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# Th23a

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49th Day: Waived  
Staff: Ryan Moroney - SC  
Staff Report: 4/23/2015  
Hearing Date: 5/14/2015

## **APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING**

**Appeal Number:** A-3-STC-12-011

**Applicant:** City of Santa Cruz Public Works Department

**Appellants:** Commissioners Mary Shallenberger and Esther Sanchez

**Local Government:** City of Santa Cruz

**Local Decision:** Approved by the City of Santa Cruz Planning Commission on April 7, 2011 (Coastal Development Permit (CDP) Application File Number CP11-0015).

**Project Location:** Bluff edge at East Cliff Drive near 104 4<sup>th</sup> Avenue, City of Santa Cruz, Santa Cruz County.

**Project Description:** After-the-fact construction of a cantilevered road deck and retaining wall system for a failing section of East Cliff Drive near 104 4<sup>th</sup> Avenue.

**Staff Recommendation:** Substantial Issue Exists; Approval with Conditions

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**Important Hearing Procedure Note:** The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the attorney general or the Executive Director prior to determining whether or not to take testimony regarding whether

the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow (unless it has been postponed) during which the Commission will take public testimony.

## **SUMMARY OF STAFF RECOMMENDATION**

On April 7, 2011, the City of Santa Cruz Planning Commission approved a Coastal Development Permit (CP11-0015), Design Permit, Slope Modification and Variance to allow the construction of a cantilevered retaining wall for a failing section of East Cliff Drive in the Seabright area of the City of Santa Cruz. Appellants contend that the City's approval was inconsistent with the City's Local Coastal Program (LCP) policies related to coastal bluff development, hazards, mitigation of shoreline structures and maximizing public access. Staff recommends that the Commission find that the appeal raises a substantial issue with respect to conformance with the City's LCP, and that the Commission take jurisdiction over the CDP for the project.<sup>1</sup> Staff further recommends that the Commission approve a conditioned CDP for the project that addresses the LCP inconsistencies.

In terms of the substantial issue question, the project is inconsistent with LCP requirements that protect coastal bluffs and require mitigation for the impacts of shoreline protection structures. Specifically, the project will result in loss of shoreline sand supply and was not conditioned to mitigate for the public recreational impacts of that loss. Relatedly, the City's LCP requires projects that adversely impact public access to mitigate those impacts, while also including policies that specifically require public access enhancement along East Cliff Drive; however, no public access component or mitigation was incorporated into the project. This is particularly problematic because the project eliminated an informal access point to Seabright Beach, which is a very popular public beach in the heart of urban Santa Cruz, and because the site is part of the last remaining gap in the California Coastal Trail within the City of Santa Cruz. Lastly, the City's action is inconsistent with LCP policies that require new development to ensure stability over the lifetime of the structure. The City's approval did not describe the expected life of the project, nor consider the stability of the development over time with regards to bluff erosion and sea level rise. Thus, the appeal raises substantial LCP conformance issues regarding public access and shoreline bluff protection.

With respect to the CDP determination in a de novo review, issues associated with the project can be addressed via conditions of approval. Specifically, the project is conditioned to mitigate

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<sup>1</sup> The CDP was approved on April 7, 2011. However, the Coastal Commission did not receive a Final Local Action Notice for the Project until March 28, 2012, almost one year after the City's approval and after the project had already been completed. An appeal was filed on April 11, 2012 and the City agreed to a 49-day waiver on April 18, 2012. Thus, even though the project has been constructed, it was done so without a valid CDP approval. Because the project was completed without a valid CDP, the development must be treated as a proposed shoreline protective structure as if it was not already in place.

for public access and recreation impacts by including a public bench and viewing area, and appropriate signage to clearly establish and enhance public use of the area. Further, to define the approved project and fully mitigate for project impacts, staff is recommending a series of conditions related to the new armoring, including: (1) an approval that (a) ties the length of armoring authorization to the life of the existing development (i.e., East Cliff Drive) that the armoring is required to protect; (b) requires the Applicant to submit a complete permit amendment application to remove the armoring when the facilities warranting armoring are no longer present, or no longer require armoring; and (c) requires the Permittee to submit a complete permit amendment application to propose mitigation for impacts attributable to the armoring beyond the 20-year period upon which initial impact mitigation is based; (2) future monitoring and maintenance parameters; (3) assumption of risk; and (4) that the area around the wall be landscaped with native drought-tolerant plants. Therefore, the project, as conditioned, is consistent with the LCP and with the public access and recreation policies of the Coastal Act. Thus, Staff recommends that the Commission approve the CDP for the project. The motions are found on page 4 below.

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## **APPENDICES**

Appendix A – Substantive File Documents

## **EXHIBITS**

Exhibit 1: Location Map

Exhibit 2: Project Site Photos

Exhibit 3: Project Plans

Exhibit 4: Final Local Action Notice (FLAN)

Exhibit 5: Appeal of City of Santa Cruz Coastal Permit Approval

Exhibit 6: City Staff Report

## I. MOTIONS AND RESOLUTIONS

### A. Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-STC-12-011 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-STC-12-011 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

### B. CDP Determination

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-STC-12-011 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number A-3-STC-12-011 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with City of Santa Cruz Local Coastal Program policies and Coastal Act access and recreation policies. Approval of the 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*



## II. STANDARD CONDITIONS

This permit is granted subject to the following 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.

## III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Public Access/Sand Supply Mitigation.** WITHIN THREE MONTHS OF ISSUANCE OF THIS PERMIT, the Permittee shall submit two copies of a Public Access Plan for Executive Director review and approval identifying the measures to be taken to implement the below mitigation requirements. Minor adjustments to these requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources:
  - a. **East Cliff Drive Scenic Overlook Area.** The Access Plan shall clearly describe the manner in which general public access associated with the East Cliff Drive Scenic Overlook Area is to be provided with the objective of maximizing public access to the overlook site (including the location of a bench and public access signage, etc.) General public pedestrian access shall be provided and allowed on both the sides of the street.
  - b. **Public Bench Platform.** One bench shall be constructed at the southeastern corner of the overlook facing the beach on a newly poured platform with curbing around it, and shall include an adjacent trash can and weekly trash service. The City shall maintain the bench and trash can in a manner designed to facilitate

public use, including replacement if either becomes damaged or destroyed by natural or man-made causes.

- c. **Signage.** The Access Plan shall identify the signage that will direct the public to the overlook area. At a minimum, the “No Beach Access” sign located at the corner of East Cliff Drive and Atlantic Avenue shall be removed and be replaced with a sign that includes the language “Coastal View.” Sign details showing the location, materials, design, size, and text of the public access sign shall be provided. The sign shall be designed to provide clear information without impacting public views and site character. The sign shall include the Commission’s access program “feet” logo and the California Coastal Trail emblem.

All requirements above and all requirements of the approved Public Access Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Public Access Plan.

2. **Future Monitoring and Maintenance.** This coastal development permit requires ongoing monitoring of the overall permitted structure and related improvements at this location (i.e., cantilevered road deck and retaining wall system, railing, drainage, and associated development), and authorizes future maintenance as described in this special condition. The Permittee acknowledges and agrees on behalf of the City and all successors and assigns that it is City’s responsibility to: (a) maintain the permitted road deck structure and related improvements in a structurally sound manner and in its approved state; (b) retrieve any failing portion of the permitted structure or related improvements that might otherwise substantially impair the aesthetic qualities of the beach; and (c) annually or more often inspect the cantilevered road deck and retaining wall for signs of failure and/or displaced structural components. Any such maintenance-oriented development associated with the permitted cantilevered road deck and retaining wall shall be subject to the following:

- a. **Maintenance.** “Maintenance,” as it is understood in this condition, means development that would otherwise require a coastal development permit whose purpose is to repair and/or maintain the overall permitted structure and make improvements to their approved configuration, including retrieval of any project components that may be displaced from the approved design.
- b. **Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits from other agencies for any future maintenance and/or repair episodes.
- c. **Maintenance Notification.** Prior to commencing any maintenance event, the Permittee shall notify planning staff of the Coastal Commission’s Central Coast District Office, in writing, regarding the proposed maintenance. Except for necessary emergency interventions, such notice shall be given by first-class mail at least two weeks in advance of commencement of work. The notification shall include a detailed description of the maintenance event proposed, and shall

include any plans, engineering and/or geology reports, proposed changes to the maintenance parameters, other agency authorizations, and other supporting documentation describing the maintenance event. The maintenance event shall not commence until the Permittee has been informed by planning staff of the Coastal Commission's Central Coast District Office that the maintenance event complies with this coastal development permit. If the Permittee has not received a response within 30 days of receipt of the notification by the Coastal Commission's Central Coast District Office, the maintenance event shall be authorized as if Commission planning staff affirmatively indicated that the event complies with this coastal development permit. The notification shall clearly indicate that the maintenance event is proposed pursuant to this coastal development permit, and that the lack of a response to the notification within 30 days of its receipt constitutes approval of it as specified in the permit.

- d. **Non-compliance Proviso.** If the Permittee is not in compliance with the conditions of this permit at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition may not be allowed by this condition, subject to determination by the Executive Director.
- e. **Emergency.** Nothing in this condition shall serve to waive any Permittee rights that may exist in cases of emergency pursuant to Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).
- f. **Duration and Scope of Covered Maintenance.** Future maintenance under this CDP is allowed subject to the above terms throughout the length of the armoring approval (see **Special Condition 3**) subject to Executive Director review and approval every ten years to verify that there are not changed circumstances associated with such maintenance that necessitate re-review. It is the Permittee's responsibility to request Executive Director approval prior to the end of each ten-year maintenance period (i.e., with the first period running through May 14, 2025. Maintenance can be carried out beyond May 14, 2025 (and beyond subsequent ten-year periods) if the Permittee requests an extension prior to the end of each ten-year maintenance period and if the Executive Director extends the maintenance term in writing. The intent of this permit is to allow for 10-year extensions of the maintenance term for as long as the seawall remains authorized unless there are changed circumstances that may affect the consistency of this maintenance authorization with the policies of Chapter 3 of the Coastal Act and thus warrant a re-review of this maintenance condition. The Permittee shall maintain the permitted armoring in its approved state. No expansion or enlargement of the permitted armoring is allowed.

- 3. Length of Armoring Approval.** This coastal development permit authorizes the approved armoring until the time when the public improvements inland of it are redeveloped, no longer present, or no longer require armoring, whichever happens first. If some portion of the public improvements is removed, while some portion is retained, the armoring shall be reduced or modified so that it is the minimum necessary to protect the public improvements that are retained. At such time (i.e., when public improvements are removed or when the public improvements no longer require armoring), the Permittee shall submit a complete coastal development permit amendment application to the Coastal Commission to remove or modify the approved armoring and to appropriately restore the affected area.

  - a. Amendment Required Proposing Mitigation for Retention of Armoring Beyond 20 Years.** If the Permittee intends to keep the armoring in place after May 14, 2035, the Permittee must submit a complete CDP amendment application prior to May 14, 2035 proposing mitigation for the coastal resource impacts associated with the retention of the armoring beyond 20 years (including, in relation to any potential modifications to the approved project desired by the Permittee at that time that may be part of such CDP application).
- 4. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the site is subject to hazards from episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunamis, tidal scour, coastal flooding, and the interaction of same; (ii) to assume the risks to the Permittee 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; and (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 due to such hazards), expenses, and amounts paid in settlement arising from any injury or damage.
- 5. Landscaping Plan.** The Permittee shall submit two copies of a landscaping plan that includes native drought-tolerant plant species that are tolerant of salt air and salt spray, with a preference for species capable of trailing vegetation that can colonize steeper bluff areas and also screen the top of the seawall as seen from the beach as much as possible. Such landscaping shall be installed on areas of the slope that have been disturbed by construction of the project. All plants shall be kept in good growing condition and shall be replaced as necessary to maintain the approved vegetation over the life of the project. All requirements above and all requirements of the approved Landscaping Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Landscaping Plan.

## **FINDINGS AND DECLARATIONS**

The Commission finds and declares as follows:

### **A. PROJECT LOCATION**

The project area is located at the eastern terminus of East Cliff Drive just east of 4th Avenue, atop a coastal bluff fronting the Pacific Ocean and Monterey Bay in the City of Santa Cruz in the northern Monterey Bay region of California. Wave action along the base of the bluff more than five decades ago resulted in landslides undermining the East Cliff Drive right-of-way and causing the collapse of large sections of East Cliff Drive near the Santa Cruz Harbor and above the Seabright Beach unit of Twin Lakes State Beach. The project site is located along a section of the remaining East Cliff Drive right-of-way that provides access to three homes.

