

## CALIFORNIA COASTAL COMMISSION

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W8b

Filed: 10/17/06  
49-day Waiver: 10/24/06  
Substantial Issue Found: 12/13/06  
Staff: Susan Craig  
Staff Report Prepared: 02/22/07  
Hearing date: 03/14/07  
Item#: W8b

## APPEAL STAFF REPORT DE NOVO HEARING

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**Appeal number** .....A-3-SCO-06-059, Collins Single Family Residence

**Applicants** .....Michael & Deborah Collins

**Appellants** .....Albert & Joel Schreck; Robert & Mitzie Forsland

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

**Local decision** .....Approved with Conditions on September 26, 2006

**Project location** .....548 Beach Drive (inland side of Beach Drive) in unincorporated Aptos, Santa Cruz County (APN 043-152-71).

**Project description** .....Construct a three-story, approximately 5,800 square-foot single-family dwelling, involving approximately 1,250 cubic yards of grading.

**File documents** .....California Coastal Act, County of Santa Cruz Certified Local Coastal Program, County of Santa Cruz Coastal Development Permit Application File 04-0255.

**Staff recommendation** ...Approval with Conditions

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**Summary of Staff Recommendation:** The proposed project would allow development of a new three-story, approximately 5,800 square-foot single-family dwelling and associated grading on an extremely steep vacant residential parcel on the inland side of Beach Drive, in unincorporated Aptos in Santa Cruz County. This shoreline area has been largely developed with single-family residences, despite significant erosion and landslide hazards because many of the parcels are located on or seaward of an eroding coastal bluff. To address potential flooding from high ocean waves, the proposed project avoids habitable living space and provides “break away” walls on the ground floor. Due to the extremely steep nature of the parcel (consisting entirely of greater than a 50% slope), the proposed project includes extensive mitigations, including the use of a reinforced concrete foundation and retaining wall to both support the slope and bear the impact and weight of a major landslide, earthquake, or flooding without collapse or structural failure.

At the December 2006 meeting in San Francisco, the Commission determined that a Substantial Issue exists with respect to the grounds on which the appeal was filed. Specifically, the Commission



California Coastal Commission  
March 2007 Meeting in Monterey

Staff: Susan Craig Approved by:

requested additional analysis regarding the public safety issues of developing on such a steep slope and an evaluation of whether a reduction in the size of the house will equal a reduction in risk from geological hazards.

According to the Commission’s staff geologist and staff engineer, the project’s design and mitigations appropriately address the hazards present on this site. The reinforced design will help to stabilize the lower part of the slope, which should decrease the amount of danger to beachside residences, the road, or other infrastructure during an upper slope failure. Additionally, the Commission’s staff geologist and staff engineer determined that a smaller structure would not lead to greater safety and stability of the bluff (see Exhibits #7 through #10).

The project is conditioned to require submittal of project plans that will implement the mitigations recommended in the project’s Geotechnical Report and Geological Investigation and will ensure erosion control during construction and appropriate post-construction drainage. The project is also conditioned to provide for an assumption of risk and an indemnification by the applicants, and to ensure that all of the conditions of approval imposed on the project by Santa Cruz County pursuant to an authority other than the California Coastal Act remain in effect. As conditioned, the project is consistent with the requirements of the Santa Cruz County LCP.

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### VI. Exhibits

[Click on this link to go to the exhibits.](#)

- Exhibit 1: Location Map
- Exhibit 2: County of Santa Cruz Findings and Conditions
- Exhibit 3: Correspondence Received Since 13 Dec 2006 Commission Hearing
- Exhibit 4: California Coastal Records Project Photographs of Beach Drive
- Exhibit 5: Project Plans
- Exhibit 6: General Plan Map
- Exhibit 7: Geotechnical Review Memorandum Dated 20 Nov 2006 (Commission Staff Geologist)
- Exhibit 8: Geotechnical Review Memorandum Dated 20 Feb 2007 (Commission Staff Geologist)



Exhibit 9: Geotechnical Review Memorandum Dated 20 Nov 2006 (Commission Staff Engineer)

