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# F12a



**Prepared April 6, 2009 (for April 10, 2009 hearing)**

**To:** Commissioners and Interested Persons

**From:** Dan Carl, District Manager  
Susan Craig, Coastal Planner

**Subject: STAFF REPORT ADDENDUM for F12a**  
**CDP Application Number A-3-SCO-08-010 (Vaden 23<sup>rd</sup> Avenue SFD)**

The purpose of this addendum is to modify the staff recommendation for the above-referenced item. Specifically, in the time since the staff report was distributed, Staff received a letter from the Appellant's representative dated April 2, 2009 (see letter attached as Exhibit A). In that letter, the Appellant's representative states that the rear yard setback shown on the proposed project plans does not comply with the County's required setback, that the attic space should be counted towards floor area ratio (FAR), and that there is an inconsistency between the residential footprint on pages 1 and 4 of Exhibit C in the staff report. Thus, at issue are (1) the nature of the County's approval in relation to the footprint of the proposed house; and (2) the manner in which the attic space either does or does not count toward FAR. Commission staff has reviewed the Appellant's letter, and has consulted with County staff regarding their approval and the methodology applied in Santa Cruz County with respect to FAR. Following those steps, Commission staff agrees that minor corrections are necessary to accurately describe the County's approval of the proposed residence with respect to the rear yard setback and to the residential footprint.

Specifically, the underlying County approval moved the footprint of the house back to the 15-foot rear setback line. Although the plans provided by the Applicant and shown in staff report Exhibit C were supposed to represent this setback, staff has confirmed with the Applicant that there was a small error on the plans. Namely, the plans show the house shifted to a 15-foot 4-inch setback as opposed to the required 15-foot setback. In addition, the submitted plans are internally inconsistent between pages 1 and 4 of Exhibit C with respect to the configuration of the rear of the structure, as noted by the Appellant. These are minor discrepancies to be sure, but errors nonetheless that require correcting.

With respect to the Appellant's claim that the attic should count towards FAR, staff does not concur. The plans clearly show an attic with a ceiling at 7-foot (and this part of the plans are not in question). Per the LCP, attic space with ceilings less than 7'6" do not count towards FAR (see staff report footnote 20 on page 13 for further information on this point). Although the Appellant raises a series of ways that this could be interpreted differently, the plain language of the LCP in relation to the attic shown on the plans directs that this area not count toward FAR. No corrections are necessary on this point.

To address the plan and setback issues, the staff report dated prepared April 10, 2009 is modified as shown below. Specifically, a footnote associated with the project description needs to be revised to state



that the County's approval of the project included the requirement that the residence be moved back on the site to the 15-foot rear setback line (the plans in the staff report show the eastern portion of the residence at the 15-foot 4-inch setback line). Also, to ensure that final plans are consistent with the Commission's understanding and the County's underlying approval, a condition is added to require submission of final plans. Such plan submittal requires that the findings be modified to require submission of revised final plans (new Special Condition 4) that show the footprint of the house shifted 4 inches to the 15-foot rear setback line and that correct the residential footprint on page 4 of Exhibit C to be consistent with the footprint shown on page 1 of Exhibit C. Thus, the staff report is modified as shown below (where applicable, text in underline format indicates text to be added, and text in ~~strikethrough~~ format indicates text to be deleted):

**1. Revise Footnote 10 on page 7 of the Staff Report as follows:**

<sup>10</sup> ~~The proposed project before the Commission is shown in Exhibit C, as modified in the following ways: (1) the footprint shown on pages 1 and 4 is 4 inches further west than is actually proposed; and (2) the configuration of the rear of the proposed residence shown on page 4 is inaccurate – see page 1 of Exhibit 4 for the accurate rear building configuration. reflects the additional 4.5 foot setback for the residential structure associated with the County's January 9, 2008 action. In other words, the proposed project (and the plans in Exhibit C) reflect the additional 4.5 foot residential setback that was central to the County's final review and action.~~

**2. Revise Paragraph 4 on Page 14 of the Staff Report as follows:**

In sum, and provided the project is moved back to the 15-foot rear setback line, the proposed project would incrementally increase residential massing visible from significant public viewing areas, but it would not significantly adversely effect these viewsheds nor community character otherwise. The proposed project would result in residential development that is not atypical of the size and scale of existing development along 23<sup>rd</sup> Avenue and, more broadly, along the tops of bluffs in this larger stretch of coast. The proposed project can be found consistent with the visual resource and community character policies cited above.

**3. Add Special Condition 4 as follows:**

**4. Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittees shall submit two full-sized sets of final plans to the Executive Director for review and approval. The final plans shall be in substantial conformance with the plans submitted to the Coastal Commission (pages one and three of plans prepared by Wayne Miller Designer dated January 5, 2009 and dated received in the Commission's Central Coast District Office January 7, 2009; page two of plans prepared by Wayne Miller Designer dated revised January 27, 2009 and dated received in the Commission's Central Coast District Office January 30, 2009; and sheet number C-01 of a plan prepared by Mid Coast Engineers dated March 2006 and dated received in the Commission's Central Coast District Office March 18, 2009 – see Exhibit C) except that they shall be revised and supplemented to comply with the following requirements:

- The footprint of the residence as shown on page 1 of Exhibit C shall be shifted to the east so that



the rear of the residence aligns with the 15-foot rear yard setback line.

The Permittees shall undertake development in accordance with the approved Final Plans.



