

## CALIFORNIA COASTAL COMMISSION

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**Prepared February 24, 2012 (for March 8, 2012 Hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Dan Carl, District Director  
John Akeman, Coastal Planner

**Subject:** **Appeal A-3-SCO-08-001.** Appeal by Mr. and Mrs. Albert Schreck of Santa Cruz County decision granting a coastal development permit (CDP) with conditions to Michael and Deborah Collins (Raobank) to construct a new three-story 4,048 square foot single-family dwelling on a bluff parcel located at 546 Beach Drive (on the inland side of Beach Drive) in the unincorporated Aptos area of south Santa Cruz County. Filed: 1/8/2008. 49th Day: Waived.

#### Recommendation

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal A-3-SCO-08-001 was filed. Staff recommends a **YES** vote on the following motion and resolution:

**Motion and Resolution.** I move that the Commission determine and resolve that Appeal Number A-3-SCO-08-001 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the following findings. By such action, the Coastal Commission declines to take jurisdiction over the CDP for this project, the Santa Cruz County's action becomes final and effective, and any terms and conditions of the County's decision remain unchanged. The motion passes only by an affirmative vote of the majority of the Commissioners present.

#### Beach Drive Background

The proposed development is located along Beach Drive in the unincorporated Aptos-Rio del Mar area of Santa Cruz County (see location maps and photos in Exhibit 1A and Exhibit 6). Beach Drive is not a through road, and is partially public (on the upcoast portion) and partially private, marked by a locked gate, on its downcoast side. The appealed project is located within the private section of Beach Drive. The pre-Coastal Act Beach Drive road and mostly built-out single-family residential development (about 140 total residences) is located at the base of the coastal bluff on an area that was historically beach. The middle section of Beach Drive (i.e., up and down coast of the midpoint) enjoys through views of the beach and ocean, whereas the up and downcoast ends have a row of residential structures between the road and the beach. Shoreline armoring fronts the entire seaward side of Beach Drive and the residences. The character of the residential stock is somewhat eclectic but mostly quite boxy. The structures on the seaward side of the road are quite large at its upcoast end, and generally smaller on the



private downcoast end (past the locked gate). Just upcoast is Aptos Creek and State Parks' Seacliff State Beach unit, and just downcoast is Hidden Beach. See Exhibit 1A and Exhibit 6 for a location map and oblique air photos of the project area.

Beach Drive and the residential development along this street have essentially been constructed on the back beach area in an area of high hazard and a significant public beach viewshed. As a result, development and redevelopment along Beach Drive has long raised concerns in light of these constraints and challenges. To address coastal hazards, primarily in terms of bluff landslide and ocean flooding, the County's LCP requires that otherwise approvable homes and significant remodels on Beach Drive be flood elevated such that living space is above 100-year flood levels (in this case ocean flooding), and that any features below this level be designed to be expendable in the event of such flooding, including that any walls in this area be "breakaway" walls designed to be sacrificed in a significant flood surge. Typically such construction involves the use of deep piers embedded into subsurface bedrock on which the rest of the structure is founded. To address landslide dangers, the County also requires new residences on the inland side of Beach Drive to be designed and engineered to withstand the impact of any expected landslides from the bluffs above, including through use of reinforced concrete roof and rear wall deflection devices. Given the lack of flat space at the base of the bluffs in many cases, the newer homes meeting these design specifications are often built into the bluff itself (i.e., the bluff is excavated and the house is built within the excavation), and these structures are typically referred to as "bunker" homes for this reason. Although there are a number of older residential properties that have not been redeveloped in this way, there have been approximately 11 bunker-style residences developed on Beach Drive under the LCP to date.<sup>1</sup> The County-approved project that is the subject of this appeal is proposed as a bunker home that includes these same design and engineering features.