The bluffs at this site are typical of this region, composed of well-consolidated weakly cemented sands and silts of the Purisima sandstone formation overlain by easily eroded marine terrace deposits. Because the coastline between the Santa Cruz Municipal Wharf and the Santa Cruz Harbor trends roughly east-west (and perpendicular to the dominant direction of approach for waves within the northern portion of Monterey Bay) littoral drift is generally slow, allowing formation of fairly continuous and protective beaches. These beaches include Main Beach fronting the Boardwalk and Seabright Beach at this location. The Seabright Beach formation has also benefitted from the installation of the Santa Cruz Harbor jetties, which have helped to form the generally wide beach that fronts the site. Downcoast of the Santa Cruz Harbor, the beaches become generally narrower and more discontinuous, with a historically documented rate of long-term average annual erosion of approximately one-foot per year in some places. Along the subject property, the rates of erosion are generally less, with much of the reduced rate of erosion due to the construction of the downcoast Harbor jetties between 1962 and 1964. When the west jetty was completed in late 1962, the annual littoral flow of sand, totaling about 300,000 cubic yards, was significantly blocked, causing the upcoast beaches to trend toward expansion and the downcoast beaches to tend towards contraction. By 1965, the upcoast Seabright Beach had widened to over 300 feet and the downcoast Capitola Beach had been reduced by almost 90 percent to an average of only 20 feet. Ultimately, beaches downcoast from the Harbor generally recovered to a certain degree after a few years as a buildup of sand on the upcoast side of the Harbor jetties peaked and littoral drift began bypassing the jetties. Now, long-term average annual erosion rates along the subject property have slowed, although the bluff continues to retreat, primarily due to erosion, slumping, and bedrock block failure. This retreat is driven primarily by storm induced saturation and earthquakes and now averages roughly 0.3 feet per year.

See **Exhibit 1** for a project location map and **Exhibit 2** for site photos.

### **B. PROJECT DESCRIPTION**

The project is for after-the-fact construction of a cantilevered road deck and retaining wall system designed to stabilize the coastal bluff and protect the existing road infrastructure at the eastern terminus of East Cliff Drive just east of 4<sup>th</sup> Avenue and adjacent to Seabright beach. Specifically, the City installed an anchored girder system to support an expanded roadbed. This

design was chosen to allow the roadbed to cantilever out over the face of the bluff to provide safe vehicular access for residents while providing the necessary turning radius for emergency vehicles. The cantilevered roadbed slopes back away from the bluff to allow drainage to enter an existing storm system that leads away from the bluff to the Santa Cruz Harbor. This design also eliminated the need for construction of armoring at the base of the slope, and allowed all construction work to be completed closer to the top of the bluff rather than having to work from the beach. The project design also included construction of a bluff retaining wall that extends from the edge of the cantilevered roadbed, over the slope and terminates about 15 feet above the beach.<sup>2</sup> The retaining wall is textured and colored to match the native soil (see **Exhibit 2** for project photos).

See **Exhibit 3** for project plans.

### **C. PROJECT BACKGROUND**

The primary driver for the project was a concern for loss of road access to three residences located on the inland side of East Cliff Drive. Although the bluff in this area is no longer being actively eroded by coastal waves, it continues to erode and fail in the form of shallow landsliding as the exposed earth materials lay back to shallower slope angles and a more stable configuration. It should be noted that prior to construction of the project, the site had been used as an informal public access way to the beach via a “goat trail” down the bluff, including as far back as 1978 (see pages 3 and 4 of **Exhibit 2**). Moreover, the project area includes the downcoast portion of the last remaining gap in the California Coastal Trail (CCT) network within the City of Santa Cruz. This small gap extends approximately 100 feet across the bluff face upcoast to 4<sup>th</sup> Avenue (see pages 7 and 8 of **Exhibit 2**). From there the CCT runs continuously almost entirely along the coastline past the Santa Cruz Beach Boardwalk, along West Cliff Drive to the City limits near Natural Bridges State Park. Immediately downcoast from the subject area, the trail network picks up around the Santa Cruz Harbor, where it links to the Arana Gulch paved paths recently constructed by the City, or to Twin Lakes State Beach, the site of an important County public access improvement project that was approved by the Commission in 2012 and scheduled to begin construction in the spring of 2015.

### **D. CITY OF SANTA CRUZ APPROVAL**

On April 7, 2011, the City of Santa Cruz Planning Commission approved a CDP (CP11-0015), Design Permit, Slope Modification and Variance, to allow for the construction of a cantilevered retaining wall for a failing section of East Cliff Drive near 4<sup>th</sup> Avenue in the City of Santa Cruz. Notice of the City’s action on the CDP was received in the Coastal Commission’s Central Coast

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<sup>2</sup> The City’s staff report for the project (**Exhibit 6**) states that the Applicants/Owners for the project were William and Elizabeth Engelman. The Engelmans own the property at 104 4<sup>th</sup> Avenue, which is on the inland side of East Cliff Drive. The Engelmans initiated contact with the City regarding their concerns for maintaining adequate vehicular access, including emergency vehicles, to their property, which resulted in the City moving forward with a retaining wall and roadbed expansion project. However, the entire project is located on City public right-of-way property.

District Office on March 28, 2012 (see **Exhibit 4.**)<sup>3</sup> The Coastal Commission's ten-working day appeal period for this action began on March 29, 2012 and concluded at 5 p.m. on April 11, 2012. One appeal (see **Exhibit 5**) was received during the appeal period (see below).

## **E. APPEAL PROCEDURES**

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

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

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

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<sup>3</sup> The City submitted the Notice of Final Local Action to the Central Coast District office almost a year after the Planning Commission approved the project. By that time the project had already been constructed.

## **F. SUMMARY OF APPEAL CONTENTIONS**

The Appellants contend that the City's action is inconsistent with the City's certified LCP policies related to public access and coastal bluff protection. Specifically the Appellants contend that: 1) the project approval does not meet the LCP's requirement to mitigate for impacts of shoreline protective structures; 2) the project does not meet LCP requirements to ensure the stability of new development over the lifetime of the structure; 3) the project does not meet the LCP standard of a 50-foot setback for coastal development; and 4) the LCP requires projects that adversely impact public access to mitigate those impacts and includes policies that provide for enhancing public access along East Cliff Drive, but no public access mitigation was part of the project or required as a condition of approval.

See **Exhibit 5** for the full appeal text.

## **G. SUBSTANTIAL ISSUE DETERMINATION**

### **Substantial Issue Background**

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission determines that the City's approval of the project presents a substantial issue.

### **Substantial Issue Analysis**

#### ***Public Access***

Similar to the Coastal Act, the City's LCP contains a host of policies requiring that public access and recreation opportunities along the City's coastline be maximized, and prohibiting the removal of existing coastal access points. For example, Land Use Element Policy 3.5 requires the City to "protect coastal recreational areas, maintain all existing coastal access points open to the public, and enhance public access, open space quality and recreational enjoyment in a manner that is consistent with the California Coastal Act."

As described above, the project is located on East Cliff Drive just east of 4<sup>th</sup> Avenue above Seabright State Beach. Prior to construction of the project, this area was an actively eroding bluff that provided informal public access (i.e. a "goat trail") to the beach below. However, with



construction of the project, public access to the beach is no longer possible from this location due to the vertical retaining wall and associated railing. While the City's staff report acknowledged that the subject site's existing land use included "public access,"<sup>4</sup> it ultimately decided not to include a beach public access component to the project because there is existing beach public access in the immediate area, including a public access stairway upcoast at the end of 3<sup>rd</sup> Avenue and a pedestrian path downcoast adjacent to Aldo's Restaurant and the Santa Cruz Harbor. However, one must first travel a block inland to Atlantic Avenue to reach each of these beach public access points. Construction of the project eliminated an informal public accessway to the beach, inconsistent with LCP Land Use Element Policy 3.5. Moreover, the area between the project site and 4th Avenue represents the last remaining gap in the California Coastal Trail within the City of Santa Cruz and therefore represents a prime location to enhance public access. However, no public access component or mitigation for the project's public access impacts was incorporated into the project.<sup>5</sup> For these reasons, the approved project raises a substantial issue of conformance with respect to the LCP's public access policies.

### ***Coastal Bluff Protection and Sand Supply Mitigation***

Safety Element Policy 1.2.3 mirrors Coastal Act Section 30235 and requires that shoreline protective structures be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Implementation Plan (IP) Section 24.10.2430 implements this policy and includes more specific and additional requirements (e.g. "The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement;" and "Protect and enhance free public access to or along the beach, and sign such access when necessary").

The project includes a concrete bluff wall retaining system that retains bluff materials behind it, preventing the sand behind it from contributing to the local sand supply. This natural bluff erosion contributes sand to the local beach sand supply, and interfering with it will impact the local sand supply. The City-approved project did not mitigate for the project's resultant loss of sand supply, inconsistent with the above LCP policy and IP standard.

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<sup>4</sup> The retaining wall and cantilevered roadbed are located on land designated "Coastal Recreation" (CR) and zoned "Ocean Front Recreational" (OF-R). The CR designation includes neighborhood, community and regional park lands used for passive and/or active recreational uses by residents and visitors. Natural areas can also be used as low-density park land providing hiking trails and other recreational amenities; the OF-R zoning provides for uses including 1) beach and surf access ways, public or private; public beach-recreation activities; but not including the use of any building or structure, other than stairways and handrails; 2) Outdoor classes, public or private; for scientific research, art, and other subjects; 3) Parking areas or lots, public or private; but not including the use of any building or structure; 4) Picnic grounds and barbecue facilities, public or private, including tables, benches, and fire pits; but not including any other structure or building; 5) Public fishing facilities; and 6) Safety structures, including, but not limited to, warning signs, barricades, retaining walls, erosion control facilities, lifeguard towers built by, or under the direction of, or with special approval of the city.

<sup>5</sup> During a site visit in 2010, Commission staff strongly suggested to Public Works Department staff that the City incorporate a public access component into the project. Commission staff suggested that mitigation for the proposed project could include a possible path connection along the portion of East Cliff Drive that had eroded, which would complete the only remaining gap in the CCT in the City of Santa Cruz. City staff was concerned about the cost of such a project, and Commission staff provided City staff with the name of a contact person at the State Coastal Conservancy to discuss the possibility of funding for such a project. It is not known if the City contacted the State Coastal Conservancy in this regard. Commission staff also suggested that if the CCT connection was not feasible, that the City incorporate a stairway to the beach as part of the project. Again, the City expressed concern over the cost of and need for such a stairway.

Additionally, the LCP requires new development to ensure stability over the life of the structure (IP Section 24.10.2430(2)(a): “The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms”). However, the City’s approval did not describe the expected life of the project, nor consider the stability of the development over time, especially as the adjacent unarmored bluff continues to erode and may be impacted by sea level rise. Without this information, it cannot be determined whether or not the City-approved project ensures stability over the life of the project, as required by the LCP.

Thus, the City’s approval raises a substantial LCP conformance issue with respect to coastal bluff protection and sand supply mitigation.

### ***50-year Setback for New Development***

The Appellants final contention is that the City’s action is inconsistent with LCP Safety Element Policy 1.2.1, which provides that “[f]or development adjacent to cliffs, require setbacks for buildings equal to 50 years of anticipated cliff retreat.” The project includes the construction of a cantilevered expansion of the existing East Cliff Drive roadbed to allow for continued vehicular access, including emergency access, to three existing homes along this section of East Cliff Drive. Many roads along bluffs in Santa Cruz, including East Cliff Drive, are already located within the 50-year bluff setback, and it does not appear that Safety Element Policy 1.2.1’s specific reference to “setbacks for buildings” is intended to apply to roads. Thus, this contention does not raise a substantial issue of LCP conformance.

### **Substantial Issue Conclusion**

The City-approved project raises substantial LCP conformance issues in terms of maximizing public access and protecting coastal bluffs and sand supply. Therefore, the Commission finds that **a substantial issue** exists with respect to the project’s conformance with the certified City of Santa Cruz LCP, and takes jurisdiction over the CDP application for the proposed project.

## **H. COASTAL DEVELOPMENT PERMIT DETERMINATION**

The standard of review for this CDP determination is the City of Santa Cruz certified LCP and, because it is located between the first public road and the sea, the access and recreation policies of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference.

### **1. Public Access and Recreation**

#### **Coastal Act Public Access and Recreation Policies**

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road (East Cliff Drive). Coastal Act Sections 30210 through 30213, 30221 and 30223 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. ...*

**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.*

These overlapping policies clearly protect access to and along the shoreline and to offshore waters for public access and recreation purposes.