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APR 02 2009

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Susan Craig, Coastal Planner  
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**RE: Item F12a – Appeal No. A-3-SCO-08010, Vaden 23<sup>rd</sup> Avenue SFD  
Appeal to Coastal Commission of CDP Application No. 02-0432  
APN 028-232-16**

Dear Susan:

Thank you for arranging an opportunity for me to inspect the full sized plans associated with appeal number A-3-SCO-08-010, concerning the proposed Vaden 23<sup>rd</sup> Avenue SFD. This appeal is set for hearing before the Coastal Commission on Friday, April 10, 2009. I reviewed the plans in your Santa Cruz Office Monday (and again Wednesday) with architect Mike Vierhus.

The context of our concern is important to keep in mind and is as follows. The Staff Report concludes that the County's LCP does **not** provide a specific mechanism to allow all this [proposed] development [grading, driveway, utilities, etc.] within the 25-foot setback area and that only to avoid a "taking" is a "certain amount of development" allowed, "provided its inconsistencies are minimized to the maximum extent feasible." Under these circumstances, it is respectfully requested that conditions be added to assure that no confusion will result and that the inconsistencies will truly be minimized to the maximum extent feasible.

The key problem is that ***inconsistent and inadequate plans*** have been submitted by the Applicant as can be easily seen by looking at Exhibit C to the Staff Report and comparing pages 1 and 4. On page 1, the SFD has a ***footprint clearly and substantially longer and different in shape*** from the one on page 4 (the Mid Coast Engineers Site Plan). By resorting to "notes," the Plans create confusion as to whether there is compliance with the County's requirement that the entire SFD be "moved back on the site to the fifteen feet rear setback."

Furthermore, these ***inadequate plans obscure*** the fact that the square footage of the so-called "attic" (which is actually a room) is required to be counted as floor area and result in a violation of the LCP's FAR. The room in question is shown on the upper floor of Section 4 on page 3 of the Miller Plan and the confusion results from this Section showing the room having a ceiling, with another "attic" above it so as to reduce the height of the room to less than the 7' 6" height at which floor area must be counted. Additional confusion results from the Section being drawn at 1/8" scale (while other drawings are at 1/4" scale) and a beam being shown as located in the room even though it is not.

**CCC Exhibit** A  
**(page** 1 **of** 3 **pages)**

If it's possible to have an "addendum" prepared for the April 10<sup>th</sup> Commission meeting, providing Commissioners with staff insight on these matters, prior to the Commission's consideration of the item, that would be ideal. Below are the two issues we've identified, with a proposed solution for the Commission staff to consider for inclusion in a possible addendum:

**First Issue – Adequate and Accurate Documentation on the Plans to be Approved So As to Show Compliance with County Requirement for Moving Entire Building Back on the Site to the 15 Feet Rear Setback Line.** The County of Santa Cruz imposed a condition requiring that the SFD be "moved back on the site to the fifteen feet rear setback" (Condition 7g). This is approximately an additional 4' 10" further back from the Coastal Bluff at front of the building. However, this additional setback is not adequately documented on the Plans being recommended for approval (Exhibit C to the Staff Report) or in the Coastal Commission Conditions of Approval (pp. 18-19).

Instead of providing accurate final plans to be referenced as to exactly what the Coastal Commission is approving, the Plans (Exhibit C) provide a kind of "note," indicating that the entire structure should be moved towards the rear of the lot. As a result, the Plans do not adequately or accurately incorporate this vitally important condition imposed by the County and recommended as well by the Coastal Commission staff, specifically that the entire SFD be "moved back on the site to the fifteen feet rear setback."

To accomplish this result, language could be added under "Special Conditions," along these lines:

**"Conform Plans To Reflect Approved Project.** The Permittees shall submit to the staff in the Commission's Santa Cruz Office no later than June 20, 2009 revised Plans to replace Exhibit C, providing an accurate depiction of the building to be constructed, and accurately reflecting all the conditions of approval, including specifically movement of the entire SFD back to the 15 feet rear setback line (an additional 4' 10" setback from the coastal bluff). This submittal shall be made available for public review for at least 10 working days prior to approval thereof by the Coastal Commission staff. The submittal shall be subject to review by Coastal Commission staff for compliance with said conditions of approval, and the CDP shall not be valid nor development commence until Coastal Commission staff has approved the revised Plans. After approval of the revised Plans by Coastal Commission staff, the revised Plans will be incorporated into the permit and acceptance of conditions document to be signed by the Permittee or authorized agent pursuant to Standard Condition 1."

**Second Issue – Conform Plans to Comply with FAR Limitations.** With the informed assistance of architect Mike Vierhus, it became clear upon examination of the Plans this week that the building as depicted on the plans does not, in fact, conform to the Santa Cruz County

LCP requirements relating to Floor Area Ratio (FAR), in that the building is actually too “large” for the lot, according to the adopted County LCP. Section 4 of Page 3 of the Plans drawn by Miller dated 1/5/09 indicate that an upper floor “room” (7’ x 15’ = 105 sf and containing a window) which the applicant wants to have the County and the Coastal Commission exclude from FAR calculations does not constitute an “attic” under the County LCP. The space shown has both a “floor” and a “ceiling,” neither of which an attic can have under the County LCP. Further, the “ceiling,” has another space above it. These two features result in a proposed structure that has an additional 105 square feet of floor area for a total of 1805 square feet when only 1703 square feet is allowed (an excess building size of 102 sf). The true height of the so-called attic is 11’ and since it is not less than 7’ 6”, the floor area of the room is required to be counted in calculating FAR.