Exhibit 10: Geotechnical Review Memorandum Dated 13 Feb 2007 (Commission Staff Engineer)

## I. Project Procedural History

The Santa Cruz County Planning Commission first heard the project on April 12, 2006 and continued the project to the May 10, 2006 agenda to allow the applicants to conduct a neighborhood meeting and to ensure that representatives from the Department of Public Works Storm Water Management Section and the applicants' engineer would be present. After hearing the results of the neighborhood meeting and other technical information, the Planning Commission voted to deny the application and directed staff to prepare findings for denial that were subsequently adopted on June 28, 2006. The Planning Commission based the denial on health and safety concerns due to the location of the residence in an area subject to landslide hazards at the toe of a coastal bluff. On July 11, 2006, the applicants appealed this decision to the Board of Supervisors. On August 22, 2006, the Board of Supervisors voted to take jurisdiction of the project and to schedule the project for a public hearing.

On September 26, 2006 the Santa Cruz County Board of Supervisors overturned the Planning Commission's denial and approved the project based on the recommended findings and conditions presented to the Planning Commission at the April 12, 2006 hearing, with two additional conditions of approval. A full set of the County's findings and conditions of approval are attached to this report as Exhibit #2. Albert and Joel Schreck and Robert and Mitzi Forsland appealed this approval to the Coastal Commission. The applicants provided a 49-day waiver on October 24, 2006. On December 13, 2006 the Coastal Commission found that the appeals raised a Substantial Issue in terms of the project's consistency with the Santa Cruz County LCP. As a result, the Commission took jurisdiction over the coastal development permit (CDP) application and must now conduct a *de novo* review of the project's consistency with the Santa Cruz County LCP and the public access and recreation policies of the Coastal Act.

## II. Staff Recommendation

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit 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-06-059 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 an affirmative vote of a majority of the



Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:** *The Commission hereby approves the coastal development permit on the grounds that the development, as conditioned, will be in conformity with the provisions of the Santa Cruz County certified Local Coastal Program. Approval of the coastal development permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.*

### III. 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 Permittees 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 Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

#### B. Special Conditions

- 1. Revised Plans/Compliance with County's Conditions. Prior to Issuance of the Coastal Development Permit,** the Applicants shall submit, for Executive Director review and approval, revised plans consistent with the requirements of the County's Conditions (as shown in Exhibit #2) II.B, II.C(1-10, 12, 18), II.K, II.L, II.M, II.Q. The landscaping plan shall not include any species listed on the *California Exotic Pest Plant Council List*. **Prior to Construction,** the Permittees shall provide written evidence, for Executive Director review and approval, that the Santa Cruz County Planning Department has determined that the Permittees have complied with County Conditions



III.A through III.D. The Permittees shall maintain the developed property consistent with the County's Conditions V.A through V.F (Operational Conditions).

- 2. Erosion and Sedimentation Control Plan. Prior to any site disturbance,** the Permittees shall submit, for Executive Director review and approval, an Erosion and Sedimentation Control Plan that incorporates the following provisions: The plan shall indicate that prior to the commencement of grading, the Permittees shall delineate the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas. The Erosion and Sedimentation Control Plan shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in any runoff from construction, staging, and storage/stockpile areas; and provide for the replanting of disturbed areas immediately upon conclusion of construction activities in that area. The plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated offsite maintenance areas; and the immediate clean-up of any leaks or spills.
- 3. Post Construction Drainage Plan. Prior to commencement of construction,** the Permittees shall submit to the Executive Director for review and approval a drainage plan that identifies the specific type, design, and location of all drainage infrastructure and Best Management Practices (BMPs) necessary to ensure that post construction drainage from the project, including runoff from the roof and other impervious surfaces, does not result in erosion, sedimentation, or the degradation of coastal water quality. The Permittee shall be responsible for implementing and maintaining the drainage facilities for the life of the project.
- 4. Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** The Permittees acknowledge and agree, on behalf of themselves and all successors and assigns: (i) that the site is subject to hazards from coastal erosion and scour, wave and storm events, geologic instability, and the interaction of same; (ii) 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; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) 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; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowners.