### **LCP Public Access and Recreation Policies**

Similar to the Coastal Act, the LCP requires that public access be maximized:

***Land Use Element Policy 3.5*** *Protect coastal recreational areas, maintain all existing coastal access points open to the public, and enhance public access, open space quality and recreational enjoyment in a manner that is consistent with the California Coastal Act.*

***Land Use Element Policy 3.5.1*** *Protect coastal bluffs and beaches from intrusion by non-recreational structures and incompatible uses and along the shoreline, requires new development or remodeling to be sited and designed so as to avoid a “wall” of buildings.*

***Land Use Element Policy 3.5.2*** *Ensure that development does not interfere with the public’s right to access the ocean (where acquired through use or other legislative authorization)*

***Land Use Element Policy 3.5.3*** *Require new development and public works projects to provide public access from the nearest public roadway to the shoreline and along the coast, except where it is inconsistent with public safety, protection of fragile coastal resources, or where adequate access exists nearby.*

***Land Use Element Policy 3.5.5*** *Develop and implement plans to maximize public access and enjoyment of recreation areas along the coastline.*

***Land Use Element Policy 5.6.2*** Provide public access from and through new development to adjacent or nearby schools, parks, natural areas and coastal recreation areas.

***Parks and Recreation Element Policy 1.7*** Develop plans to repair, maintain and maximize public access and enjoyment of recreational areas along the coastline consistent with sound resource conservation principle, safety, and rights of private property owners.

***Parks and Recreation Element Policy 1.7.1*** Maintain and enhance vehicular, transit, bicycling and pedestrian access to coastal recreation areas and points.

***Parks and Recreation Element Policy 1.7.6*** Develop and implement an integrated design, land use, recreation, cliff stabilization, and landscaping plan for West Cliff and East Cliff Drives to enhance public access, safety and recreational enjoyment in these areas.

***Parks and Recreation Element Policy 4.2*** Develop a system of recreational trails providing access to and connections between the City's various parks, recreation facilities, and natural, coastal and urban areas.

### **Consistency Analysis**

LCP Land Use Element Policy 3.5 requires that all existing coastal access points be maintained and Land Use Element Policy 3.5.2 requires that development not interfere with the public's right to access the ocean. The after-the-fact project eliminated an informal public accessway (i.e. "goat trail") to Seabright State Beach, inconsistent with these policies. Specifically, there is evidence that the bluff area in question provided a public access point to Seacliff Beach dating as far back as 1978 (see pages 3 and 4 of Exhibit 2), and this access was eliminated by construction of the project. However, no public access element was incorporated into the after-the-fact project and no mitigation was required to offset that impact. In fact, the project design itself included elements to eliminate public access. Specifically, the City's staff report for the project states: "The project design includes construction of a screen wall that will hang from the edge of the cantilever road bed, over the slope to prevent public access to the cantilevered road bed from below." The loss of this public access point, without mitigation, cannot be found consistent with the Coastal Act and LCP.

Likewise, the policies identified above direct that new public works projects "provide public access from the nearest public roadway to the shoreline and along the coast" and that public access along the coast be enhanced. As discussed above, no public access component was incorporated into the project as required by these policies. This is particularly problematic in this case because the area in question (i.e. between the project site and 4th Avenue) represents the last remaining gap in the California Coastal Trail within the City of Santa Cruz. This location therefore represents a prime location to enhance public access.<sup>6</sup> However, the City determined

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<sup>6</sup> Commission staff encourages City staff to seek out funding options that would provide for completion of this final portion of the CCT within City limits. As part of this process, the City has informally committed to installing a sidewalk along the frontage of 2011 East Cliff when the future path connection is constructed to join the retaining wall and complete this section of the CCT. It should further be noted that Parks and Recreation

that construction of a project to bridge the gap in the CCT or incorporate a stairway to the beach into the retaining wall would be prohibitively expensive and that direct public access to the shoreline is located just upcoast and downcoast of the project site (i.e. at the 3<sup>rd</sup> Avenue stairway and adjacent to Aldo's Restaurant and the Santa Cruz Harbor, respectively (see pages 1 and 2 of **Exhibit 2**)). Nevertheless, because the project eliminated public access to the beach and did not incorporate any public access component, it cannot be found consistent with the Coastal Act and LCP.

In order to bring the project into conformance with the above-cited policies, Commission staff has worked with City staff on a suite of public access improvements for the project set forth in **Special Condition 1**. Specifically, **Special Condition 1(a)** requires the City to prepare a Public Access Plan that clearly describes the manner in which general public access associated with the East Cliff Drive Scenic Overlook Area is to be provided with the objective of maximizing public access to the site. **Special Condition 1(b)** requires the City to install and maintain a public bench at the southeastern corner of the overlook facing the beach, thereby allowing for maximum visual access of the beach and blue water views from this site. Finally, **Special Condition 1(c)** requires the City to institute an appropriate signage plan for the site, including removal of the existing "No Beach Access" sign located at the corner of East Cliff Drive and Atlantic Avenue and replacing it with a California Coastal Trail or other appropriate sign.

As conditioned, the project can be found consistent with the Coastal Act public access and recreation policies and LCP policies cited above.

## 2. Geologic Conditions and Hazards

### Applicable Policies

***Safety Element Policy 1.2.3** Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or protect existing structures in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

### IP Section 24.10.2430

*Before approving a coastal permit in the Shoreline Protection Overlay District, the hearing body must find that the proposed development will:*

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Element Policy 1.7.6 requires the City to develop and implement an integrated design, land use, recreation, cliff stabilization, and landscaping plan for West Cliff and East Cliff Drives to enhance public access, safety and recreational enjoyment in these areas. A prior CDP amendment, 3-90-111-A2, approved by the Coastal Commission in June 1998 allowed construction of two engineered armor stone revetment structures to protect West Cliff Drive and repair of the damaged recreational pathway and two parking areas. That amendment was conditioned to require submission of a West Cliff Drive Integrated Development and Management Plan within two years of approval. That process was initiated by the City but has since stalled. In light of this project and other recent (and proposed) projects along both West Cliff and East Cliff, the Commission believes that the timing is now ripe for the City to prepare integrated development and management plans for both West Cliff and East Cliff Drive.

1. *Protect trees and vegetation and sensitive wildlife habitat;*
2. *Be consistent with the following criteria for bluff or cliff development:*
  - a. *The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms.*
  - b. *The development will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.*
  - c. *The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement.*
  - d. *The development which proposes use of retaining walls shall be allowed only to stabilize slopes. Sea walls at the toe of sea cliffs to check marine erosion shall be allowed only where there is no less environmentally damaging alternative.*
  - e. *The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.*
3. *Provide maximum erosion protection, using accepted engineering practices and other methods and specifications set forth in this title;*
4. *Maintain public view corridors between the sea and the first public roadway parallel to the sea and maintain natural views of the coastline;*
5. *Protect paleontological resources as prescribed in the Land Use Plan;*
6. *Protect and enhance free public access to or along the beach, and sign such access when necessary;*
7. *Include mitigation measures prescribed in any applicable environmental document;*
8. *Be compatible with the established physical scale of the area;*
9. *Be consistent with the design review guidelines of this title and the policies of any applicable area plan;*
10. *Be consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act.*

### **Consistency Analysis**

Safety Element Policy 1.2.3 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” methods designed to forestall erosion also alter natural landforms and natural shoreline processes. Accordingly, with the exception of coastal-dependent uses, Safety Element Policy 1.2.3 limits the construction of shoreline protective works to those required to protect existing structures or public beaches in danger from erosion. The Coastal Act provides these limitations because shoreline structures can have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural

landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beaches.

Under Safety Element Policy 1.2.3, a shoreline structure may be approved if: (1) there is an existing structure; (2) the existing structure is in danger from erosion; (3) shoreline-altering construction is required to protect the existing endangered structure; and (4) the required protection is designed to eliminate or mitigate its adverse impacts on shoreline sand supply. The first three questions relate to whether the proposed armoring is necessary, while the fourth question applies to mitigating some of the impacts from shoreline armoring.

#### Existing Structure to be Protected

The portion of East Cliff Drive at this location appears visible on aerials dating back to 1943, and therefore predates the coastal permitting requirements of both 1972's Proposition 20 (the Coastal Initiative) and the 1976 Coastal Act. This section of road provides access to three homes and is located at the top of the destabilized bluff. It is also an extremely important segment of the California Coastal Trail. Thus, the existing utilities and road, including in relation to its use as a public recreational access facility, are existing structures for purposes of Safety Element Policy 1.2.3.

#### Danger from Erosion

Safety Element Policy 1.2.3 allows shoreline protective structures when required to protect existing structures in danger from erosion, but it does not define the term "in danger." In this case, the City Public Works Department provided such evidence in the form of a Geologic Investigation which concluded the following:

*The portion of East Cliff Drive studied for this project is threatened by the imminent and continued collapse of the coastal bluff. If left unprotected the bluff will continue to fail. The marine terrace deposits will erode and slump. If exposed under an extreme erosion event, the weakly consolidated Purisima Formation sandstone will also erode and fail. Prior failure of these deposits has caused the loss of roadway, resulting in limited vehicle access. Current plans call for the reconstruction of a portion of the failed roadway, which will likely incorporate some form of a retaining wall. This will provide and maintain emergency vehicle access to the surrounding private properties.*

Photographic evidence of the site prior to construction of the project also demonstrates active erosion (about 0.3 feet per year) consistent with this conclusion. Accordingly, this portion of East Cliff Drive and its related elements constitute existing structures that are in danger from erosion and thus qualify for shoreline protection consideration for the purposes of LCP Safety Element Policy 1.2.3.

#### Feasible Protection Alternatives to a Shoreline Structure

The third Safety Element Policy 1.2.3 test that must be met is that the proposed armoring must be "required" to protect the existing threatened structure. In other words, shoreline armoring can be permitted if it is the only feasible alternative capable of protecting the structure.<sup>7</sup> This

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<sup>7</sup> Coastal Act Section 30108 defines feasibility as follows: "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

evaluation is often conceptualized as a search for the least environmentally damaging feasible alternative that can serve to protect existing endangered structures. Other alternatives typically considered include: the “no project” alternative; abandonment of threatened structures; relocation of threatened structures; sand replenishment programs; drainage and vegetation measures on the blufftop; and combinations of each.

In this case, the City chose not to pursue the first three alternatives because they would result in the loss of access to the three residences in question. According to the May 4, 2011 staff report to the Transportation and Public Works Commission, “[t]he City Attorney has determined the City is responsible for maintaining this access and emergency access via public right-of-way to these homes. The alternate, but more expensive option, is to purchase the homes.” The City’s engineer did consider three structural alternatives: 1) a modular block retaining wall; 2) a cantilever wall with tiebacks; and 3) a cantilever concrete deck. City staff and the consultant team deemed that of these three alternatives, only alternative three could be built from the road and reduce the need for shoring. The modular block retaining wall was rejected for aesthetic reasons and the cantilever wall with tiebacks was rejected because it would have required excavation and access from the beach, causing adverse impacts to public access and necessitating significant shoring. Thus, the Commission concurs that the project selected and ultimately constructed by the City is the least environmentally damaging feasible alternative.

#### Duration of Authorization

Safety Element Policy 1.2.3 only authorizes shoreline protection devices when necessary to protect an existing structure in danger of erosion, and shoreline protective devices are no longer authorized by Policy 1.2.3 after the existing structures they protect are redeveloped, no longer present, or no longer require armoring.

Specifically, although the purpose of this project is to protect a public road, the proposed shoreline armoring nevertheless impedes public access to and along the shoreline, adversely impacts beaches and related habitats, potentially increases erosion on adjacent properties, and visually impairs this coastal area. Additionally, although design modifications and access improvements can help mitigate sand supply and beach access impacts these impacts can never be entirely eliminated or mitigated. The proposed armoring is nevertheless being approved by the Commission, however, based on the “override” provision of Policy 1.2.3 that instructs the Commission to approve a shoreline protective device to protect an existing structure if specified criteria are satisfied.

In such a circumstance, the only applicable basis for the Commission to approve proposed armoring such as this that is otherwise inconsistent with the LCP is when it is required to protect an existing structure in danger from erosion. If there was no existing structure in danger from erosion and the armoring was not required to protect it, the shoreline protection would be denied. That the project satisfies the tests of the LCP Safety Element Policy 1.2.3 “override,” and thereby must be authorized despite its other impacts that cannot be fully mitigated, therefore presumes the existence of a legally authorized existing structure that the armoring is required to protect.

Accordingly, one reason to limit the length of a shoreline protective device’s development authorization is to ensure that the armoring being authorized is only being authorized as long as



it is required to protect a legally authorized existing structure. If an applicant must seek reauthorization of the armoring before the structure that it was constructed to protect is demolished or redeveloped, then Policy 1.2.3 instructs the City (or Commission on appeal) to approve the shoreline protective device if it is still required to protect an existing structure in danger of erosion. However, once the existing structure that the armoring is required to protect is demolished or redeveloped, the armoring is no longer authorized by the override provisions contained in Safety Element Policy 1.2.3 of the LCP. Accordingly, if there is no existing structure in danger from erosion, then the Commission cannot approve an otherwise inconsistent shoreline protective device. Although in this case it is likely that East Cliff Drive, the structure being protected by this device, will be in place for many years, it is unclear how sea level rise and other geologic hazards may affect the shoreline in this area over time, so it is still necessary to ensure that the shoreline protection does not outlast the structure it was constructed to protect, even in the case of public infrastructure.