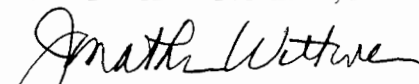
One easy way to deal with this would be to change the roof line, slightly so that the “room” height will be less than 7’ 6”. Other solutions might also exist. However, the key point is that, as designed, the proposed dwelling is not in conformity with the County’s LCP.

It is my understanding that you will pursue this issue with your Supervisor. If you conclude that there is a violation of the County’s LCP in this regard (and we strongly believe that there is), we request that your addendum ask the Commission to impose an additional “Special Condition,” which could be added along these lines:

**“Conform Building Size To Applicable County Regulations.** The Permittees will submit to the staff in the Commission’s Santa Cruz Office a revised set of building plan drawings, providing an accurate depiction of the building to be constructed, and reducing the height of the so-called “attic” to less than 7’ 6” so that the building will not exceed the maximum size allowed under the Santa Cruz County LCP. This will require changing the roof line or other action to reduce the floor area by 102 square feet. After approval of the revised building plan drawings by Coastal Commission staff, these revised building plan drawings will be incorporated into the permit and acceptance of conditions document to be signed by the Permittee or authorized agent pursuant to Standard Condition 1.”

Thank you for your consideration of the foregoing.

Very truly yours,  
WITTWER & PARKIN, LLP

  
Jonathan Wittwer

cc: Ralph Borelli, Client  
Mike Vierhus

**CCC Exhibit A**  
**(page 3 of 3 pages)**

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F12a



Appeal filed:	2/19/2008
Substantial issue found:	3/6/2008
Staff report prepared:	3/19/2009
Staff report prepared by:	Susan Craig
Staff report approved by:	Dan Carl
Hearing date:	4/10/2009

## APPEAL STAFF REPORT - DE NOVO HEARING

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**Appeal number** .....A-3-SCO-08-010, Vaden 23<sup>rd</sup> 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 the paved section of 23<sup>rd</sup> 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 23<sup>rd</sup> Avenue pavement 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** ...**Approve with Conditions**

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### A. Staff Recommendation

#### 1. Summary of Staff Recommendation

The Applicants propose to construct a two-story single family dwelling with a basement on an undeveloped lot located along the coastal bluffs where 23<sup>rd</sup> Avenue extends directly seaward from East Cliff Drive in the Live Oak neighborhood of Santa Cruz County. The Commission previously found that the County's original CDP action raised a substantial issue and took jurisdiction over the CDP for the proposed project on March 6, 2008. The standard of review for the proposed project is the Santa Cruz County certified LCP and the public access and recreation policies of the Coastal Act.



The proposed project constitutes infill development in a fairly urbanized and developed neighborhood. The size and scale of the proposed project is substantially consistent with neighboring development along 23<sup>rd</sup> Avenue and should not significantly impact the public viewshed. Although the paved extension of 23<sup>rd</sup> Avenue would be located in the LCP’s required 25-foot minimum bluff top setback area (but the residence would not), this road incursion can be justified under the LCP as necessary to provide for development on this residential property. Conditions are recommended to have the Applicants assume all risk for developing at this location, and to ensure that the public’s right of access along 23<sup>rd</sup> Avenue and to the beach is not adversely impacted. As conditioned, and to the degree feasible given the applicable fact set, staff believes that the proposed project can be found consistent with the requirements of the certified Santa Cruz County LCP and the public access and recreation policies of the Coastal Act. **Therefore, staff recommends approval with conditions.** The motion and resolution to approve the project subject to the staff recommendation are found directly below.

## 2. Staff Recommendation on CDP Application

Staff recommends that the Commission, after public hearing, **approve** the CDP for the proposed development subject to the standard and special conditions below.

**Motion.** I move that the Commission approve coastal development permit number A-3-SCO-08-010 pursuant to the staff recommendation.

**Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve a Coastal Development Permit.** The Commission hereby approves the coastal development permit on the grounds that the development as conditioned will be in conformity with the policies of the Santa Cruz County Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

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## B. Findings and Declarations

The Commission finds and declares as follows:

Click on the link above  
to go to the exhibits.

### 1. Project Location

The proposed project is located on top of the bluff that fronts Corcoran Lagoon/Santa Maria Cliffs Beach near Corcoran Lagoon in the unincorporated Live Oak beach area of Santa Cruz County. See Exhibit A for project location maps.

#### 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. 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 skim-boarding, 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 California Coastal Management Program 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 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 typically 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, skim-boarding, 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, bluff-top terraces, and coastal lagoons. Live Oak also includes a number of defined neighborhood and special communities within it (e.g., Twin Lakes, Pleasure Point, etc.). 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

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<sup>1</sup> Census data from 1970 show 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).



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 recreational 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 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 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 dramatically 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 riprap revetments on its inland edge and is most often referred to as 26<sup>th</sup> Avenue Beach. 26<sup>th</sup> Avenue Beach 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 an aerial photograph of the area on page 1 of

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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.

<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, 26<sup>th</sup> 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. Riprap 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 1/4 acres of sandy beach at 26<sup>th</sup> 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.