In terms of viewshed concerns, residential mass and scale is limited along Beach Drive in the same way as it is in the rest of the County under the LCP (e.g., 50% maximum floor area ratio, 40% maximum coverage, etc), but maximum height is limited to 25 feet on the inland side of the street and 17 feet on the seaward side (as opposed to the more common 28-foot residential height maximum that generally applies elsewhere). The County's prohibition on 3-story residential development also applies to this area but is limited to the inland side of the road; on the seaward side, the story limitation is more limiting in that a one-story maximum applies. In all eleven existing cases, the County has allowed bunker homes to extend to three-stories through granting variances that respond to the fact that one of the stories is required to be non-habitable and sacrificial below flood levels.<sup>2</sup> The County-approved project under this appeal is three-stories through the same variance process in this case, and the non-habitable and

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<sup>1</sup> And one such flood-elevated and on caissons structure developed on the seaward side of the road to date. That seaward structure was the subject of a County CDP that was appealed to the Commission, and the Commission declined to take jurisdiction over the CDP in that appeal (County CDP 01-0022 and Commission appeal number A-3-SCO-03-032; the Commission found no substantial issue on July 10, 2003).

<sup>2</sup> Although these lower floors are conditioned to be non-habitable and sacrificial, including through breakaway wall sections, they generally push the boundaries of what a sacrificial area provides and how it is perceived from the street. These areas typically provide for garage and storage and entry facilities that do not generally appear any different from more typical residential construction from the outside.



sacrificial lower level provides for garage space for five cars, storage, entryway stairs, entry to elevator, non-structural breakaway interior walls, and un-reinforced slab on-grade.

As indicated, the project is located on the bluff side of Beach Drive. This bluff is approximately 107 feet in height and consists of marine terrace deposits, some sandy material, and underlying (and subsurface) sandstone bedrock. The bluff face is relatively steep, ranging from about 50% to 70% in slope, and is covered with sparse to dense ruderal vegetation (both native and non-native). Based on the soil type, steep slope, and related factors, the Applicant's geotechnical consultants identify a known history of slope failure and landslides, erosion, drainage issues, saturated soil, liquefaction and earth movement from seismic events. The various decks, platforms, pathways, retaining walls, and related residential development present and exposed/cantilevered in the upper bluff area above Beach Drive stand testament to these issues. The project site is also located within the Federal Emergency Management Agency (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. Beach Drive and its residences have in the past been subjected to wave run-up and storm surge, which has resulted in damage to some of the homes.

#### 546 and 548 Beach Drive Background

The project that is the subject of this appeal (at 546 Beach Drive) is related to a second and very similar residential project that was originally pursued on the immediately adjacent site (at 548 Beach Drive) at roughly the same time by the then owners of both sites.<sup>3</sup> The two sites are directly next to one another on the bluff side of Beach Drive, and share similar attributes in that they are about the same size (about 13,000 square feet) and about the same general configuration (they are both bluff properties ranging from 50% to 70% slope). In 2006, the County approved a bunker house at 548 Beach Drive of similar size and scale as the County-approved residence that is the subject of this appeal. That 2006 approval was then appealed to the Coastal Commission by Albert and Joel Schreck and Robert and Mitzie Forsland.<sup>4</sup> The Commission took jurisdiction over that CDP, and on September 6, 2007 approved a CDP for the project in roughly the same form as had been approved by the County. On November 5, 2007 the Appellants filed a lawsuit in Santa Cruz County Superior Court challenging the Commission's approval. The Superior Court ultimately upheld the Commission's decision. The Appellants appealed to the Sixth District Court of Appeal, and on September 27, 2011 the Appellate Court upheld the trial court's judgment, again finding for the Commission.

Because the project at 548 Beach Drive (that was the subject of the litigation) was so similar to the project at 546 Beach Drive (i.e., this current appeal), and because the project at 548 Beach Drive was the subject of then pending litigation, the property owners, in consultation with Commission staff, preferred to wait until the litigation was resolved to bring this matter forward. With the litigation recently

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<sup>3</sup> Both parcels were owned at that time by Michael and Deborah Collins, and both are now owned by Rabobank (i.e., the Collins ultimately lost the property in foreclosure to Pacific State Bank, and Pacific State Bank and its assets were taken over by Rabobank in 2010).