Therefore, the Commission hereby authorizes the proposed armoring in this case coincident with the existing structure (East Cliff Drive) it is authorized to protect, and requires removal of the armoring when the structure it was authorized to protect is redeveloped, no longer present, or no longer requires armoring. **Special Condition 3** also requires the Permittee to submit a complete permit amendment application to remove the armoring when the existing structure warranting armoring is redeveloped, is no longer present, or no longer requires armoring. In this manner, new development will not be able to rely on armoring that no longer meets the override provisions of Safety Element Policy 1.2.3.

#### Mitigation for Impacts of Project

In terms of impact mitigation for the approved project, and as discussed further below, the mitigation for the impacts associated with the proposed shoreline protection have used a twenty-year time period to calculate passive erosion and sand retention impacts, both of which are tied to the future rates of erosion and are time dependent. These impacts will continue to occur, though, for the full time that the approved armoring system is in place, including beyond twenty years if it continues to be necessary to protect East Cliff Drive. This CDP approval requires the Applicant to submit a complete permit amendment application to propose mitigation for impacts attributable to the armoring beyond the twenty-year period upon which initial impact mitigation is based. And as such, additional mitigation will be required after the initial twenty-year period if the protective structure remains.

Using a twenty-year period for initial impact mitigation is appropriate in this case. Such initial twenty-year mitigation framework uses available information on historic trends for the projection of future erosion. In siting new development, proposed setbacks attempt to anticipate future acceleration of erosion through using the highest historic erosion rate or by developing relationships between erosion and sea level. And, on an eroding coastline, if the proposed erosion rate is higher than the actual rate, the result is only that the development will be safe from erosion for a longer time period than initially assumed. However, for shoreline armoring mitigation, the Commission has often based the calculations upon average or moderate historic erosion rates so that the mitigation is unlikely to cover unanticipated impacts over the mitigation period (e.g., associated with higher actual erosion rates and associated problems than anticipated and applied in a mitigation context). While long-term erosion rates for mitigation calculations can be expected to provide a reasonable estimate of future erosion for the coming one or two

decades, projections much farther into the future are far more uncertain; and the uncertainty concerning future erosion only increases with time. Using a time period of twenty years for the mitigation calculations ensures that the mitigation will cover the likely initial impacts from the armoring, and then allows a recalculation of the impacts based on better knowledge of future erosion rates and associated impacts accruing to the armoring when the twenty years has elapsed. Efforts to mitigate for longer time periods would require the use of much higher erosion rates and would bring a higher amount of uncertainty into a situation where a single, long-term mitigation effort is not necessary to be effective.

Therefore, **Special Condition 3** ties the length of development authorization to the timeframe of the structure being protected and requires the Permittee to submit an application for a permit amendment to remove the armoring when the currently existing structures warranting armoring are redeveloped, are no longer present, or no longer require armoring. However, since the mitigation is calculated based on the first twenty years of impact (again see Mitigation of Shoreline Sand Supply Impacts Section below), **Special Condition 3a** also requires the Permittee to submit an application for a permit amendment prior to the expiration of the twenty-year period, proposing mitigation to address the impacts of the armoring beyond the twenty-year period.

#### Sand Supply Impacts

The fourth test of Safety Element Policy 1.2.3 that must be met in order to allow approval is that shoreline structures must be designed to eliminate or mitigate adverse impacts to local shoreline sand supply.

Beach sand material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves; and from coastal dunes and bluffs, and, as relevant here when the bluffs lose material due to landslides, surface erosion, gullying, and other processes. The cantilevered retaining wall is expected to alter these natural processes, particularly with respect to the amount of material that would have been supplied to the beach if the bluff were to erode naturally. Moreover, if natural erosion were allowed to continue at the project site, some amount of additional beach material would be added to the larger littoral cell sand supply system fronting the bluffs. The Commission's Senior Coastal Engineer reviewed the project plans to assess coastal processes impacts of the project and determined:

*The As-Built project has no encroachment on the beach. The only encroachment that will occur will be when there is enough erosion on the lower bluff that the caissons are exposed. When the caissons are exposed, the inland portion of the beach will be fixed psychologically, but the back beach will not be fixed in the normal way we think of "fixing the back beach" or causing passive erosion. The shoreline could move inland, unless or until there is a new permit to extend the bottom of the wall of to fill the space between the caissons. Such a future action might result in encroachment and passive erosion, as those concerns are normally considered.*

*The only beach or sand impacts that are directly associated with this wall are the sediments that are being held in place behind the wall. With a wall face of 74' long and 20' high, on average, the wall face will be 1,480 square feet. If the bluff erodes back at 0.3 feet per year, the retained sand would be 444 cubic feet per year or 16.4 cubic yards*

*per year.*

Therefore, the after-the-fact project does not encroach onto the beach and it does not fix the back of the beach, but it will still retain sand in the bluff, so mitigation is required for the sand that is trapped behind the retaining wall rather than falling to the beach and entering the littoral cell. The proposed project is estimated to retain 16.4 cubic yards of sand per year that would have become part of Seabright beach. It has proven difficult over the years for the Commission to identify appropriate mitigation for such impacts. That difficulty is heightened by the particular facts of this case, including that the coastal processes affecting this bluff have changed over time from direct wave attack to a slower rate of bluff retreat due to erosion, slumping and bedrock failure.

Where avoidance of impacts is not possible, mitigation typically required by the Commission for such sand supply impacts have been in-lieu fees and/or beach nourishment, and in some cases compensatory beach access improvements. With regards to beach nourishment, a formal sand replenishment strategy can introduce an equivalent amount of sandy material back into the system over time to mitigate the loss of sand that would be caused by a protective device over its lifetime. Obviously, given the right circumstances, such an introduction of sand, if properly planned, could feed into the Monterey Bay sand system to mitigate the impact of the project. As an alternative mitigation mechanism, the Commission oftentimes uses a mitigation payment when in-kind mitigation of impacts is not available.<sup>8</sup> In situations where ongoing sand replenishment or other appropriate mitigation programs are not yet in place, the mitigation payment is deposited into an account until such time as an appropriate program is developed, and the funds can then be used to offset the designated impacts. When mitigation funds are pooled in this way for multiple projects in a certain area, the cumulative impacts can also be better addressed inasmuch as the pooled resources can sometimes provide for a greater mitigation impact than a series of smaller mitigations based on individual impacts and fees. Another alternative mitigation also often applied by the Commission is using public recreational access improvements to offset impacts from encroachment, passive erosion and loss of bluff materials.<sup>9</sup> Such mitigation is typically applied by the Commission to public agencies that manage public access when they have applied for armoring projects.

In this case, the Commission finds that in-kind recreational mitigation measures for retention of bluff material due to the project are feasible, and can be used as mitigation for the public access recreational resource impacts of the proposed project for the initial 20 year approval period. Therefore, this permit is conditioned for in-kind recreational offsets (e.g., public access improvements) as the most appropriate mitigation method, given the above-described factors. Staff is recommending **Special Condition 1** as appropriate in-kind recreational resource mitigation measures, the initial cost of which the City estimates will be approximately \$6,000 as well as ongoing maintenance costs over time. These measures are described in greater detail in the section on public access and recreation, above.

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<sup>8</sup> Assuming a sand replacement fee in the range of \$25-\$42 (See, CDP 3-09-029, Rusconi Seawall, 105 Seabright Ave.) this would result in a sand supply mitigation fee in the range of \$8,200-\$13,776 at the erosion rate identified above (i.e. 16.4 cubic yards per year over a 20-year period.)

<sup>9</sup> At this time, the only sand supply impacts from the project are due to the loss of bluff materials that are being retained by the wall.

Accordingly, as conditioned, the proposed project offsets impacts on sand supply through in-kind recreational resource benefits. Therefore, the project satisfies LCP Safety Element Policy 1.2.3 requirements regarding mitigation for sand supply impacts.

IP Section 24.10.2430 requires that shoreline protection structures be “sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms.” The City’s approval did not describe the expected life of the project, nor consider the stability of the development over time, especially as the bluff continues to erode and is impacted by sea level rise. Without this information, it is difficult to determine whether or not the City-approved project ensures stability over the life of the project, as required by the LCP. Given the geological instability of the landform at this location, there is a possibility that the structure and related improvements may fail in the future as well. Failure might include displacement of the structure, or portions thereof, which may result in structural components falling to the beach located below the project site. Accordingly, this approval is also conditioned to require monitoring of the new structure to ensure that it remains stable, and also requires that if any or all of the portions of the structure fail and are displaced to the beach below, that such structural components be retrieved from the beach in a timely manner (**Special Condition 2**).

Finally, there are inherent risks associated with development on and around eroding slopes in a dynamic coastal bluff environment; this applies to the project proposed as well as for the highway development in this area in general. The approved project is likely to be affected by bluff and shoreline erosion in the future. Although the Commission has sought to minimize the risks associated with the development proposed in this application (and in past actions with other development at this location), the risks cannot be eliminated entirely. Accordingly, this approval is conditioned for the City to assume all risks for developing at this location (see **Special Condition 4**).

### **3. Visual and Scenic Resources**

#### **Applicable Policies**

The City of Santa Cruz LCP includes strong protections for visual and scenic resources along the coast and requires that coastal protective structures be sensitive to the natural setting and minimize the alteration of the natural shoreline:

***Environmental Quality Element Policy 4.1.3** Require coastal protective structures, signs and public facilities to be sensitive to the natural setting and minimize the alteration of the natural shoreline.*

***Community Design Element Policy 2.1.2:** Minimize the impact of grading and development on important natural features such as bluffs and foothills.*

***Community Design Element Policy 2.1.3:** Protect the Monterey Bay National Marine Sanctuary and the shoreline and views to and along the ocean, recognizing their value as natural and recreational resources.*

***Community Design Element Policy 2.2.1:** Develop siting, scale, landscaping and other design guidelines to protect visually sensitive areas and ensure that development is compatible with the character of the area. Areas to be protected include... bluffs, scenic coastal areas...*

### **Consistency Analysis**

The City textured and colored the retaining wall to match the native soil of the surrounding bluff (see pages 5-6 of **Exhibit 2**), consistent with the requirements of Environmental Quality Element Policy 4.1.3. To further address the visual impacts of the wall, **Special Condition 5** requires native plant landscaping on the portions of the bluff that were disturbed by construction activities. Overall, as constructed and as conditioned, the project can be found consistent with the above-cited LCP public viewshed policies.

## **I. 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 that the activity may have on the environment.

The City of Santa Cruz, acting as lead agency, found that the project was exempt from CEQA requirements and issued a Categorical Exemption. 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 preceding coastal development permit findings discuss the relevant coastal resource issues with the proposal, and the permit conditions identify appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above, which 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 which approval of the proposed project, as conditioned, would have on the environment within the meaning of CEQA. Thus, if so conditioned, 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)

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. *Geologic Investigation*, Zinn Geology, May 12, 2009
2. *Geotechnical and Geologic Investigation for East Cliff Drive Slope Stabilization and Repair Project*, Pacific Crest Engineering, Inc. June 2009.
3. *Transportation and Public Works Commission Report*, City of Santa Cruz Public Works Dept., May 4, 2011.