## Exhibit B.

The site is located along that section of bluffs where 23<sup>rd</sup> Avenue extends directly seaward from East Cliff Drive. Given the orientation of the bluffs along 23<sup>rd</sup> Avenue, the project 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 23<sup>rd</sup> Avenue pavement (the 23<sup>rd</sup> Avenue right-of-way continues and extends through to the beach as a “paper” street past the pavement). The bluffs along 23<sup>rd</sup> Avenue are not currently armored, although there is a small amount of existing permitted riprap at the promontory nearest and fronting the ocean where the bluffs change direction and extend downcoast parallel to the shoreline. Although the County does not maintain 23<sup>rd</sup> Avenue, the Commission has historically considered 23<sup>rd</sup> Avenue to be public property and a public street.<sup>7</sup> A vertical public access trail extends from East Cliff Drive along 23<sup>rd</sup> 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 23<sup>rd</sup> Avenue accessway provides vertical access to the beach, including the only vertical access to the fore beach when Corcoran Lagoon waters occupy the back beach and make dry passage from East Cliff Drive otherwise not possible at this location.

The project site is located just inland of the “paper” portion of 23<sup>rd</sup> Avenue just past four existing residences all located on the inland side of 23<sup>rd</sup> Avenue and seaward of East Cliff Drive. The site is currently vacant, and covered with ruderal vegetation (see pages 2-3 of Exhibit B for photographs of the site). The project site is made up of two APNs: APN 028-232-15 and APN 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 (see page 12 of Exhibit E), 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, at the other coastal lagoon outlet locations,<sup>9</sup> and at the Pleasure Point surfing area.

## 2. Project Description

The proposed project is for construction of a single-family dwelling (SFD) on APN 028-232-16, construction of an extension of 23<sup>rd</sup> Avenue and subsurface public utilities to serve the approved SFD on the 23<sup>rd</sup> Avenue right-of-way, and construction of a portion of the road extension, namely a portion of 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 23<sup>rd</sup> Avenue, and the fire safety turnaround would be constructed on a portion of both parcels. See Exhibit C for project

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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. As explained in more detail in footnote 21, the history of this road is not entirely clear, but the available evidence shows that it is owned by the County.

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

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



plans.<sup>10</sup>

### 3. Recent Procedural History

Santa Cruz County originally approved a CDP for the proposed project on January 9, 2008. The County's decision was appealed to the Commission, and on March 6, 2008, the Commission found that the County's approval raised substantial LCP and Coastal Act conformance issues, primarily with respect to the LCP's hazards policies, and specifically in terms of coastal bluff-top setback and related requirements. The Commission thus took jurisdiction over the CDP for this project at that time. Since that time, both the Applicants and the Appellant have provided additional information for the Commission to consider regarding the project (see Exhibit E).

### 4. Coastal Development Permit Determination

The standard of review for this application is the Santa Cruz County certified LCP and, because the project is located between the first public road (East Cliff Drive) and the sea, the public access and recreation policies of the Coastal Act.

#### A. Coastal Bluff Setback Requirements

##### 1. Applicable Policies

Bluff setback issues regarding the proposed project are 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). These policies are also related to and understood in relation to other IP sections, including IP Sections 16.10.070(h)(1)(i), 16.10.070(h)(1)(iii), and 16.10.070(h)(1)(viii). These policies and sections state as follows:

***LUP Policy 6.2.12 (Setbacks from Coastal Bluffs).** All development activities,<sup>11</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.*

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<sup>10</sup> The proposed project before the Commission reflects the additional 4.5-foot setback for the residential structure associated with the County's January 9, 2008 action. In other words, the proposed project (and the plans in Exhibit C) reflect the additional 4.5-foot residential setback that was central to the County's final review and action.

<sup>11</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."



**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.*

**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.*

...

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

...

**2. 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 bluff tops 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 site based on the Applicants' 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>12</sup> The proposed project includes development within the LCP's minimum 25-foot setback area (see page 4 of Exhibit C).

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<sup>12</sup> Nielsen and Associates reports dated July, 30, 2003 and May 16, 2005.



Specifically, the extension of 23<sup>rd</sup> Avenue pavement 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 45 feet from the bluff edge. The LCP does not provide a specific mechanism to allow this development within the 25-foot setback area.<sup>13</sup>

In this case, development that is located in the required bluff setback is almost entirely related to site access. In other words, it is not that the residence itself is inappropriately set back in this regard, it is the fact that access to the site is accomplished within the setback area.<sup>14</sup> The reason for this is because the site can only be accessed from 23<sup>rd</sup> Avenue. In other words, the site is “landlocked” because it cannot be accessed otherwise. Thus, a strict application of the LCP’s 25-foot setback requirement would mean that this site could not be accessed and, by extension, could not be developed with a residence. Such an application of the setback requirement would result in a denial of the proposed project.

If the Commission were to deny the project, a question might arise as to whether the denial resulted in an unconstitutional “taking” of the Applicants’ property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

*The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

Similarly, the Santa Cruz County LCP states:

*Neither the County General Plan, the County LCP Land Use Plan, nor any implementing ordinance shall be construed as authorizing the County or any agency thereof to exercise its power to approve, conditionally approve, or deny any land use application in a manner which will take or damage private property for public use, without the payment of just compensation therefor. The County General Plan, County LCP Land Use Plan, and each and every implementing ordinance thereof shall be interpreted so as to avoid such taking in the absence of a duly adopted resolution of necessity for eminent domain proceedings. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States of America.*

Although the Commission is not a court and may not ultimately adjudicate whether such an action would constitute a taking, the Coastal Act and LCP impose on the Commission the duty to assess

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<sup>13</sup> See the substantial issue determination findings for this case for further detail on this point (adopted findings for Appeal A-3-SCO-08-010 dated March 6, 2008).

