

LUP Policy 6.2.15, on the other hand, is a less specific policy with respect to blufftop development and setbacks; it applies a different safety standard; and it appears that it is meant to be applied to a different circumstance. On the later point, it appears that this LUP policy is meant to apply to a case where bluff setbacks may not be the primary issue, or even a relevant issue in the context of blufftop development at all. This is also reflected in its broader application to areas of storm inundation, beach erosion, and bluff erosion, and not bluff setbacks specifically. Although bluff erosion is cited and building setbacks are an identified mitigation measure, bluff setbacks explicitly are not, and this broader range of hazards

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<sup>13</sup> Nielsen and Associates reports dated July, 30, 2003 and May 16, 2005.

<sup>14</sup> With respect to the residence, the 40-foot distance is based on the location of the residence if it were moved back per County Condition II.B.7.a so that it was 20 feet inland of the property line where it intersects the 23rd Avenue right-of-way (see Exhibit B).



appears meant to account for cases where development is proposed in low-lying areas where existing lots may exist, but where a stable building site (i.e., per LUP Policy 6.2.12 and IP Section 16.10.070(h)(1)(i) and (ii)) cannot be found. In such cases, a bluff setback may even make little sense lacking a bluff (e.g., proposed development on low lying area of upper beach) or where the development in question is seaward of the bluff (e.g., along Potbelly Beach Road, Las Olas Drive, and Beach Drive), and buildings are instead being set back as appropriate to respond to the hazard otherwise. In terms of the safety standard, the idea of applying hazard mitigation over a 100-year lifetime presumes that the hazard cannot be avoided in the first place in a manner consistent with the LCP otherwise. In other words, the LCP clearly stakes out hazard avoidance in other relevant policies, including Policy 6.2.12 that is premised not on mitigating a hazard, but rather on providing a 100-years stable site based on existing site conditions and not any mitigations, and ensuring at least a 25-foot setback (also reflected in IP Section 16.10.070(h)(1)(i) - (iii)). Avoidance versus mitigation are two fairly different concepts, and the avoidance encapsulated in Policy 6.2.12 and related policies goes as far as to base hazard avoidance on the pre-development application condition of the land and to explicitly disallow mitigation measures to achieve the stability requirements.

In sum, it appears that LUP Policy 6.2.15 is meant to be applied to a different circumstance than minimum blufftop setbacks. Even if it were appropriate to consider it to apply to the subject case, which it is not, it does not trump the provisions of LUP Policy 6.2.12 and related policies that clearly identify minimum bluff setback requirements. First, LUP Policy 6.2.12 and related policies are more specific with respect to bluff setbacks than LUP Policy 6.2.15, and thus LUP Policy 6.2.12 (and its implementing policies) are the ones that apply to bluff setbacks.<sup>15</sup> Second, even if that weren't the case, and the two policies were considered on par with one another with respect to bluff setback requirements, at a minimum there is a conflict between the two policies. In that case, it seems more likely that the reason that Policy 6.2.15 omits explicit reference to the 25-foot minimum setback standard is poor drafting, as opposed to a conscious decision to create conflict between two LUP policies as a means to recast the bluff setback requirements (that are plainly stated elsewhere) through Policy 6.2.15. This is supported by the fact that the exceptions built into Policy 6.2.15 are not included in the explicit exception sections otherwise (e.g., see IP Section 16.10.070(h)(2)). In fact, the reference to the 100-year lifetime in LUP Policy 6.2.15 is more readily rectified to the rest of the plain language of the LCP by reading the LUP Policy 6.2.15 text (of mitigating hazards over 100 years) to refer to the 25-foot minimum/100-year stability requirements.<sup>16</sup>

And finally, if the conflict is not otherwise resolved in that manner, the LCP provides a conflict resolution framework. Specifically, where there is a conflict such as this, the LCP requires that it be resolved in terms of the Coastal Act. LCP Chapter 1, under the heading "Interpretation" states as follows:

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<sup>15</sup> Giving precedence to the more particular provisions of LUP Policy 6.2.12 over the more general provisions of LUP Policy 6.2.15 with respect to bluff setback requirements is in accord with generally applicable principles of California law (see, for example, Civil Code Section 3534 ("Particular expressions qualify those which are general")).

<sup>16</sup> This is also reflected by the fact that when the geologic hazards policies were last updated through LCP amendment 3-98 part B (certified by the Commission in 1999), the minor revisions made to LUP Policy 6.2.15 at that time were described in terms of making the policy consistent with LUP Policy 6.2.12, and they were certainly not understood the other way around.



*In any case in which the interpretation or application of an LCP is unclear, as that policy may relate to a particular development application or project, the application or interpretation of the policy which most clearly conforms to the relevant Coastal Act policy shall be utilized.*

Pursuant to Coastal Act Section 30253, development is to be sited, designed, and built to minimize risks, and to allow for natural shoreline processes to occur without interference from future proposals in response to erosion and other geologic hazard dangers that might lead to impacts on coastal resources (such as impacts on public beach access, sand supply, ESHA, visual resources, and natural landforms). In other words, the Coastal Act requires hazard avoidance as opposed to mitigation. Although the Coastal Act does not identify a specific blufftop setback distance, it has been the Commission's long practice to avoid potential erosion issues, including avoiding potential future armoring, by avoiding the hazard altogether through appropriate setbacks as opposed to allowing the hazard to be mitigated. In that sense, it is clear that the interpretation that most clearly conforms to the Coastal Act is that the bluff setback requirements of LUP Policy 6.2.12 are the bluff setback policies that apply per the LCP.

#### C. Substantial Issue Determination Conclusion

It is clear that the 25-foot minimum setback requirement applies to this project. It is equally clear that the proposed project cannot meet this requirement. The County's interpretation that LUP Policy 6.2.15 can be used to undo the 25-foot minimum setback requirement cannot be found consistent with the LCP. In fact, were it to be the case, then Policy 6.2.15 would find applicability to blufftop sites literally throughout the County, and could be used to negate the LCP's plain language and requirement for a 25-foot minimum blufftop setback (or a greater setback where 100-year stability requires same). Were that to occur, such an interpretation would lead to projects that included mitigation for 100-years of stability as opposed to conforming to the more stringent 25-foot/100-year stable building site standard. This would lead to inappropriate development being pursued near and/or over blufftop edges Countywide, where such precarious perches were maintained through such measures as super-engineered foundation structures and the like. This would lead to adverse coastal resource impacts, including with respect to natural landforms and public viewsheds. Even if the County were to want to limit its application in that scenario to this case, the interpretation forwarded is so broad as to escape limitation to this case.

Thus, the Commission finds that a substantial issue is raised with respect to the grounds on which the appeal has been filed and takes jurisdiction over the CDP application for the proposed project. Bluff setbacks and hazard avoidance are core elements of the Coastal Act and the LCP. It is clear that the County's CDP decision is inappropriate in that context, and cannot be rectified to the certified LCP.