REGULATORY AND JURISDICTIONAL BOUNDARIES  
City of Santa Cruz

Santa Cruz County  
Santa Cruz, Soquel Quadrangles (portions)

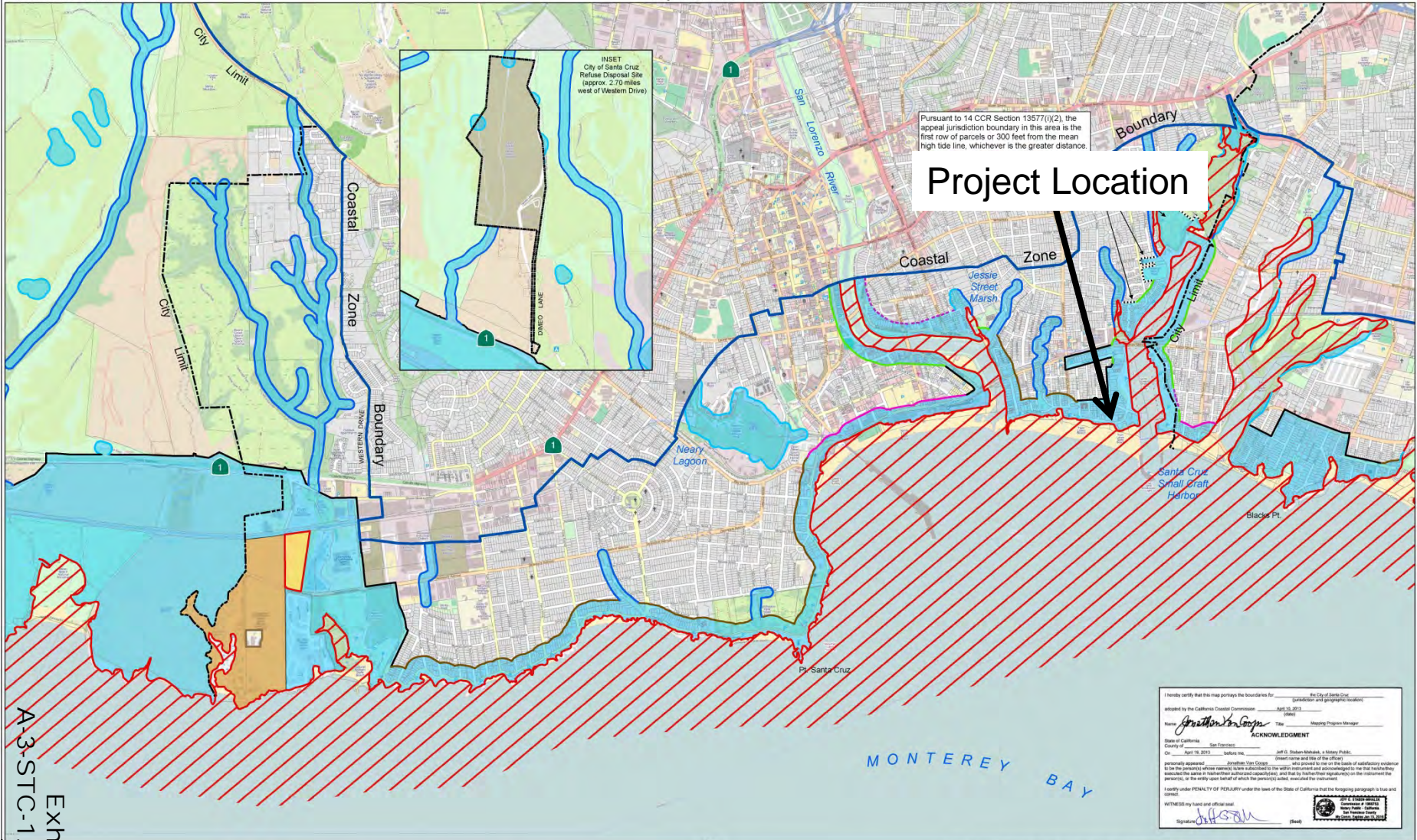
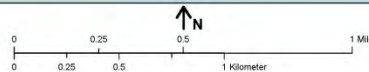


Exhibit 1  
A-3-STC-12-011  
1 OF 1

Technical Services Division - GIS Unit  
California Coastal Commission

Base map: (c) OpenStreetMap and contributors,  
Creative Commons-Share Alike License (CC-BY-SA).  
For illustrative purposes only.



\*The Appeal Jurisdiction shown on this map may include areas adjacent to streams  
depicted on the corresponding USGS 7.5 minute quadrangle maps that have been  
channelized or otherwise altered. Pursuant to 14 C.C.R. §13577(a), channelized  
streams not having significant habitat value should not be considered as a basis for  
delineating stream appeal jurisdiction.

I hereby certify that this map portrays the boundaries for \_\_\_\_\_  
jurisdiction and geographic location:  
adopted by the California Coastal Commission \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_  
State of California \_\_\_\_\_  
County of \_\_\_\_\_  
Date: \_\_\_\_\_  
I, \_\_\_\_\_, \_\_\_\_\_  
personally represented \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence  
that the foregoing is a true and correct copy of the map as the same was submitted to the Commission for its review and approval.  
I am duly qualified to act as a witness in the foregoing proceedings, and that I have not been disqualified from acting as a witness in the foregoing proceedings, or the whole or any part thereof, by any law of the State of California or the United States of America.  
WITNESS my hand and official seal  
Signature: \_\_\_\_\_ (Seal)



# Project Location



Photo Courtesy of California Coastal Records Project  
Copyright © 2010 Kenneth & Gabrielle Adelman. All rights reserved.  
[www.californiacoastline.org](http://www.californiacoastline.org)