<sup>14</sup> This access issue is not limited to the proposed project. The paved extent of 23<sup>rd</sup> Avenue is essentially completely contained in the setback area, and each of the existing four developed properties located on 23<sup>rd</sup> Avenue has some existing driveway and related development located within 25 feet of the bluff-top edge.



whether its action might constitute a taking so that the Commission may take steps to avoid it. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what sort of government action results in a “taking” was addressed by the United States Supreme Court in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the denial of all economic use was permitted by a “background principle” of state real property law. Other Supreme Court precedent establishes that another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant’s property of all reasonable economic use, the Commission may be required to allow some development even if a Coastal Act or LCP policy would otherwise prohibit it, unless the proposed project would be prohibited under background principles of state law. If the Commission concludes that its action does not constitute a taking, however, then it may deny the project consistent with Section 30010 and the LCP. When the Commission is faced with a decision that could be considered a taking, the Commission has often allowed for a certain amount of development to avoid such potential taking, including in Santa Cruz County cases.<sup>15</sup> In such a situation, the Commission may propose modifications to the development to minimize its inconsistencies while still allowing some reasonable amount of development.

In this case, denial could result in a constitutional taking of private property. The site is a residentially designated property along a public street right-of-way organized in a typical “grid” layout in an area substantially developed with residences in that grid. It is accessed by 23<sup>rd</sup> Avenue, a public road that provides access to four other lots that are similarly situated and are currently developed with single-family homes. The proposed development is consistent with the character of development in this area. The site was purchased in 1999 for \$1,150,000.00. There was and is very little about the configuration of the site relative to 23<sup>rd</sup> Avenue that would make it appear that residential development would not be appropriate here. Rather, it appears as though the paved edge of 23<sup>rd</sup> Avenue could readily be extended to account for site access in the same manner it provides for site access for the existing four residences on 23<sup>rd</sup> Avenue. Thus, it would appear that a fair argument can be made that there is a reasonable, investment-backed expectation to a single-family residence on this property. While that is not the only criterion for demonstrating a potential taking (nor necessarily the only reason for identifying this criterion), in this case the Commission has reason to believe that such a denial could engender a taking. As such, the Commission can and does find that such development can be allowed under the LCP provided its inconsistencies are minimized to the maximum extent feasible.

In terms of minimizing setback inconsistencies, there is little that can be done in this case. Extension of

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<sup>15</sup> See, for example, Commission decision on the Hinman residence (appeal and Commission CDP number A-3-SCO-00-033).





23<sup>rd</sup> Avenue pavement appears to have already been minimized to the degree feasible through the County's approval process (including in terms of providing adequate fire and public safety access, etc.). It appears to make little practical or LCP sense to attempt to "jog" the road pavement even further inland to bring it further from the bluff. It is not possible to do so in a way that could meet the 25-foot setback, and such a jog would lead to an oddly configured road that would have to be located at least partially on private property outside of the 23<sup>rd</sup> Avenue right-of-way, and that would serve to reduce available space for residential development.<sup>16</sup> Also, extending the pavement as proposed would serve to better provide public recreational access along 23<sup>rd</sup> Avenue and to the beach, albeit marginally, because it replaces an unpaved and ruderal section of 23<sup>rd</sup> Avenue with a paved section along the existing public trail alignment and immediately adjacent to the primary view over the bluff edge that is easier to traverse,<sup>17</sup> whereas a jogged section would not to the same degree. A better way to address bluff setback issues and to minimize project inconsistencies with them in this case is for the Applicants to assume all risks for developing along the coastal bluff, and for the Applicants to waive any right to shoreline armoring that may exist so as to avoid a future shoreline armoring project here (with its attendant adverse coastal resource impacts) designed to protect the residential development authorized.<sup>18</sup> See Special Condition 1. To ensure potential future property owners are clearly made aware of this requirement (and the terms and conditions of this CDP more broadly), this approval is also conditioned for the Applicant to record a deed restriction acknowledging the terms and conditions of this CDP as CC&Rs on the property (see Special Condition 3). As conditioned, and to the degree feasible given the applicable fact set, the proposed project can be found consistent with the LCP requirements cited in this finding above.

## B. Visual Resources and Community Character

### 1. Applicable Policies

The LCP is highly protective of coastal zone visual resources and community character, and particularly protective when development is proposed in beach viewsheds. For example, applicable LCP and Coastal Act policies include:<sup>19</sup>

***Objective 5.10.a Protection of Visual Resources.*** To identify, protect, and restore the aesthetic values of visual resources.

***Objective 5.10.b New Development in Visual Resource Areas.*** To ensure that new development is appropriately designed and constructed to minimal to no adverse impact upon identified visual resources.

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<sup>16</sup> And lead to potential additional inconsistencies with the LCP with respect to front yard setback, FAR, and lot coverage; all issues that are also at play in this application (see also Visual Resources and Community Character finding).

<sup>17</sup> As is identified in the Public Access findings, 23<sup>rd</sup> Avenue provides access to the beach from East Cliff Drive along the paved extent and a "goat path" trail extending from the end of the pavement to the beach.

<sup>18</sup> Such waiver/assumption of risk provisions are also consistent with and required pursuant to the LCP inasmuch as the LCP recognizes that development is not appropriate in areas affected by coastal hazards unless a minimum of 100 years of site and structural stability can be guaranteed without relying on engineering measures and shoreline protection.

<sup>19</sup> Because a component of recreational access includes visual access, the LCP and Coastal Act access and recreation policies cited in the Public Access and Recreation finding below are also relevant. They are not re-cited here.



***LUP Policy 5.10.2 Development Within Visual Resource Areas.*** Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....