<sup>4</sup> Commission appeal number A-3-SCO-06-059. Mr. Schreck is also the Appellant in this current appeal.



resolved, the appeal is now before the Commission, thus explaining the roughly four-year lag time between the appeal being filed and being brought before the Commission.

County Approved Project (at 546 Beach Drive)

On October 24, 2007, the Santa Cruz County Planning Commission approved CDP 06-0156 to construct a new three-story, 4,048 square foot single-family dwelling, including about 1,600 cubic yards of grading, at the toe of the bluff at 546 Beach Drive (see project plans in Exhibit 5). The Appellants appealed that Planning Commission decision to the County Board of Supervisors, and on December 11, 2007 the Board upheld the Planning Commission action and approved a CDP for the project. Pursuant to Coastal Act Section 30603, this County approval is appealable to the Commission because the approved development is located: 1) between the sea and the first public road paralleling the sea; 2) within 300 feet of the inland extent of the beach; and 3) within 300 feet of the top of the seaward face of the coastal bluff.

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.<sup>5</sup> Commission staff has analyzed the County's Final Local Action Notice for the development (Exhibit 1B), the Appellant's contentions (Exhibit 2), and the relevant requirements of the LCP (Exhibit 3). The appeal raises no substantial issue with respect to the LCP as follows:

#### Appellants Contentions

The Appellants primarily contend that the project does not conform to LCP requirements related to coastal hazards, including that the County-approved development threatens safety (i.e., bluff collapse, harm to the public and the neighboring properties, and rescue service crews involved in the event of major earth movement from a landslide) both during and after construction. In making this contention, the Appellants cite LCP Land Use Plan (LUP) Policy 6.2.10 and Coastal Act Section 30253.<sup>6</sup> The Appellants also contend that the approval is inconsistent with LUP Policy 6.3.1 with respect to siting development on slopes in excess of 30%. Not citing any other LCP policies, the Appellants also contend that the project inappropriately alters natural landforms, and that the residential structure should be considered a type of shoreline protective device.

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<sup>5</sup> The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

<sup>6</sup> Coastal Act Section 30253 is not the standard of review in this case, and thus this contention under Section 30253 is invalid.



See the Appellants' full appeal document in Exhibit 2, and see applicable LCP policies in Exhibit 3.<sup>7</sup>

### 30% Slope

LUP Policy 6.3.1 generally prohibits structures on slopes in excess of 30%. However, this policy also explicitly excludes single-family dwellings on existing lots from this prohibition where siting on steeper slopes would lead to less ground disturbance, and if siting on lesser slopes is infeasible. In this case, the entire project site contains slopes ranging from about 50% to 70%, meaning that it is not feasible to site a residence on a slope of 30% or less on this property because there are no such areas on this property. Thus, the County-approved project is consistent with the exception provided for in LUP Policy 6.3.1, and this appeal contention does not raise a substantial LCP conformance issue.

### Coastal Hazard Minimization

LUP Policy 6.2.10 requires all development to be sited and designed to avoid or minimize hazards (as determined by the geologic hazards assessment or geologic and engineering investigations). Other LCP hazard policies reflect this same general premise of siting and designing development in such a way as to avoid and/or minimize hazards (see Exhibit 3). The Appellants identify a number of concerns on this point, generally focused on potential dangers to others nearby (i.e., neighbors, road users, etc.) during and after construction.