Exhibit 2  
A-3-STC-12-011  
1 of 9



# Downcoast of Project Location







**Informal Access  
Path to Beach  
(1978)**





**Informal Access Path  
to Beach (2005)**



## Project As-Built (view from 4<sup>th</sup> Avenue)





# Project As Built (View from Beach)





# Last remaining Gap of Coastal Trail in Santa Cruz



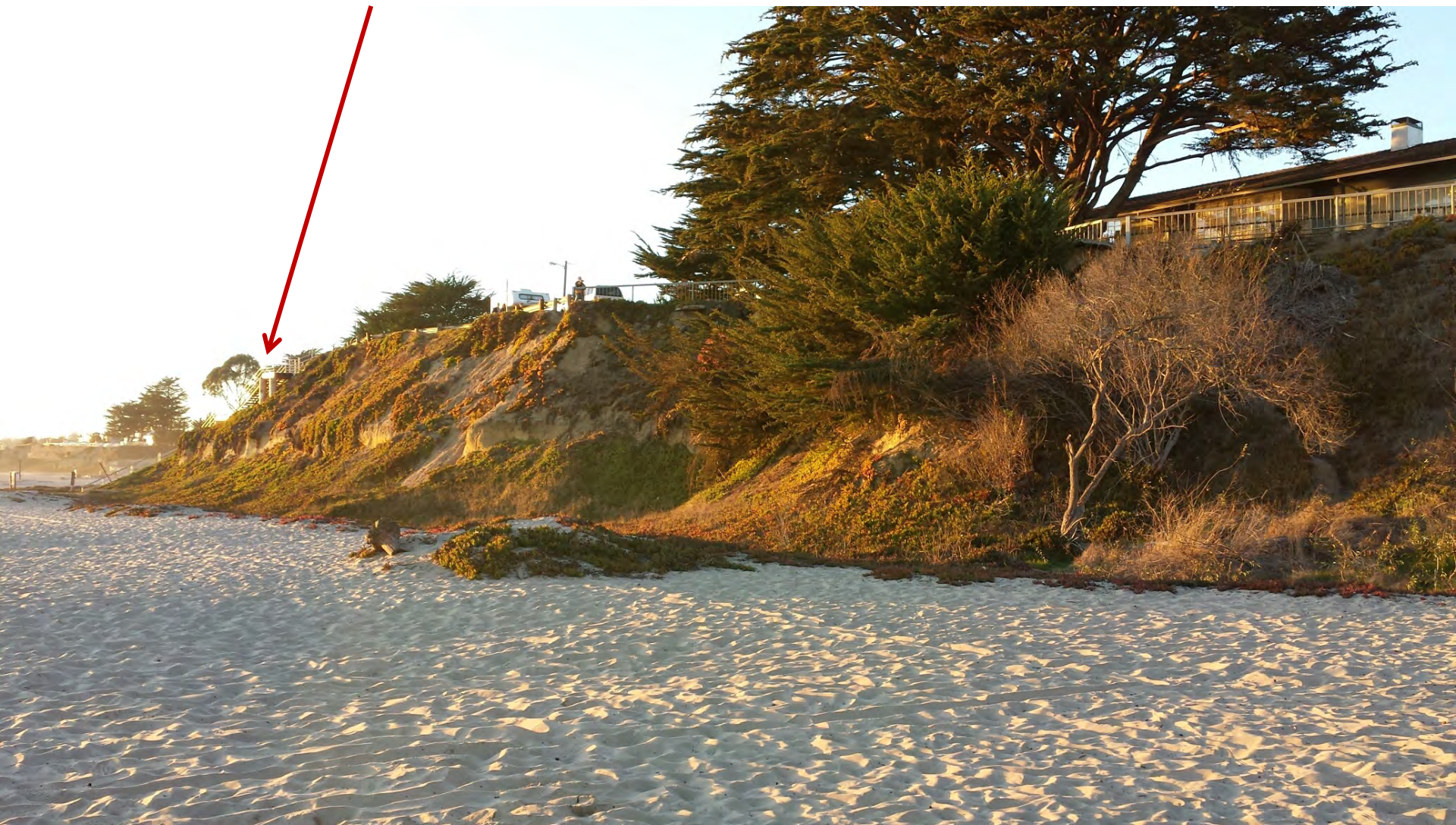


# Aerial View – Coastal Trail Gap





Existing public access stairs to beach at 3<sup>rd</sup> Avenue



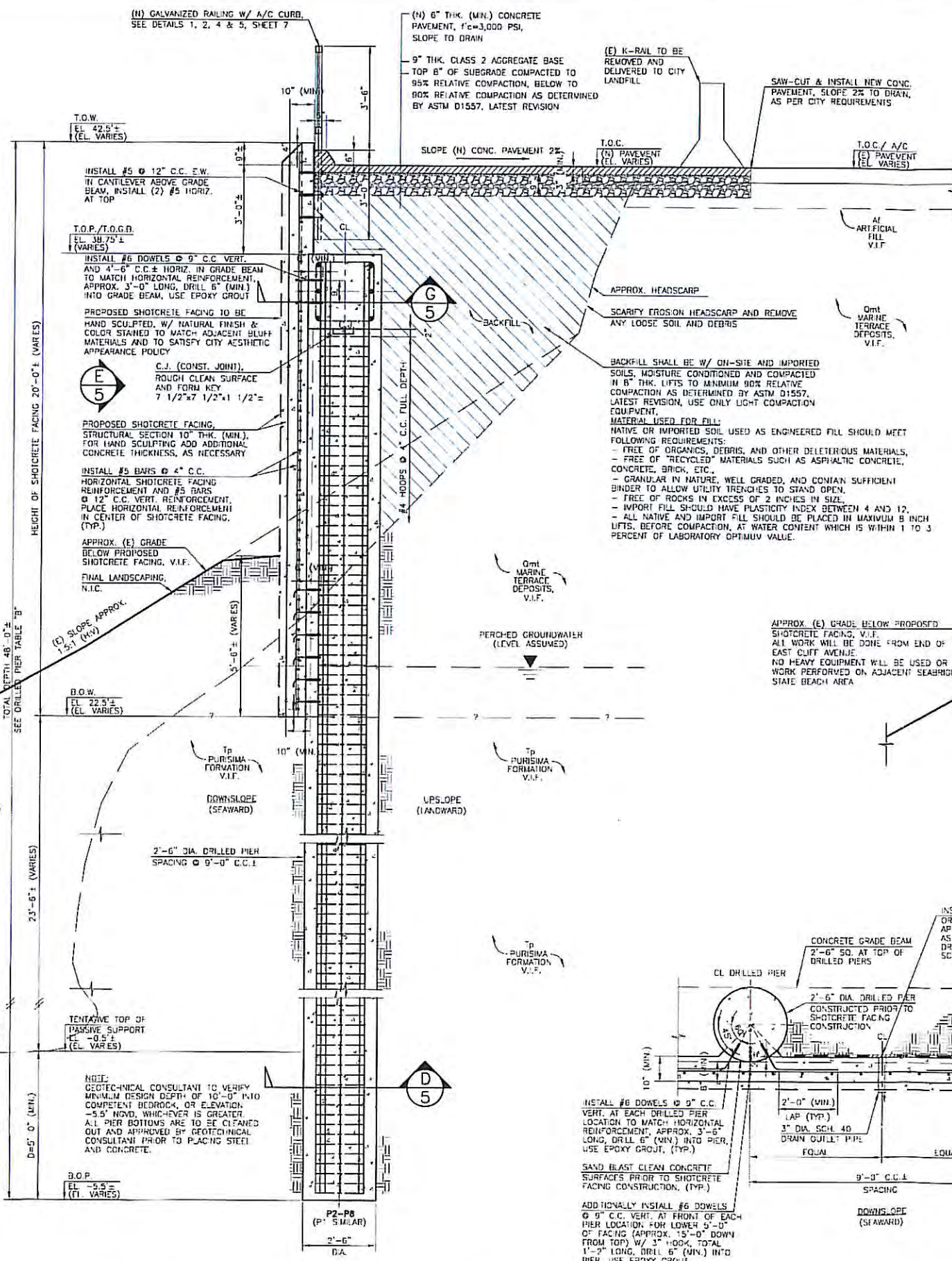




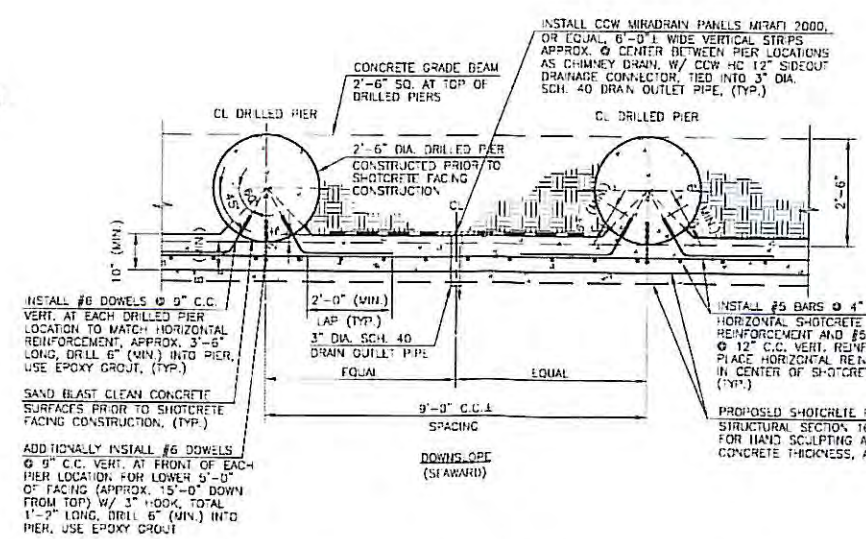




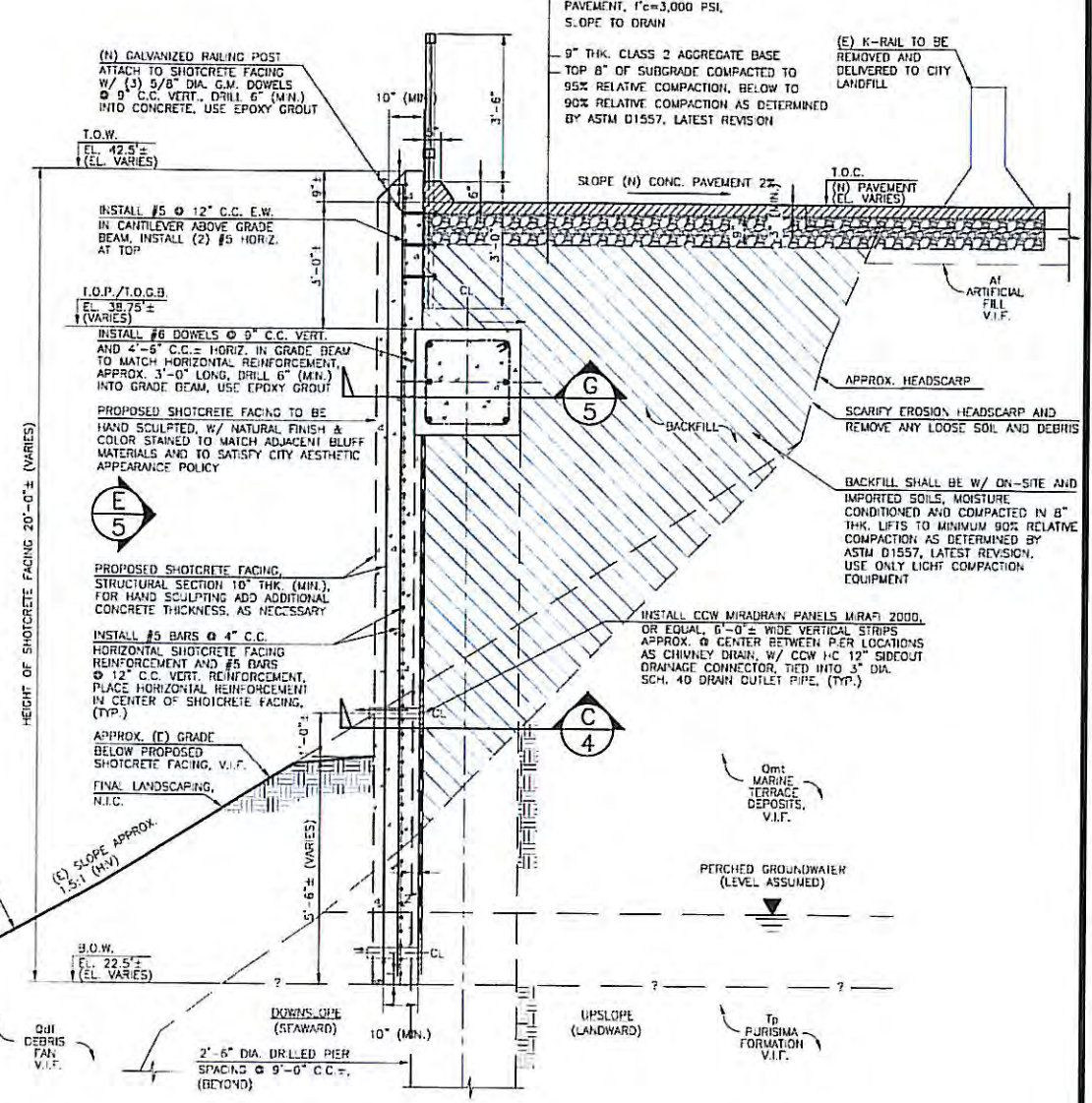




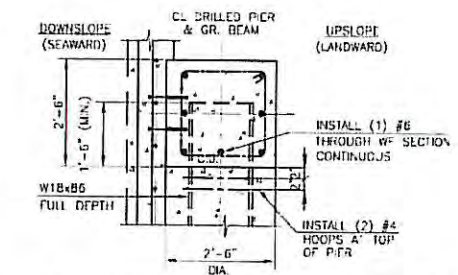
**SECTION-DRIILLED PIER CONSTRUCTION**  
SCALE: 1/2"=1'-0"



**SECTION-SHOTCRETE FACING W/ DRAIN**  
SCALE: 1/2"=1'-0"



**SECTION-SHOTCRETE FACING**  
SCALE: 1/2"=1'-0"



**ALT. SECTION-STEEL PILE**  
SCALE: 1/2"=1'-0"

**ABBREVIATIONS:**

C.C.	-CENTER TO CENTER
C.O.	-CLEAN OUT
E.W.	-EACH WAY
(E), (N)	-EXISTING, NEW
N.I.C.	-NOT IN CONTRACT
P.T.D.F.	-PRESSURE TREATED DOUGLAS FIR
T.O.G.B.	-TOP OF GRADE BEAM
T.O.W.	-TOP OF WALL
T. & B.	-TOP AND BOTTOM
U.N.O.	-UNLESS NOTED OTHERWISE
V.I.F.	-VERIFY IN FIELD
B.O.W.	-BOTTOM OF WALL
O.B.W.	-GRADE BELOW OF WALL
B.O.P.	-BOTTOM OF PIER

NOTE:  
TOPOGRAPHIC MAP INFORMATION BY HANAGAN LAND SURVEYING, INC., DATED 03-26-2009, SEE SHEET 2.  
- FOR TIEBACK TABLE "A" AND DRIILLED PIER TABLE "B" SEE SHEET 5.



**SOIL ENGINEERING CONSTRUCTION, INC.**  
927 ARBUCKLE STREET, REDWOOD CITY, CALIFORNIA 94063  
PHONE (650) 367-3595 FAX (650) 367-8139

**SOIL ENGINEERING CONSTRUCTION, INC.**  
REGISTERED PROFESSIONAL ENGINEER  
**GEORGE E. DREW**  
No. 20681  
EXP. 9-30-13  
CIVIL  
STATE OF CALIFORNIA

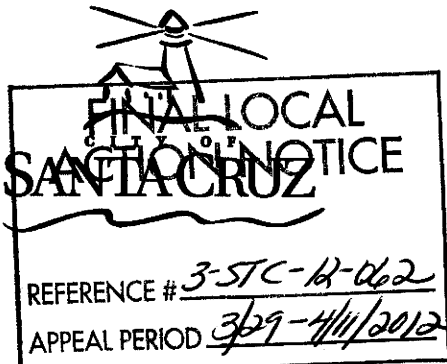
**EAST CLIFF DRIVE SLOPE STABILIZATION AND REPAIR PROJECT**  
SHEET 1 OF 2

**EAST CLIFF DRIVE-CITY OF SANTA CRUZ**  
RIGHT-OF-WAY, SANTA CRUZ, CALIFORNIA

FILE NO.	27-11-11
PROJECT	11-037
DWG. NO.	11-037-04
REVISION	12-09-11
DESIGNED BY	ME
CHECKED BY	SEC

4 OF 10 Exhibit 3  
A 3 STC 12-011  
3 of 3





Dept. of Planning and Community Development  
809 Center Street, Room 206  
Santa Cruz, CA 95060  
(831) 420-5100

## Notification of Final Local Action on Coastal Permits

Date: April 18, 2011

To: Attn: Susan Craig, Planner  
California Coastal Commission  
Central Coast District  
725 Front St., Ste 300  
Santa Cruz, CA 95060

From: City of Santa Cruz Planning Department

# RECEIVED

MAR 28 2012

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Please be advised of the following actions:

☐ Zoning Administrator hearing of \_\_\_\_\_  
(date)

Local appeals have ☐ have not ☐ been filed on the following case:

File No.: \_\_\_\_\_ Address: \_\_\_\_\_  
☐ Adopted findings and conditions are attached. ☐ Were previously submitted.

☒ Planning Commission hearing of April 7, 2011  
(date)

Local appeals have ☒ have not ☐ been filed on the following case numbers:

File No.: CP11-0015 Address: 104 4th Ave., Santa Cruz, CA  
☒ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ City Council hearing of \_\_\_\_\_  
(date)

Local appeals have ☐ have not ☐ been filed on the following case numbers:

File No.: \_\_\_\_\_ Address: \_\_\_\_\_  
☐ Adopted findings and conditions are attached. ☐ Were previously submitted.

☐ This project is not appealable to the California Coastal Commission. Section 24.04186.

Action Agenda for coastal permits acted upon is attached.



**Department of Planning &  
Community Development**

809 Center Street, Room 206  
Santa Cruz, CA 95060  
(831) 420-5100

## ZONING PERMIT

Appl./Owner: **Chris Chang**  
Address: **Public Works**  
**809 Center St.**  
**Santa Cruz CA 95060**

Rep.: **William & Elizabeth Engleman**  
Address: **104 4th Ave.**  
**Santa Cruz CA 95063**

The following permit(s) was/were issued on April 7, 2011 by the Planning Commission  
and will be effective on April 18, 2011 unless appealed, for CP11-0015

(CASE NO.)

at 104 4th Ave., Parcel No(s). 010-301-06  
(ADDRESS)

subject to the attached conditions.

- ☐ Administrative Use Permit
- ☒ Coastal Permit \* (see back for appeal information)
- ☐ Conditional Fence Permit
- ☒ Slope Regulations Modification Permit
- ☒ Design Permit
- ☐ Demolition/Conversion Permit (HIST/RES)
- ☐ Historic Alteration Permit
- ☐ Planned Development Permit
- ☐ Major/Minor Modification
- ☐ Relocation Permit/Reconstruction
- ☐ Sign Permit
- ☐ Special Use Permit
- ☐ Subdivision/Minor Land Division/Lot Line Adjustment
- ☒ Variance
- ☐

By:   
**Mike Ferry, Associate Planner**

This permit is issued to the owner of the property. In executing this permit, applicant/owner agrees to comply with all terms of permit(s), including conditions of approval, if any. Permit must be exercised within 36 months of date of issuance (above) unless otherwise indicated in conditions of approval. See reverse for information regarding appeals and property reassessment.

In accordance with Chapter 24.04 of the Santa Cruz Municipal Code, any interested person may appeal a final action of a hearing body or staff. Appeal of a decision of the City Planning Director or the Zoning Administrator must be made to the City Planning Commission through the Planning Department. Appeals of a decision of the City Planning Commission or Historic Preservation Commission must be made to the City Council through the City Clerk. All appeals must be made in writing and state the nature of the application and the basis upon which the decision is considered to be in error. Appeals must be accompanied by the required appeal filing fee. \*\*Appeals must be received no later than ten (10) calendar days following the action from which the appeal is being taken. If the tenth day falls on a weekend or holiday, the appeal period is extended to the next business day.

Whenever any permit is denied or withdrawn, no new application for the same or substantially the same project may be filed for a period of one year from the date of said denial or withdrawal. Where an application has been denied without prejudice, application for the same or substantially the same project may be filed within said period of one year.

---

#### \*COASTAL PERMITS

- ☐ This Coastal Permit is not appealable to the California Coastal Commission. Section 24.04186.
- ☒ \*\*This Coastal Permit is appealable to the California Coastal Commission following appeal to the Planning Commission and City Council. Appeals must be filed within ten (10) working days after final action by City Council. There is no fee. Appeal forms are available in the Regional Office of the Coastal Commission: 725 Front Street, Suite 300, Santa Cruz, CA 95060.

For permits not appealable to the Planning Commission or City Council, the effective date of this permit will be ten (10) working days after receipt by Coastal Commission of Final Action Notice from the City Planning Department.