- 5. Indemnification by Applicants/Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Permittees agree to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittees against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
- 6. Conditions Imposed by Local Government.** All previous conditions of approval imposed on the project by Santa Cruz County pursuant to an authority other than the California Coastal Act remain in effect (see Exhibit #2).

## IV. Recommended Findings and Declarations

The Commission finds and declares as follows:

### A. Project Location

The project site is located on the landward side of Beach Drive in Aptos (see Exhibit #1 for project location). There are a total of 137 existing homes on Beach Drive, 56 of which are seaward of Beach Drive and 81 which are located at the base of a steep coastal bluff on the inland side of Beach Drive. At the end of the public section of Beach Drive is a State Beach parking lot. A private (gated) portion of Beach Drive begins after this parking lot (see Exhibit #4 for photographs of Beach Drive).

The project site is a vacant parcel located in the private section of Beach Drive in Aptos (see page 4 of Exhibit #4 for a photograph of the project site). This bluff-side property is steeply sloped, with the entire site consisting of a slope ranging from 50% to over 70%. A line of mostly one-story homes exists on the ocean side of Beach Drive, between the project site and the beach. There are 15 existing homes (including three under construction) on the bluff side within the private section of Beach Drive, 11 of which are three stories. The project site is also located within FEMA Flood Zone V, a 100-year coastal flood hazard zone designated for areas subject to inundation resulting from wave run-up and storm surges.



## B. Project Description

The project includes construction of an approximately 5,800 square-foot, three-story house at 548 Beach Drive in Aptos. The residence will be constructed using reinforced concrete, and has been designed and engineered to withstand the impact of expected landslides. For example, the sides of the proposed structure are designed as retaining walls to prevent damage by landslide flows along the side yards. The proposed project includes approximately 1,250 cubic yards of grading, due to the steeply sloped nature of the project site. The lowest habitable floor of the proposed dwelling is located 21-feet above mean sea level, which is above FEMA's expected 100-year wave impact height. The first floor of the proposed project consists of a non-habitable five-car garage. The garage doors and non-load bearing walls are designed to function as "breakaway" walls, as required by the FEMA regulations for development in FEMA Flood Zone V. Please see Exhibit #5 for project plans.

## C. Geologic Hazards/Drainage

Santa Cruz County Land Use Plan (LUP) Policy 6.2.10 requires new development to minimize hazards, and states:

### ***6.2.10. Site Development to Minimize Hazards***

*Require all developments to be sited and designed to avoid or minimize hazards as determined by the geologic hazards assessment or geologic engineering investigations.*

As discussed at the December 13, 2006 hearing on the appeal, the history of landslides in this area, the amount of backcut necessary to construct a residence on a greater than 50% slope, and the fact that Beach Drive is not a "through" road (i.e., there is only one way in-and-out) necessitate a careful evaluation of the proposed development's impact on public safety and its consistency with the hazard policies of the LCP.

Beach Drive in Aptos consists of well over 100 parcels that were created prior to passage of the Coastal Zone Protection Initiative in 1972 (see Exhibit #4 for photographs of Beach Drive). A total of 137 of these parcels are developed, 81 of which are located on the bluff side of Beach Drive. Over the years, this area of the coast has been subjected to landslides, storm surge, and wave run-up that has damaged or destroyed homes. In response to the hazardous conditions found along Beach Drive, the County has been requiring since 1993 that any new residential development or redevelopment along the inland side of Beach Drive be constructed to withstand landslides, earthquakes, and floods. As of today, eight three-story dwellings using the same reinforced construction as the proposed project have been approved on the inland side of Beach Drive; three of these approved houses have been constructed and three more are currently under construction.

The Commission's staff geologist visited the site on November 16, 2006 and analyzed the geotechnical documents contained in the County's record in a memorandum attached to this report as Exhibit #7. The Commission's staff engineer also reviewed the technical documents relating to the project, as well



as oblique aerial photographs of Beach Drive available on the California Coastal Records Project web site<sup>1</sup>, and has provided an engineering analysis that is attached as Exhibit #8.