This development is proposed to be located directly on a bluff face with slopes ranging from 50% to over 70% and has therefore not been sited to avoid hazards. Essentially the entire site, however, consists of the steep bluff face, so there is no alternative location in which to build a home that does not raise similar concerns. In order to address these site constraints, the project has been designed to minimize existing hazards. For example, although the process of excavation does have the potential to destabilize the slope, the project includes typical and appropriate construction precautions (see, for example, pages 17 - 26 of Exhibit 1B for the project conditions). These precautions include excavating the back-cut from the top down in 5-foot increments during dry-weather conditions, and ensuring that tiebacks are installed and tensioned prior to excavating the next 5-foot increment. The County also required significant additional construction BMPs through incorporating the recommendations of the Applicant's Geotechnical Report and Geologic Investigation into the approval (such as winter grading requirements or no grading between October 15 through April 15, and erosion control measures, etc.). There is little doubt that the construction approved, including the excavation portion at the toe of the bluff, raises concerns over ensuring that the construction does not lead to problems (such as causing landslides that might extend across the road and/or onto neighboring properties). However, the County's approval

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<sup>7</sup> Note that the Appellant only cites two LCP policies, LUP Policies 6.2.10 and 6.3.1, but Exhibit 3 includes others. The reason for this is that the Commission's general practice is to construe appeal contentions broadly, and to identify policies that appear relevant to appeal contentions even when specific policies in that regard are not identified.



includes the types of safeguards that are typically applied to this type of construction, and it appears that the County's approval has appropriately addressed these construction concerns.<sup>8</sup>

In terms of the post-construction dangers alleged by the Appellants, the County's approval likewise appropriately addresses these concerns. The approved project is designed with a landslide containment wall on the roof that will be effective mostly in smaller debris flow and slide events, and that will prevent material from covering the roof in such smaller events. In addition, the residence has been designed and engineered to withstand the impact of any expected landslides, to mitigate geologic hazards from slope failure, and to comply with FEMA regulations. The below-grade rear and side walls of the three-story structure are designed as retaining walls to mitigate damage by landslide flows at the back and along the side yards. The rear wall consists of reinforced concrete that is secured with tie-backs drilled and embedded with grout into the bluff. A structural, flat concrete roof, including a retaining wall parapet (rooftop catchment), runs along the back portion at the top of the flat roof, which is designed to further mitigate a potential landslide from above. Thus, the residence itself is designed to withstand significant landslide events. Should a large landslide event take place, the 25-foot side yard setbacks should provide adequate area for the dispersal of landslide debris and thereby appropriately limit debris flow impacts to the road and nearby houses.<sup>9</sup>

Furthermore, the lowest floor of the approved project consists of a non-habitable five-car garage and foyer designed with break-away garage doors, non-load bearing interior walls and un-reinforced slab on grade (or pavers) as required by the FEMA regulations (as articulated in the LCP) for development in FEMA Flood Zone V. The lowest habitable floor of the approved dwelling is located above the 21-foot mean sea level, which is above FEMA's expected 100-year wave impact height identified for this location. The structure, reinforced walls and roof are supported by cast in place concrete piers drilled into the subsurface Purisma sandstone (see Exhibit 5, sheet A-8). This design is similar to the other adjacent homes on the bluff side of Beach Drive approved within the past 15 years with regards to the use of reinforced concrete foundations, retaining walls and other such designs intended to minimize hazard dangers, including withstanding the impact of expected landslides and wave run-up. The design intends to maximize stabilization of the structure and render it more able than other types of structures to withstand failure of the sloped ground on which it is built or the bluff overhead, and to allow wave forces to pass underneath as necessary, all while the inhabitants are safe inside. These extraordinary design measures also mean two important things in terms of the Appellants' contentions. First, that the bluff slope after construction is actually expected to be more stable than without the project, including because the residential structure as a whole operates as a large toe of bluff retaining structure that will enhance slope stability at this site; and second, the project should not result in exacerbating potential

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<sup>8</sup> Note that the Commission's staff geologist and coastal engineer reviewed the project at 548 Beach Drive that was on appeal to the Commission previously (A-3-SCO-06-059) and that was substantially the same as the project currently under appeal (see discussion in "546 and 548 Beach Drive Background" section above). On this question of construction dangers, these Commission staff technical experts determined that the project should not result in significant problems of the type alleged if typical precautions, such as those required by the County, were employed (see Exhibit 4).