---

In accordance with Section 65863.5 of the Government Code, a copy of this permit has been sent to the County Assessor. It is the Assessor's duty, under Section 402.2 of the Revenue and Taxation Code, to reassess the property to the extent permitted by law. If, after receiving your notice of assessment, your opinion of value differs from the Assessor's valuation, you have the right of protest and appeal. Contact the Assessor's Office immediately to discuss the valuation. If there is still a difference of opinion, you may request a hearing before the Assessment Appeals Board. Application for such hearing must be filed in writing with the Clerk of the County Board of Supervisors, County Courthouse, 701 Ocean Street, Santa Cruz, California 95060, between July 2 and August 26 of each tax year.

---



**ACTION AGENDA**  
**Planning Commission**  
**Regular Meeting**  
**7:00 p.m. - Thursday, April 7 - 2011**  
**City Council Chambers, 809 Center Street**

**Call to Order — 7:00 P.M.**

**Roll Call —**

**Present:** Commissioners D. Foster, P. Kennedy, R. Quartararo, W. Schultz, M. Whatley and Vice-Chair, M. Tustin.

**Absent:** None

**Staff:** Assistant Planning Director, A. Khoury; Principal Planner, K. Thomas; Principal Planner, E. Marlatt; Senior Planner, D. Lauritson; Associate Planner, M. Alsip; Assistant Director of Public Works, C. Schneider; Recorder, M. Schwarb.

**Audience:** 30 plus

**Statements of Disqualification —** Commissioner Kennedy disqualified himself from acting on item 3, 150 Fernside St., due to his business activities with the developer during the past year.

**Oral Communications —**

*No action shall be taken on these items.*

*The Chair may announce and set time limits at the beginning of each agenda item.*

Ed Davidson commented on the Railroad washout at Boregas Creek and handed out some letters he thought might interest the Planning Commission.

**Announcements —** None.

**Approval of Minutes —** Meeting of March 17, 2011.

**ACTION:** THE MINUTES OF THE MEETING OF MARCH 17, 2011, WERE APPROVED AS SUBMITTED, 4-0-2 WITH COMMISSIONERS QUARTARARO AND TUSTIN ABSTAINING.

## Action Agenda

## Consent Agenda —

*Items on the consent agenda are considered to be routine in nature and will be acted upon in one motion. Specific items may be removed by members of the Planning Commission or members of the public for separate consideration and discussion. Items removed will be considered in the order they appear on the agenda.*

- |    |   |                  |                       |
|----|---|------------------|-----------------------|
| 1. | <b>104 4th Ave.</b>   | <b>CP11-0015</b> | <b>APN 010-301-06</b> |
|    | Coastal Permit, Design Permit, Slope Modification and Variance to construct a cantilever retaining wall for a failing section of East Cliff Drive in the RL/OFR/CZO/SPO zone district. (Environmental Determination: Statutory Exemption (15269) Emergency Projects) (Engelman William H & Elizabeth, owner/filed: 1/19/2011) |                  |                       |
|    |   |                  | MF                    |

This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

**RECOMMENDATION:** That the Planning Commission acknowledge the environmental determination and approve the Variance, Slope Modification, Design Permit and Coastal Permit based on the Findings in the report and the attached Conditions of Approval (Exhibit A).

**ACTION: THE PLANNING COMMISSION ACKNOWLEDGED THE ENVIRONMENTAL DETERMINATION AND APPROVED THE VARIANCE, SLOPE MODIFICATION, DESIGN PERMIT AND COASTAL PERMIT ON A VOTE OF 6-0.**

## Old Business — General Business

(continued from the Planning Commission meeting of March 17)

2. **2012-2014 Capital Improvement Program Consistency with the General Plan**  
**RECOMMENDATION:** That the Planning Commission by motion find that the 2012-2014 Proposed Capital Improvement Program is consistent with the General Plan.

**ACTION: THE PLANNING COMMISSION FOUND THE 2012-2014 PROPOSED CAPITAL IMPROVEMENT PROGRAM CONSISTENT WITH THE GENERAL PLAN ON A VOTE OF 5-1, COMMISSIONER FOSTER OPPOSED.**

**ACTION: THE PLANNING COMMISSION RECOMMENDED TO THE CITY COUNCIL THAT THE CAPITAL IMPROVEMENT PROGRAM INCLUDE THE GOSS/MARKET BICYCLE LANE AND THAT THE KING STREET BICYCLE STUDY BE FUNDED AND BECOME A PREREQUISITE FOR MOVING FORWARD WITH INTERCHANGES ON MISSION STREET AT CHESTNUT AND BAY ON A VOTE OF 5-1 WITH COMMISSIONER KENNEDY OPPOSED.**



**Action Agenda**

**Old Business – Public Hearing**

(continued from the Planning Commission meeting of March 17)

3.     **150 Fernside St.**                             **CP10-0182**                             **APN 008-141-09**  
Demolition Authorization, Design and Heritage Tree Removal Permits and Tentative Subdivision Map to construct six townhouse condominium units in the R-L (Multiple Residence-Low Density District) zone district. (Environmental Determination: Categorical Exemption) (Stuart Rob B & Karen L H/W TC and as sold to Steven Graves and Fred Lattanzio, owner/filed: 12/9/2010)                             MA  
**RECOMMENDATION:** That the Planning Commission recommend to the City Council acknowledgement of the environmental determination and approval of the Demolition Authorization, Heritage Tree Removal, Design Permit and Tentative Subdivision Map to based on the findings in the report and the Conditions of Approval listed in Exhibit "A".

**ACTION:**     **THE PLANNING COMMISSION RECOMMENDED TO THE CITY COUNCIL ACKNOWLEDGEMENT OF THE ENVIRONMENTAL DETERMINATION AND APPROVAL OF THE DEMOLITION AUTHORIZATION, HERITAGE TREE REMOVAL, DESIGN PERMIT AND TENTATIVE SUBDIVISION MAP ON A VOTE OF 5-0-1 WITH COMMISSIONER KENNEDY ABSTAINING.**

**New Business – Public Hearing**

4.     **407 Broadway**                             **CP09-0036**                             **APN 005-302-24**  
Design Permit for a 111-room hotel ("Hyatt Place"); Planned Development Permit to allow a hotel in the RM Zoning District, and to allow variations to some side yard setbacks, and to allow one additional building story to a height of 42 feet; and, an Administrative Use Permit for a low-risk alcohol outlet within the hotel. One heritage tree will be removed for the project. (Environmental Determination: Mitigated Negative Declaration) (California Coastal Resorts LLC, owner/filed: 10/14/2009)                             DL  
**RECOMMENDATION:**     **That the Planning Commission recommend that the City Council adopt the Mitigated Negative Declaration and approve the Planned Development, Design, and Administrative Use Permits, based on the Findings listed in the attached resolution and the Conditions of Approval listed in Exhibit "A".**

**ACTION:**     **THE PLANNING COMMISSION CONTINUED THIS ITEM TO THE AGENDA OF APRIL 21, 2011 ON A VOTE OF 6-0.**

**Informational Items – None**

*No action shall be taken on these items.*

**Action Agenda**

**Subcommittee/Advisory Body Oral Reports — None**

*No action shall be taken on these items.*

- Chairperson's Report — None
- Planning Department Report — None

**Items Referred to Future Agendas — None**

**Adjournment — 11:40 P.M.**

The next Planning Commission meeting will take place on April 21, 2011 in the City Council Chambers.

Any writing related to an agenda item for the open session of this meeting distributed to the Planning Commission less than 72 hours before this meeting is available for inspection at the City Planning Department, 809 Center Street, Room 107 or on the City's website [www.cityofsantacruz.com](http://www.cityofsantacruz.com). These writings will also be available for review at the Planning Commission meeting in the public review binder at the rear of the Council Chambers.

**APPEALS** - Any person who believes that a final action of this advisory body has been taken in error may appeal that decision to the City Council. Appeals must be in writing, setting forth the nature of the action and the basis upon which the action is considered to be in error, and addressed to the City Council in care of the City Clerk.

Appeals must be received by the City Clerk within ten (10) calendar days following the date of the action from which such appeal is being taken. An appeal must be accompanied by a five hundred dollar (\$500) filing fee, unless the item involves a Coastal Permit that is appealable to the Coastal Commission, in which case there is no fee.

EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT

**104 4th Avenue – Application No. CP11-0015**

**Variance, Slope Modification, Design Permit and Coastal Permit to construct a cantilever road deck and retaining system on portions of a private lot and public right-of-way in the RL and OF-R zone districts.**

1. If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.
2. All plans for future construction which are not covered by this review shall be submitted to the City Planning and Community Development Department for review and approval.
3. The applicant shall be responsible for the completeness and accuracy of all forms and supporting material submitted in connection with any application. Any errors or discrepancies found therein may result in the revocation of any approval or permits issued in connection therewith.
4. The final plans shall include all recommendations listed in the Geotechnical and Geologic Investigation Report dated June 11, 2009 prepared by Pacific Crest Engineering and Zinn Geology, including drainage, erosion control and maintenance.
5. During all grading and subsurface excavations (including utility-line trenching), construction will be halted if significant archaeological resources are discovered. For the purpose of this use permit, significant archaeological resources shall include the remains of previous Indian living areas or human burials. In the instance of Indian living areas, these objects shall be recorded and mapped prior to further excavation on that portion of the site. In the event human burials are discovered during excavation, work shall be halted and the County Coroner, the Northwest Indian Cemetery Protective Association (NICPA), and other appropriate authorities shall be notified. Mitigation measures developed by the applicant and authorized archaeologists shall be subject to the approval of the Planning Department.
6. Any information developed as a result of this survey shall be forwarded to the County Archaeological Society, the County Historical Museum, and the Santa Cruz Collection, University of California Library.
7. The final plans shall include native, drought tolerant plantings on areas of the slope that have been disturbed.



## EXHIBIT "B"

### FINDINGS FOR THE APPROVAL OF A COASTAL PERMIT FOR THE PROJECT ON PROPERTY AT 104 4th Avenue, Santa Cruz, Application No. CP11-0015

Coastal Permit, Design Permit, Slope Modification and Variance to construct a cantilever retaining wall for a failing section of East Cliff Drive in the RL/OFR/CZO/SPO zone district.

#### **FINDINGS**

##### **Coastal Permit, Section 24.08.250**

##### **11. Maintain views between the sea and the first public roadway parallel to the sea.**

The view of the ocean will remain unchanged as the project involves roadbed alterations only. The project design includes construction of a screen wall that will hang from the edge of the roadbed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation in the project file.

##### **12. Protect vegetation, natural habitats, and natural resources consistent with the Local Coastal Land Use Plan.**

The project site is an existing road bed that does not contain landscaping. Only a small portion of the project would disturb the existing vegetation on the bluff and that will be replanted with native species. The project site is located within a mapped archeological sensitive area. The applicant submitted an archeological reconnaissance report dated January 28, 2011 that determined the project should not be delayed for archeological reasons and that standard language has been included in the Conditions of Approval if resources are discovered during construction.

##### **13. Be consistent with any applicable design plans and/or area plans incorporated into the Local Coastal Land Use Plan.**

The project is consistent with the Seabright Area Plan in that it will provide safe public access and emergency vehicle access to existing homes in the Seabright area. **14. Maintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan.**

The proposed project will maintain the existing public and emergency access to three homes. Existing public coastal access is provided via a stairway the City installed and maintains on East Cliff Drive, at the terminus of 3rd Avenue which is located 300 feet west of the project site. Additional public coastal access is provided via a pedestrian path adjacent to the Harbor and 450 feet east of the project site. Coastal access at this project site would primarily serve the property at 104 4th Avenue and several homes on Mariner Parkway. Because of the existing public coastal access in the immediate area, the City does not intend to construct additional pedestrian access at this location.

##### **15. Be consistent with the Local Coastal Land Use Plan goal of providing visitor-serving needs as appropriate.**

The project will provide safe access to three dwellings in the Coastal Zone. There is no visitor serving needs at this location.

**16. Be consistent with the Local Coastal Land Use Plan goal of encouraging coastal development uses as appropriate.**

The project will provide safe access for existing residents and emergency vehicles.