Both memoranda state that there is no question that the development along Beach Drive is subject to an unusually high number of geologic and other hazards, and is a challenging place to establish safe development. The Commission's staff geologist concludes, however, that the applicants' geologist and engineers have mitigated these hazards in a number of ways, such as by elevating the habitable space above the FEMA-defined 100-year flood elevation, and designing the structure to survive impact and burial by debris flows and landslides. This design will lend increased stability to the hillside and thereby decrease the risk to the nearby homes by reducing the amount of sediment that could be released by a landslide. This will also help avoid road closures and associated fire risks. Also, from the perspective of the Commission's staff geologist, appropriate strength and stability parameters have been applied based on the materials described in the geologic borings (see Exhibit #7, page 4).

The memoranda also acknowledge that the site is unstable or only marginally stable and will undoubtedly suffer slope failures in the future. The proposed structure, however, has been designed to avoid and minimize the hazards associated with such slope failures consistent with LCP requirements. Specifically, the Commission's staff engineer's memorandum (Exhibit #9) notes that the level of risk posed by the site is reflected in the 39 recommendations that are included in the project's Geotechnical Report and in the 8 recommendations that are included in the project's Geologic Investigation. The Special Conditions of the County's approval require that the final plans (including structural plans, grading plans, drainage plans, erosion control plans, landscaping plans, etc.) reference and incorporate all these recommendations (see Exhibit #2). The Special Conditions of this permit incorporate these conditions into this approval with additional specifications regarding erosion control, drainage, and a prohibition against the planting of invasive plant species. The engineering technical memorandum concludes that although the proposed development will not be safe from all hazards, it should be able to withstand the foreseeable threats from landslides, earthquakes, and flooding without collapse or structural failure. Additionally, the 25-foot side yard setbacks should provide adequate area for the dispersal of any landslide debris and thereby limit debris flow impacts to the road and nearby houses.

In order to evaluate whether project alternatives, such as a two-story residence, would result in reduced landslide risks, the Commission's staff geologist and staff engineer reevaluated the project's technical documents and provided additional memoranda (see Exhibits #8 and #10). The Commission's staff geologist concludes that while "a lower backcut at the base of an unstable slope normally would afford greater stability, in this case the backcut is to be excavated incrementally in five-foot intervals, concomitantly with the construction of tied-back retaining walls... little if any additional security would be attained by limiting the finished extent of the backcut given this construction sequence. Furthermore, once constructed, a higher retaining wall will actually afford *greater* stability than a lower one" (Exhibit #8). The Commission's staff engineer reaches a similar conclusion and also states that "the safe buildability does not change greatly if the house is two or three stories" (Exhibit #10). It is also noted

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<sup>1</sup> <http://www.californiacoastline.org/>





that six of these reinforced type houses, each of which is three stories and each of which has undergone a similar backcut process, have been (or are being constructed) without precipitating a landslide.

Another potential hazard to homes and residents along Beach Drive relates to the fact that Beach Drive is not a “through” road, i.e. there is only one way in and out of Beach Drive. In the event that a landslide or flooding impeded a portion of Beach Drive, individuals in cars and homes located past the impeded area would not be able to drive out and emergency vehicles would have difficulty accessing the area. This potential hazard situation will not change due to construction of this project due to the reasons discussed above. The County Office of Emergency Services has developed contingency plans with regards to coastal flooding and tsunami to address such situations.