<sup>9</sup> See Commission staff technical expert response to this issue in Exhibit 4.



problems for neighboring properties and/or users of the road (again, see also Commission staff technical experts' observations on these point in Exhibit 4).<sup>10</sup>

In sum, the project is located in an inherently hazardous location and therefore is not sited to avoid or minimize hazards. There is no less hazardous location on this site in which to locate development, however, and the project involves extensive construction and post-construction measures, as well as design measures that the County and Commission staff technical experts believe are appropriate to minimize the hazards present at this location. In addition, this type of bunker house design has been used for numerous other houses along Beach Drive. Thus, given the unique context of the surrounding development and the County conditions that ensure that the project is designed to minimize hazards, the Commission exercises its discretion to determine that the Appellants' contentions alleging that the County's approval inadequately addresses hazards and threatens public safety, do not raise a substantial LCP conformance issue.

#### House as Protective Device

The Appellants contend that the approved dwelling will function as both a residence and retaining wall and therefore should be considered as a "shoreline protective device".

LCP Policy 6.2.16 and related LCP requirements limit shoreline protection devices to devices that protect existing structures from a significant threat, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal dependent uses. Thus, as a general rule, the LCP does not allow shoreline protective devices in tandem with new development. Rather, the LCP requires new development to mitigate for such hazards (erosion, bluff retreat, flooding, etc.) in other ways, typically by siting such development away from the hazardous area, where the area between the hazard and the development is often called a "setback". Typically, the setback distance established is meant to provide adequate area for natural processes to occur without requiring armoring within the project's design lifetime (which is required to be at least 100 years by the LCP). However, at a site like this that is all bluff, the concept of a bluff setback (like a blufftop setback) does not generally apply. Thus, the project has instead been designed to respond to the hazard in other ways, namely through a massive concrete superstructure supported on embedded concrete caissons and retaining walls with embedment into the bluff. In other words, the traditional "setback" has been replaced by a protective device designed to achieve a similar result. Given this approach and that the LCP defines a shoreline protection structure as "any structure or material, including but not limited to riprap or a seawall, placed in an area where coastal processes operate", and further given that the entire development in this case is clearly proposed in an area where coastal processes operate, such concrete superstructure is in this case

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<sup>10</sup> The Commission's staff technical experts indicate that there is no question that development along Beach Drive is subject to an unusually high number of geologic and other hazards, and that it is a challenging place to establish safe development. They conclude, however, that the County has appropriately mitigated these hazards, and that that the design of the reinforced residences on the bluff side of Beach Drive lend increased stability to the hillside, thereby decreasing the risk to the nearby homes and Beach Drive by reducing the amount of sediment that could be released by a landslide, where this in turn will also help avoid road closures and associated public safety responder problems associated with same.



a shoreline protection structure. As such, it is not generally allowed under the LCP in tandem with new residential development.

However, although such a superstructure meets the definition of a shoreline protection structure under the LCP, the project site is located inland of existing beachfront houses and existing shoreline armoring that are located seaward of Beach Drive at this location. The LCP limits use of shoreline protective devices because shoreline structures can have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately resulting in the loss of beach. Because of the project site's inland location (i.e., in relation to Beach Drive and residential development seaward of it at this site), some of these adverse effects on shoreline processes are therefore less than they would be if this were proposed on a beachfront lot. For example, no public beach area will be lost due to this project in this context, and any sand eroding from this bluff would be captured behind the existing beachfront seawall, rather than being provided through natural processes to the beach. While the project does result in landform alteration, as discussed below, such alteration is inevitable for any development on this highly constrained site. Moreover, the superstructure proposed here is also typical of the types of superstructures that have been developed in multiple other cases along this stretch of Beach Drive under the LCP that also all met the same definition, and such structures are necessary to address geologic hazards on these extremely steep sites. As such, and in this case, the fact that the project includes a shoreline protection structure raises an issue, but the Commission exercises its discretion to determine that such issue does not rise to the level of a substantial LCP conformance issue.