***LUP Policy 5.10.3 Protection of Public Vistas.*** Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.

***LUP Policy 5.10.6 Preserving Ocean Vistas.*** Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

***LUP Policy 5.10.7 Open Beaches and Bluff Tops.*** Prohibit the placement of new permanent structures which would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access...

***LUP Policy 5.10.12 Development Visible from Urban Scenic Roads.*** In the viewsheds of urban scenic roads, require new discretionary development to improve the visual quality through siting, architectural design, landscaping and appropriate signage.

***LCP Section 13.20.130(b)(1) Entire Coastal Zone, Visual Compatibility.*** The following Design Criteria shall apply to projects site anywhere in the coastal zone: All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

***LCP Section 13.20.130(d)(1) Beach Viewsheds, Bluff Top Development.*** The following Design Criteria shall apply to all projects located on bluff tops and visible from beaches: Bluff top development and landscaping...in rural areas shall be set back from the bluff edge a sufficient distance to be out of sight from the shoreline, or if infeasible, not visually intrusive.

The LCP also explicitly recognizes the Live Oak beach area as a special area. The LCP states:

***Objective 8.8, Villages, Towns and Special Communities.*** To recognize certain established urban and rural villages as well as Coastal Special Communities for their unique characteristics and/or popularity as visitor destination points; to preserve and enhance these communities through design review ensuring the compatibility of new development with the existing character of these areas.

***LUP Policy 8.8.1 Design Guideline for Unique Areas.*** Develop specific design guidelines and/or standards for well-defined villages, towns and communities.... New development within these areas listed in Figure 8-1...shall conform to the adopted plans for these areas, as plans become available.

***Figure 8-1 Areas with Special Design Criteria or Guidelines....Area: Live Oak Planning Area;***



*Design Guideline Source: Live Oak Community Plan (to be completed)...*

## 2. Analysis

The proposed project will introduce a new residential structure where none was heretofore present. This will result in additional residential development visible in the public viewshed, including figuring prominently in the East Cliff Drive viewshed, and as seen from the beach (see photographs of the site in Exhibit B, see proposed elevations in Exhibit C, and see visual simulations of the proposed project on pages 11-12 of Exhibit E). However, the proposed residential siting, design, and scale are not dissimilar from the existing pattern of residential development in this area, and rather will continue the pattern of development that has occurred on the four currently developed parcels between East Cliff Drive and the site along 23<sup>rd</sup> Avenue (see Exhibit B for photographs of existing development). These structures all exceed one-story, with a garage and driveway at the lowest level, as is proposed here. The visual simulation of the proposed residence (provided by the Applicants) shows that it will be similar in size and scale to existing residences along 23<sup>rd</sup> and 24<sup>th</sup> Avenues. Other than the proposed driveway in the 25-foot bluff top setback (discussed above), all other aspects of the proposed residence meet the LCP's required development standards for floor area ratio (FAR)<sup>20</sup>, setbacks, height, coverage, and parking.<sup>21</sup> All utility extensions would be underground.

With respect to views from East Cliff Drive, the new residence should effectively blend into the background of existing residential development that prominently forms the backdrop for that viewshed. In other words, the view from East Cliff is primarily of residential development atop the bluff along 23<sup>rd</sup> and 24<sup>th</sup> Avenues, and an additional residence amongst others would not be inconsistent with that framework. The project would not alter the bluff itself, and no above-ground utilities would be extended. Although there would be additional massing in the East Cliff view, it would not significantly detract from the viewshed, including because the main scenic value is found looking out toward the beach and ocean.

With respect to views along 23<sup>rd</sup> Avenue and the public recreational beach access trail located there, the viewshed impact should be minimal. This is both because of the low-key nature and use patterns associated with this accessway and the fact that it is otherwise backed by residential development. Thus, an additional residence in this backdrop would not alter the perception of the view along the accessway. Really, the view along the accessway is out over the bluff and to the beach and ocean upcoast, and this view will not change with this project. An additional infill residence will fill an undeveloped gap in the viewshed that currently provides some visual relief from residential development, but filling this gap

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<sup>20</sup> There has been some ongoing disagreement on this point between the Applicant and the Appellant with respect to maximum FAR (see Exhibit E). This is at least partly because the LCP includes a fairly complicated methodology for determining FAR (see page 4 of Exhibit E). On this point, basements, attics, and under floor areas that have a ceiling height of less than seven feet six inches are not counted toward FAR. In this case, both the maximum basement ceiling height and maximum attic ceiling height are less than seven feet six inches; thus, these areas do not count toward FAR. It appears that the proposed project would constitute a 49% FAR (50% is the maximum FAR allowed at this site under the LCP).

<sup>21</sup> The front yard setback is about 19 feet (15 feet required); the side yard setbacks are 5 feet (5 feet required); the setback from the fire turnaround is 11 feet (10 feet required); the building height is 28 feet (28 feet allowed); FAR is 49% (50% is allowed); 3 off-street parking spaces are required and 3 are provided.



should not significantly affect the accessway experience.