In summary, the proposed project includes extensive mitigations, including the use of a design to both support the slope and bear the impact and weight of a major landslide, earthquake, or flooding without collapse or structural failure. The reinforced design will also stabilize the lower part of the slope, which should decrease the amount of danger to beachside residences, the road, or other infrastructure during an upper slope failure. **Special Condition #1** of this approval incorporates all the relevant County conditions that will implement the recommendations of the project’s Geotechnical Report and Geological Investigation in order to minimize hazards, in conformity with the requirements of LUP policy 6.2.10. Additionally, because proper erosion control during construction and drainage post-construction are key to mitigating the hazardous nature of the site, **Special Conditions #2 & #3** require submission of an erosion and sedimentation control plan and a post-construction drainage plan that will supplement the County’s drainage and erosion control requirements. Nevertheless, the risks to development associated with natural hazards cannot be avoided. Development in such a dynamic environment remains susceptible to damage due to long-term and episodic processes. As a result, applicants are regularly required to acknowledge site-specific geological risks and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. **Special Condition #4** requires that the applicants agree to an assumption of risk. In addition, **Special Condition #5** indemnifies the Commission from liability for costs and attorneys’ fees that the Commission might incur in connection with the defense of any action brought by a party, other than the applicants, against the Coastal Commission.

#### D. Neighborhood Compatibility and Visual Resources

The LCP includes policies and zoning regulations that require that new development be visually compatible with the character of the surrounding neighborhood, and that require protection of the public viewshed, particularly along the shoreline:

***Zoning Regulation 13.20.130(b)(1). Visual Compatibility.** All new development shall be sited, designed, and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.*

***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 have minimal to no adverse impact upon identified visual resources.*

**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 5.10.7 Open Beaches and Blufftops.** *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. Use the following criteria for allowed structures: (a) allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development. (b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.*

**Zoning Regulation 13.10.323: R-1 SINGLE FAMILY RESIDENTIAL ZONE DISTRICTS - SITE AND STRUCTURAL DIMENSIONS CHART:** *Maximum number of stories = 2; on beach side 1.*

#### 1. Neighborhood Compatibility

The project includes construction of an approximately 5,800 square foot, three-story house on a 12,888 square foot parcel on the inland side of the private section of Beach Drive. Although a number of existing residences along the inland side of the private section of Beach Drive are in the 2,000 to 3,000 square foot range, five of these residences (including several that are under construction) range in size from 3,120 square feet to 6,322 square feet, as shown in the table below:



ADDRESS	NET SITE AREA (square feet)	RESIDENCE SIZE (square feet)	PERMIT#/APPROVAL DATE CCC=Commission SCO=County
540 Beach Drive	8,100	3,120	P-79-389 (CCC) August 20, 1979
637 Beach Drive	6,000	4,900	3-SCO-05-104 March 8, 2005
635 Beach Drive	6,514	3,613	3-SCO-05-449 October 21, 2005
633 Beach Drive	6,538	3,582	3-SCO-05-450 October 21, 2005
629 Beach Drive	11,674	6,322	Prior to 1973
<b>548 Beach Drive (Collins)</b>	<b>12,888</b>	<b>5,800</b>	A-3-SCO-06-059 (CCC) Not yet approved – This Application

Although the proposed residence will be larger than some of the adjacent residences, its size is compatible with a number of the existing and approved developments along this section of Beach Drive. Additionally, its size is proportional to the large size of the lot (see Exhibit #6 for lot configuration). The proposed project complies with the certified zoning code standards for floor area ratio and lot coverage (see Exhibit #2, page 3). Finally, the mass of the residence will be broken up by stepping back each of the three levels to be flush with the bluff (see Exhibit #5 for project plans).

Despite the project design's compatibility with the pattern of development in this neighborhood, an issue is raised by the fact that the County approved a variance to allow a three-story residence at the site (the LCP maximum is two stories on the inland side of Beach Drive). The applicants requested this variance in order to account for the limitations on the use of the first floor required by FEMA regulations described above and to avoid the additional grading that would be required to accommodate a larger second story. The County's analysis of this request states in part:

*“The steep topography of the site and the FEMA restrictions present special circumstances inherent to the property that would deny the property a reasonably sized dwelling as enjoyed by residents of similar structures on the bluff side of Beach Drive. Many homes along the bluff side of Beach Drive already have three stories, including the house at 641 Beach Drive and the dwellings approved on adjacent lots. For this reason, the granting of a variance to allow three stories will not constitute the granting of special privileges.”*