#### Natural Landform Alteration

LUP Policy 6.3.9 and related LCP policies require site design to minimize grading and avoid natural landform alteration (see Exhibit 3). The County-approved project will require substantial grading to excavate for the superstructure and the house, and thus will alter a natural landform, specifically the bluff. It is clear that there may be options that could reduce the amount of grading and landform alteration. Perhaps most obviously, the project could be reduced in scope to reduce the amount of bluff excavation and alteration. The project could also be redesigned to avoid the "bunker" house style. For example, the residence could be elevated on deep piers or even a single pier above the bluff, which would limit the work in the bluff itself. However, such design is likely to be infeasible, as it would make it difficult for site access and parking,<sup>11</sup> and would likely not be visually compatible with the character of the surrounding neighborhood, or consistent with beach viewshed protection. In this case, although a reduction in the scale of the project could reduce grading and landform alteration here, the project as approved by the County is generally consistent with the nature of landform alteration that has typically been allowed along Beach Drive. Thus, while there are some LCP inconsistencies related to landform alteration, the Commission exercises its discretion to determine that these appeal contentions do not rise to the level of a substantial issue in this particular case, given the nature of the surrounding

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<sup>11</sup> Access to the residence in such a scenario would be from the bottom of the structure through exposed or pier-integrated stairs, or potentially an elevator. Parking could only be accommodated on-street.





development.

#### Conclusion

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for such development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance, even if the project is not entirely consistent with the applicable certified LCP. As explained above, the Commission is guided in its decision of whether the issues raised in a given case are “substantial” by the following five factors: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. First, the County-approved project is for one single-family residence that consists of infill residential development that is typical in size, scale and design with other existing residential development on Beach Drive. Thus, the extent and scope of this project weigh in favor of a finding of no substantial issue. Second, while the County’s findings do not show full LCP consistency, the County has provided sufficient factual and legal support for its decision that, given the extreme constraints present on this site, the proposed project design minimizes hazards and natural landform alteration to the degree feasible, even if it must necessarily be constructed as a shoreline protective device, similar to past practice and development along Beach Drive of this nature. Third, natural landforms and bluffs (and their relation to the shoreline more generally) are the primary coastal resources affected by this decision. Although these are significant coastal resources, their significance at this site along the inland side of the Beach Drive bluffs in an area of bunker homes and a well-established residential subdivision (on what was historically a back-beach area) is more limited than it might normally be considered to be. Thus, this factor raises some concern, but still weighs in favor of finding no substantial issue for this circumstance. Fourth, this type of “bunker” construction is limited to Beach Drive, therefore the County’s action should not result in an adverse precedent for future LCP interpretation, as this type of home would not be approvable in a less constrained location and absent the potential for a constitutional taking. Fifth, based on the unusual siting of this lot and residence, the appeal does not raise issues of regional or statewide significance, as this project should not be seen as establishing a precedent for development anywhere other than perhaps for Beach Drive (where it is common). Thus, the substantial issue factors support a finding that no substantial issue exists with respect to this County-approved project’s conformance with the certified Santa Cruz County LCP. The Commission therefore exercises its discretion to find no substantial issue and declines to take jurisdiction over the CDP for the project.



Click on the link below  
to go to the exhibits.

Exhibit 1A: Location Maps

Exhibit 1B: County's Final Local Action Notice

Exhibit 2: Appeal Contentions

Exhibit 3: Applicable Santa Cruz County LCP policies

Exhibit 4: Commission Staff's Geologist's and Engineer's memos on 548 Beach Drive

Exhibit 5: Project Plans

Exhibit 6: Project Photos