With respect to views from the beach, the view impacts are similar to those from East Cliff Drive. The public beach viewshed on its inland side at this location is mostly defined by existing residential stock in the surrounding neighborhoods, and the riprap at the end of 23<sup>rd</sup> Avenue where it extends downcoast (see pages 1-2 of Exhibit B and page 12 of Exhibit E). Thus, the public viewshed at this site has long been impacted by similar residential development. The infill of this site in a fairly urban residential neighborhood setting should not significantly adversely affect beach views. Although the proposed project will incrementally add to the amount of development within the public viewshed, such increment is minor in relation to the nature of the existing built environment and the effect that it has on the public viewshed. The size and scale of the proposed project are not atypical for this stretch of coast, and the proposed residence would occupy an area between existing homes, which would make it blend in somewhat with the existing developed back-beach aesthetic. The additional residential structure setback from the bluff top edge (i.e., greater than the 25-foot minimum that is more the rule than the exception for Santa Cruz County's bluff top residences) also helps in this regard as the massing is pulled back somewhat from the bluff itself thus allowing it to recede to a degree as perceived from the beach below.

In sum, the proposed project would incrementally increase residential massing visible from significant public viewing areas, but it would not significantly adversely effect these viewsheds nor community character otherwise. The proposed project would result in residential development that is not atypical of the size and scale of existing development along 23<sup>rd</sup> Avenue and, more broadly, along the tops of bluffs in this larger stretch of coast. The proposed project can be found consistent with the visual resource and community character policies cited above.

## C. Public Access and Recreation

### 1. Applicable Policies

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

**30210.** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

**30211.** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

**30213.** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

**30220.** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*



**30221.** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

**30223.** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas such as the beach area located adjacent to the site. Section 30240(b) states:

**30240(b).** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The LCP also protects public recreational access, including as follows:

**LUP Policy 7.6.2 Trail Easements:** *Obtain trail easements by private donation of land, by public purchase, or by dedication of easements...*

**LUP Policy 7.6.3 Utilization of Existing Easements:** *Seek to utilize existing publicly owned lands where possible to implement the trail system, subject to policy 7.6.2.*

**LUP Policy 7.7.1 Coastal Vistas:** *Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2.*

**LUP Policy 7.7.4 Maintaining Recreation Oriented Uses:** *Protect the coastal bluff top areas and beaches from intrusion by non-recreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owner, subject to policy 7.6.2.*

**LUP Policy 7.7.10: Protecting Existing Beach Access:** *Protect existing pedestrian...access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established through judicial determination of prescriptive rights.... Protect such beach access through permit conditions such as easement dedication...*

**LUP Policy 7.7.11 Vertical Access:** *Determine whether new development may decrease or otherwise adversely affect the availability of public access, if any, to beaches and/or increases the recreational demand. If such impact will occur, the County will obtain as a condition of new development approval, dedication of vertical access easements adequate to accommodate the intended use, as well as existing access patterns, if adverse environmental impacts and use conflicts can be mitigated, under the following conditions: (b) Within the Urban Services Line: from the first public road to the shoreline if there is not dedicated access within 650 feet...*



***LUP Policy 7.7.12 Lateral Access:*** Determine whether new development would interfere with or otherwise adversely affect public lateral access along beaches. If such impact will occur, the County will obtain...dedication of lateral access along bluff tops where pedestrian and/or bicycle trails can be provided and where environmental and use conflict issues can be mitigated....

***IP Section 15.01.060(b) Trail and Beach Access Dedication:*** As a condition of approval for any permit for a residential, commercial, or industrial project, an owner shall be required to dedicate an easement for trail or beach access if necessary to implement the General Plan or the Local Coastal Program Land Use Plan.

LCP access and recreation policies otherwise specifically applicable to the subject site include:

***LUP Policy 2.22.1 Priority of Uses within the Coastal Zone:*** Maintain a hierarchy of land use priorities within the Coastal Zone: **First Priority:** Agriculture and coastal-dependent industry; **Second Priority:** Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities; **Third Priority:** Private residential, general industrial, and general commercial uses.

***LUP Policy 2.22.2 Maintaining Priority Uses:*** Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.

***LUP Policy 7.7.18 Areas Designated for Neighborhood Public Access:*** Maintain a system of neighborhood access points appropriate for access by local residents at the following locations...23<sup>rd</sup> Avenue....

***LUP Policy 7.7.19 Improvements at Neighborhood Access Points:*** Provide, encourage, and/or require provision of the following improvements appropriate to neighborhood access points: path improvements and maintenance; bicycle parking; recycling; garbage collection; and law enforcement...

## 2. Analysis

The beach recreational area adjacent to 23<sup>rd</sup> Avenue is one of the most popular for visitors in all of unincorporated Santa Cruz County. As previously detailed, the project site fronts the extremely popular 26<sup>th</sup> Avenue Beach that is highly used and is a prime bodysurfing, skim-boarding and surfing destination (see “Project Location” section of this report). Just upcoast is the wide expanse of beach that is sometimes occupied by Corcoran Lagoon waters. The Monterey Bay National Marine Sanctuary is located directly offshore. It is within this context, and in light of the Coastal Act parameters established because of it, that individual projects must be understood and evaluated for their effect on the beach, near shore, and offshore public access and recreational experience.