There are 81 existing residences on the bluff side of Beach Drive. Of these, 42% are three stories. Along the private section of Beach Drive, 75% of the 16 existing inland-side residences and those under construction are three stories. The majority of this development took place prior to passage of the Coastal Zone Protection Initiative, as shown in the table below:

<b>WHEN APPROVED</b>	<b># OF 3-STORY SFDS ON INLAND SIDE OF BEACH DR.</b>
Prior to 1973	20
Pre-LCP Certification (prior to January 13, 1983)	3
Post LCP Certification (after January 13, 1983)	11
<b>TOTAL</b>	<b>34</b>

After 1973 but prior to certification of the LCP, the Commission approved three three-story residences along the inland side of Beach Drive. Following certification of the LCP, the County has approved 11 three-story residences along the inland side of Beach Drive, all of which received a variance for the third story (since LCP certification, the County has approved one two-story inland-side residence on Beach Drive). In addition to these 11 residences, in 1996 the County approved construction of two three-story, greater than 3,000 square foot residences, one on the subject parcel (548 Beach Drive) and one on an adjacent parcel at 546 Beach Drive. An extension to the permit was granted in 1998, but the projects were never built and the permits eventually expired. The owner of these properties sold both properties to the Collins in 2003. Two of the County's approvals for three-story residences along Beach Drive have been reviewed by the Commission, as discussed in the paragraphs below.

In December 1998, the County's approval of a three-story residence at 413 Beach Drive was appealed to the Commission (Appeal A-3-SCO-98-117). The Commission determined that the project raised No Substantial Issue, finding that the proposed development constituted infill development in a generally built-out area that has the same general size, mass, scale, and design features as surrounding homes. The Commission also found that it was reasonable to allow for six variances (including a third-story variance) to allow for a modest residential use (approximately 2,000 square feet of living space on a 5,794 square foot parcel). The Appellants sued the Commission and the court ruled in the applicant's and the Commission's favors and upheld the County's variance findings.

In addition, in 2000 the Commission received an application for two houses on the beach area located south of Beach Drive. Development of this beach area would have required a substantial extension of Beach Drive. Commission staff undertook a prescriptive rights study and ultimately filed litigation asserting prescriptive rights on the property. The Commission was countersued by the applicants. The Commission heard this case in closed session and directed staff to settle, upon advice of the Attorney General's office. The settlement agreement allowed for one three-story reinforced house on the bluff side of the private section of Beach Drive and included extension of Beach Drive by one lot. The house is currently under construction (probable address is 637 Beach Drive). The settlement also provided that the remaining beach area that was part of the original application would be dedicated to public



beach use.

LCP Zoning Regulation 13.10.230 describes the findings that need to be made prior to granting a residential variance, such as the three-story variance in this case, and states:

*The following findings shall be made prior to granting a Variance Approval in addition to the findings required for the issuance of a Development Permit pursuant to Chapter 18.10:*

- 1. That because of special circumstances applicable to the property, including size, shape, topography, location, and surrounding existing structures, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.*
- 2. That the granting of such variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental to public health, safety or welfare or injurious to property or improvements in the vicinity.*
- 3. That the granting of such variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated.*

With respect to required finding #1, Commission staff has previously questioned the appropriateness of the use of variances to allow a third story, which has become a customary practice on the inland side of Beach Drive rather than to address a particular constraint of a specific parcel. This issue was discussed in the legal decision previously described above (A-3-SCO-98-117). The Court of Appeals ruled that the third-story variance was not unreasonable despite the fact that it was being applied on a locational rather than site-specific basis.<sup>2</sup> Notwithstanding the court's determination regarding this approach, the Commission continues to encourage the County to submit an LCP amendment to the LCP's height standards for which variances are routinely approved.

With respect to required finding #2, the project has been designed to address FEMA requirements and as discussed in the Geological Hazards section above, the Commission's staff geologist and staff engineer state that the three-story residence will afford *greater* stability to the bluff (see Exhibits #8 and #10). Thus, the granting of the variance will not be materially detrimental to public health or safety or injurious to property. Additionally, as discussed below, the granting of the variance will not have an impact on visual resources.

Finally, with respect to required finding #3, as noted above, 42% of all existing residences along the entire stretch of Beach Drive are three stories; 75% of the existing structures along the private section of Beach Drive (project site location) are three stories. Since passage of the Coastal Zone Protection Initiative in 1972, the Commission and/or the County have approved 14 three-story residences (and only one two-story residence) along the inland section of Beach Drive. As such, a strict application of the

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<sup>2</sup> 81 Cal. App. 4<sup>th</sup> 880, 890.



zoning ordinance to limit the proposed project to two stories would deprive the applicants the privileges enjoyed by other property owners in the vicinity.

Also, the proposed project meets the LCP's 25-foot height requirement. In other words, the LCP would allow a two-story structure of equal height. Therefore the granting of a variance for a three-story residence has no bearing on the visual impact of the proposed development, which is more directly addressed through the visual resource policies referenced below.

## 2. Visual Resources

The project is within a mapped scenic resource area and therefore must comply with LCP Policies 5.10(b) and 5.10.2 regarding development within visual resource areas. The purpose of these policies is to ensure that new development is appropriately designed and constructed to have minimal to no adverse impacts upon identified visual resources. LCP policies 5.10.2 and 5.10.3 require that development in scenic areas be evaluated against the context of the local environment, utilize natural materials, blend with the area, integrate with the landform, and protect significant public vistas from inappropriate structural design. LCP Policy 5.10.7 allows structures to be visible from a public beach if they are infill residential structures and when the structure is compatible with the existing pattern of development.

In this case, the project site is located behind a line of existing one-story homes on the seaward side of Beach Drive, and near existing single-family dwellings on the inland side of Beach Drive. Along this private stretch of Beach Drive, 75% of the existing inland residences are three stories. The County determined that the upper story of the proposed dwelling will be visible from the open beach at low tides, as are other similarly-designed residences in the area. The design of the structure will be integrated into the Beach Drive neighborhood in terms of architectural style, colors, and materials. **Special Condition #1** of this approval incorporates the County's conditions regarding final plans, the finish and color of exterior materials, etc., into this approval. The size of the residence, although larger than some of the adjacent residences, will be proportional to the large size of the lot (almost 13,000 square feet), and will comply with County standards for floor area ratio and lot coverage. The mass of the residence will be broken up by stepping back each of the three levels to be flush with the hillside.

The inland views from the public beach and offshore areas are largely occupied by existing residential development on the seaward and inland side of Beach Drive, and by homes that are located all along the top the bluff, which in many cases are fronted by large retaining structures (see Exhibit #4 for photos of Beach Drive). The homes along Beach Drive are relatively boxy and developed close together. At the project site area, there are multiple two- and three-story residential structures on the inland side of Beach Drive and a series of one- and two-story structures on the seaward side. The design of the proposed development is similar to adjacent development along the inland side of Beach Drive.

The proposed infill development will not block views of the beach or of the ocean. Although the project will incrementally add to the amount of development within the public viewshed, its impact would be less than significant within the scope of the existing view. As conditioned to require submission of final plans that include finish materials and colors, the project is consistent with the visual resources policies of the Santa Cruz County LCP.



## E. Public Access

The project location lies between the first public road and the sea. Section 30604(c) of the Coastal Act requires that the Commission make specific findings of consistency of such development with the public access and recreation policies of the Coastal Act. The following Coastal Act policies provide for public access and recreation along the coast:

***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.*

***30212(a).** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

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

***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.*

The project is located on the inland side of the private portion of Beach Drive. The site is not suitable for public access due to the steep topography of the site. No public access easements exist across this property. Lateral beach public access is available seaward of the beach-side homes that exist along Beach Drive. This beach access connects to Rio del Mar State Beach and Seacliff State Beach to the north and to County beach areas to the south. Thus, as proposed, the project is consistent with the public access policies of the Coastal Act.

## V. 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 conducted environmental review for the proposed project per the requirements of CEQA and issued a Negative Declaration with Mitigations.

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. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, 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.