The 23<sup>rd</sup> Avenue road right-of-way extends from East Cliff Drive (inland of the site) along the top of the bluff through to the Monterey Bay. Historically, 23<sup>rd</sup> Avenue connected through to the former location of East Cliff Drive, which ran laterally between the current location of the row of now bluff-top houses



(extending south of the site) and the ocean at this location. This beach-fronting segment of East Cliff Drive was long ago lost to coastal erosion and the roadway realigned inland. Thus, 23<sup>rd</sup> Avenue is currently a narrow street that provides paved access to existing homes on the downcoast side of the road and also provides public recreational access more generally along the same paved stretch as well as continuing trail access beyond the end of the pavement along an existing trail to the beach. The 23<sup>rd</sup> Avenue right-of-way itself is somewhat larger than the paved and trail areas, and continues through to the ocean (see page 3 of Exhibit A, pages 1-2 of Exhibit B, and Exhibit D). In addition to area on the bluff-top itself, this right-of-way also includes undeveloped bluff and beach areas. The proposed project includes paving a portion of the existing 23<sup>rd</sup> Avenue right-of-way to provide access to the proposed residence. Because it is a public right-of-way<sup>22</sup> and because it provides existing important vertical access to the ocean, the project must be understood in relation to its potential effect on this public recreational access resource.<sup>23</sup>

23<sup>rd</sup> Avenue is designated in the LCP as a neighborhood accessway for which the development of pathways and public amenities is to be pursued (LUP Policies 7.7.18 and 7.7.19). This right-of-way is valuable coastal property for which the LCP dictates public uses, such as pedestrian trails. Likewise, 23<sup>rd</sup> Avenue provides a stunning coastal vista to the northwest for which the LCP encourages the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches (LUP Policy 7.7.1).

The proposed project should not significantly affect public recreational access opportunities. The additional pavement may slightly enhance the public's ability to make use of 23<sup>rd</sup> Avenue to get to the beach by providing a more stable paved surface, but this effect is marginal. The additional pavement may also make it more likely that the type of public recreational access amenities called out in the LCP for 23<sup>rd</sup> Avenue (e.g., overlook with benches, etc.) may be more likely to be pursued by the County (e.g., because the pavement will facilitate better access further out along the bluff, including near prime potential overlook locations), but this effect is probably limited as well. More important for this project is to ensure that whatever is done here does not prejudice future options for public recreation, and to ensure that neighboring property owners are clearly aware of existing and potential future public recreational access opportunities along this stretch of 23<sup>rd</sup> Avenue, and that they agree not to interfere with same. Given that 23<sup>rd</sup> Avenue is configured differently than other streets in the area, and can appear in some ways to be a private driveway, such understanding and acknowledgement is critically important for protecting this public recreational resource, including avoiding potential problems in the future.

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<sup>22</sup> The right-of-way has long been considered by the Commission to be a public right-of-way (see, for example, application files 3-97-027 and A-3-SCO-99-056). For example, it is clear that the 23<sup>rd</sup> Avenue right-of-way is not shown as a separate parcel on parcel maps for the area (see Exhibit D). This is unlike private roadways in the area such as 22<sup>nd</sup> Avenue (aka Coastview Drive), which is located directly inland of the subject site and which is a privately-owned separate parcel on which taxes are paid. The implication is that the 23<sup>rd</sup> Avenue right-of-way, like other right-of-ways in the area, became public when it was offered to the County at the time of the original subdivision in the late 1800s. The County has since renamed this roadway (from Moran Drive to 23<sup>rd</sup> Avenue) and there has been a long history of public use as evidenced in part by the existing meandering trail to the beach at this location. In addition, although only a court of law can establish or extinguish prescriptive rights of access, it would appear that if the public does not already own the right-of-way, the public may have established a prescriptive right of access at this location.

<sup>23</sup> As distinguished from its effect on the public recreational beach experience, which is better understood in terms of public viewshed and character issues in this case (see preceding Visual Resources and Community Character finding).



Therefore, this project is conditioned for the Applicants to acknowledge that 23<sup>rd</sup> Avenue provides ongoing public recreational access and for them to agree to not interfere with same in the future (see Special Condition 2). To ensure potential future property owners are clearly made aware of this requirement (and the terms and conditions of this CDP more broadly), this approval is also conditioned to require that the Applicants record a deed restriction acknowledging the terms and conditions of this CDP as CC&Rs on the property (see Special Condition 3). As conditioned, the project can be found consistent with the public recreational access policies cited in this finding above.

## 5. Coastal Development Permit Conditions of Approval

### A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### B. Special Conditions

1. **Coastal Hazards.** The Permittees acknowledge and agree, on behalf of themselves and all successors and assigns: (a) that the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, tsunami, ocean waves, storms, coastal flooding, bluff and other geologic instability, and the interaction of same; (b) to assume the risks to the Permittees and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; (e) to assume responsibility for any adverse effects to property caused by the





permitted project; and (f) to waive any rights to construct any shoreline protective device(s) that may exist under Public Resources Code Section 30235 or the Santa Cruz County LCP (including LUP Policy 6.2.16 and IP Section 16.10.070(h)(3)) for the purpose of protecting any development approved pursuant to coastal development permit A-3-SCO-08-010.

2. **23<sup>rd</sup> Avenue Public Recreational Access.** The Permittees acknowledge and agree, on behalf of themselves and all successors and assigns: (a) that public recreational access exists along the 23<sup>rd</sup> Avenue right-of-way (both paved and unpaved portions); and (b) to avoid interfering with such access (including, but not limited to, not posting any signs purporting to limit/restrict such access, not placing other obstacles to such access, and not verbally or otherwise disturbing access users), including with respect to future public recreational access improvements along the right-of-way, as may be provided in the future.
3. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittees shall submit to the Executive Director for review and approval documentation demonstrating that the Permittees have executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the Permittees’ entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## 6. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The County, acting as the lead CEQA agency, exempted the project from environmental review pursuant to Section 15301 of CEQA.

Santa Cruz County, acting as the lead CEQA agency, found the project to be categorically exempt from CEQA requirements (per CEQA Guidelines Section 15303). The Coastal Commission’s review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to



address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