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863 FAX (831) 427-4877  
[www.coastal.ca.gov](http://www.coastal.ca.gov)

**COMMISSION NOTIFICATION OF APPEAL**

DATE: April 12, 2012

TO: Julianna Rebagliata, Planning Director  
City of Santa Cruz, Department of Planning & Community Development  
Santa Cruz City Hall  
809 Center Street, Room 206  
Santa Cruz, CA 95060

FROM: Madeline Cavalieri, District Manager

RE: **Commission Appeal No. A-3-STC-12-011**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: CP11-0015  
Applicant(s): City Of Santa Cruz  
Description: Construct a cantilever retaining wall for failing section of East Cliff Drive.  
Location: 104 - 4th Avenue (@ East Cliff Drive), Santa Cruz (Santa Cruz County) (APN(s) 010-301-06)  
Local Decision: Approved w/ Conditions  
Appellant(s): Commissioner Mary Shallenberger; Commissioner Esther Sanchez  
Date Appeal Filed: 4/11/2012

The Commission appeal number assigned to this appeal is A-3-STC-12-011. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the City of Santa Cruz's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact John Akeman at the Central Coast District office.

cc: William and Elizabeth Engleman

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060-4508  
VOICE (831) 427-4863 FAX (831) 427-4877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name: California Coastal Commission; Commissioners Shallenberger and Sanchez

Mailing Address: 45 Fremont Street, Suite 2000

City: San Francisco

Zip Code: CA, 94105

Phone: (415) 904-5200

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Santa Cruz

2. Brief description of development being appealed:

Construction of a cantilever retaining wall for failing section of East Cliff Drive.

**RECEIVED****APR 11 2012****CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA**

3. Development's location (street address, assessor's parcel no., cross street, etc.):

104 - 4th Avenue @ East Cliff Drive, Santa Cruz APN 010-301-06

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions  
☒ Approval with special conditions:  
☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-3-STC-12-011

DATE FILED: April 11, 2012

DISTRICT: Central Coast



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator  
☐ City Council/Board of Supervisors  
☒ Planning Commission  
☐ Other

6. Date of local government's decision: April 7, 2011

7. Local government's file number (if any): CP11-0015

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

City of Santa Cruz  
809 Center Street  
Santa Cruz, CA 95060

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) William and Elizabeth Engleman  
104 -4th Avenue  
Santa Cruz, CA 95062

(2) Juliana Rebagliati, Planning Director  
City of Santa Cruz  
809 Center Street  
Santa Cruz, CA 95060

(3)

(4)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mary K Schallenberger  
Appellant or Agent

Date: April 11, 2012

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

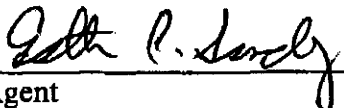
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed:   
Appellant or Agent

Date: April 11, 2012

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

(Document2)

**Reasons for Appeal: City of Santa Cruz Coastal Development Permit 11-0015 (104 4<sup>th</sup> Avenue)**

The City of Santa Cruz approved a coastal permit, design permit, slope modification and variance to construct a bluff retaining system and cantilevered road deck for a failing section of East Cliff Drive, to protect and stabilize the actively eroding bluff at the eastern terminus of East Cliff Drive just east of 4<sup>th</sup> Avenue. This section of East Cliff Drive provides the only access to three existing homes. The City-approved project is inconsistent with the City of Santa Cruz's certified LCP for the following reasons:

First, the City's LCP includes a number of policies that protect coastal bluffs and require mitigation for the impacts of shoreline structures. For example, Environmental Quality Element Policy 3.2.2 prohibits bluff development on slopes that are greater than 30% (which is the case here) unless impacts are mitigated to an insignificant level. Additionally, Safety Element Policy 1.2.3 and Implementation Plan Section 24.10.2430 require that structures that alter shoreline processes be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The approved project includes installing a bluff retaining system that would retain bluff materials behind it, prohibiting any sand that is present from contributing to the local sand supply. As stated in the City's findings, the existing road failure is the result of wave action eroding the bluff and subsequent land sliding and erosion. This natural bluff erosion contributes sand to the local beach sand supply, and interfering with it will impact with the local sand supply. The City-approved project did not mitigate for the loss of sand supply due to the project, inconsistent with the above LCP policies and standards.

Second, the LCP requires new development to ensure stability over the life of the structure. It appears that the City's approval does not describe the expected life of the project, and it appears that the City's approval does not consider the stability of the development over time, especially as the bluff continues to erode and is impacted by sea level rise. Therefore, it not clear whether or not the City-approved project ensures stability over the life of the project, as required by the LCP.

Third, the project includes the construction of a cantilevered road bed that will extend over the edge of the bluff and out into the beach area. It is not clear that such a structure can be allowed consistent with LCP Safety Element Policy 1.2.1, which requires a 50-year setback for development., and with Implementation Plan Section 24.10.2430.. Further, the City granted a variance to allow for this development, but it is not clear that the variance was issued consistent with the LCP, including because in determining whether or not the variance would be detrimental to adjacent properties, it appears the City considered only the adjacent residential properties, and not the adjacent public beach, which would be encroached upon by the approved roadbed.

Finally, the City did not consider the public access impacts caused by the sand supply impacts of the project, inconsistent with Land Use Element Policy 3.5 et. seq., Land Use Element Policy 5.6.2., and Parks and Recreation Element Policies 1.4.6, 1.7, 1.71, 1.7.6, and 4.2. .The approved project will fix a portion of the coastal bluff and retain sand material behind it, resulting in a loss of sand supply to the beach. The City's LCP

requires projects that adversely impact public access to mitigate those impacts and includes policies that provide for enhancing public access along East Cliff Drive, but no public access mitigation was part of the project or required as a condition of approval.

In summary, based on the information available, it appears that the approved project is inconsistent with LCP policies related to hazards, bluff development and public access.



**Department of Planning &  
Community Development**  
809 Center Street, Room 206  
Santa Cruz, CA 95060  
(831) 420-5100

## ZONING PERMIT

Appl./Owner: **Chris Chang**  
Address: **Public Works**  
**809 Center St.**  
**Santa Cruz CA 95060**

Rep.: **William & Elizabeth Engleman**  
Address: **104 4th Ave.**  
**Santa Cruz CA 95063**

The following permit(s) was/were issued on April 7, 2011 by the Planning Commission  
and will be effective on April 18, 2011 unless appealed, for CP11-0015

(CASE NO.)

at 104 4th Ave. Parcel No(s). 010-301-06

(ADDRESS)

subject to the attached conditions.

- ☐ Administrative Use Permit
- ☒ Coastal Permit \* (see back for appeal information)
- ☐ Conditional Fence Permit
- ☒ Slope Regulations Modification Permit
- ☒ Design Permit
- ☐ Demolition/Conversion Permit (HIST/RES)
- ☐ Historic Alteration Permit
- ☐ Planned Development Permit
- ☐ Major/Minor Modification
- ☐ Relocation Permit/Reconstruction
- ☐ Sign Permit
- ☐ Special Use Permit
- ☐ Subdivision/Minor Land Division/Lot Line Adjustment
- ☒ Variance

By:   
**Mike Ferry, Associate Planner**

This permit is issued to the owner of the property. In executing this permit, applicant/owner agrees to comply with all terms of permit(s), including conditions of approval, if any. Permit must be exercised within 36 months of date of issuance (above) unless otherwise indicated in conditions of approval. See reverse for information regarding appeals and property reassessment.



In accordance with Chapter 24.04 of the Santa Cruz Municipal Code, any interested person may appeal a final action of a hearing body or staff. Appeal of a decision of the City Planning Director or the Zoning Administrator must be made to the City Planning Commission through the Planning Department. Appeals of a decision of the City Planning Commission or Historic Preservation Commission must be made to the City Council through the City Clerk. All appeals must be made in writing and state the nature of the application and the basis upon which the decision is considered to be in error. Appeals must be accompanied by the required appeal filing fee. \*\*Appeals must be received no later than ten (10) calendar days following the action from which the appeal is being taken. If the tenth day falls on a weekend or holiday, the appeal period is extended to the next business day.

Whenever any permit is denied or withdrawn, no new application for the same or substantially the same project may be filed for a period of one year from the date of said denial or withdrawal. Where an application has been denied without prejudice, application for the same or substantially the same project may be filed within said period of one year.

---

#### \*COASTAL PERMITS

- ☐ This Coastal Permit is not appealable to the California Coastal Commission. Section 24.04186.
- ☐ \*\*This Coastal Permit is appealable to the California Coastal Commission following appeal to the Planning Commission and City Council. Appeals must be filed within ten (10) working days after final action by City Council. There is no fee. Appeal forms are available in the Regional Office of the Coastal Commission: 725 Front Street, Suite 300, Santa Cruz, CA 95060.

For permits not appealable to the Planning Commission or City Council, the effective date of this permit will be ten (10) working days after receipt by Coastal Commission of Final Action Notice from the City Planning Department.

---

In accordance with Section 65863.5 of the Government Code, a copy of this permit has been sent to the County Assessor. It is the Assessor's duty, under Section 402.2 of the Revenue and Taxation Code, to reassess the property to the extent permitted by law. If, after receiving your notice of assessment, your opinion of value differs from the Assessor's valuation, you have the right of protest and appeal. Contact the Assessor's Office immediately to discuss the valuation. If there is still a difference of opinion, you may request a hearing before the Assessment Appeals Board. Application for such hearing must be filed in writing with the Clerk of the County Board of Supervisors, County Courthouse, 701 Ocean Street, Santa Cruz, California 95060, between July 2 and August 26 of each tax year.

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**Department of Planning &  
Community Development**

809 Center Street, Room 206  
Santa Cruz, CA 95060  
(831) 420-5100

## ZONING PERMIT

Appl./Owner: **Chris Cheng**  
Address: **Public Works**  
**809 Center St.**  
**Santa Cruz CA 95060**

Rep.: **William & Elizabeth Engleman**  
Address: **104 4th Ave.**  
**Santa Cruz CA 95063**

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(CASE NO.)

at 104 4th Ave., Parcel No(s). 010-301-06

(ADDRESS)

subject to the attached conditions.

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- ☐ Major/Minor Modification
- ☐ Relocation Permit/Reconstruction
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- ☐ Special Use Permit
- ☐ Subdivision/Minor Land Division/Lot Line Adjustment
- ☒ Variance

By:   
**Mike Ferry, Associate Planner**

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**Department of Planning &  
Community Development**

809 Center Street, Room 206  
Santa Cruz, CA 95060  
(831) 420-5100

## ZONING PERMIT

Appl./Owner: **Chris Chang**  
Address: **Public Works**  
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**Santa Cruz CA 95060**

Rep.: **William & Elizabeth Engleman**  
Address: **104 4th Ave.**  
**Santa Cruz CA 95063**

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and will be effective on April 18, 2011 unless appealed, for CP11-0015  
(CASE NO.)  
at 104 4th Ave., Parcel No(s). 010-301-06  
(ADDRESS)

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- ☐ Subdivision/Minor Land Division/Lot Line Adjustment
- ☒ Variance
- ☐

By: Mike Ferry  
**Mike Ferry, Associate Planner**

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FILE COPY



AGENDA  
Planning Commission  
Regular Meeting  
7:00 p.m. - Thursday, April 7 - 2011  
City Council Chambers, 809 Center Street

Call to Order —

Roll Call — Mari Tustin, Vice Chair; David Foster; Peter Kennedy; Rod Quartararo; Bill Schultz; Melissa Whatley

Statements of Disqualification —

Oral Communications —

*No action shall be taken on these items.*

*The Chair may announce and set time limits at the beginning of each agenda item.*

Announcements —

Approval of Minutes — Meeting of March 17, 2011

Consent Agenda —

*Items on the consent agenda are considered to be routine in nature and will be acted upon in one motion. Specific items may be removed by members of the Planning Commission or members of the public for separate consideration and discussion. Items removed will be considered in the order they appear on the agenda.*

1. 104 4th Ave. CP11-0015 APN 010-301-06  
Coastal Permit, Design Permit, Slope Modification and Variance to construct a cantilever retaining wall for a failing section of East Cliff Drive in the RL/OFR/CZO/SPO zone district. (Environmental Determination: Statutory Exemption (15269) Emergency Projects) (Engelman William H & Elizabeth, owner/filed: 1/19/2011) MF  
This project requires a Coastal Permit which is appealable to the California Coastal Commission after all possible appeals are exhausted through the City.

**RECOMMENDATION:** That the Planning Commission acknowledge the environmental determination and approve the Variance, Slope Modification, Design Permit and Coastal Permit based on the Findings in the report and the attached Conditions of Approval (Exhibit A).

**Old Business — General Business**

(continued from the Planning Commission meeting of March 17)

2. 2012-2014 Capital Improvement Program Consistency with the General Plan  
RECOMMENDATION: That the Planning Commission by motion find that the 2012-2014 Proposed Capital Improvement Program is consistent with the General Plan.

**Old Business — Public Hearing**

(continued from the Planning Commission meeting of March 17)

3. 150 Fernside St. CP10-0182 APN 008-141-09  
Demolition Authorization, Design and Heritage Tree Removal Permits and Tentative Subdivision Map to construct six townhouse condominium units in the R-L (Multiple Residence-Low Density District) zone district. (Environmental Determination: Categorical Exemption) (Stuart Rob B & Karen L H/W TC and as sold to Steven Graves and Fred Lattanzio, owner/filed: 12/9/2010) MA  
RECOMMENDATION: That the Planning Commission recommend to the City Council acknowledgement of the environmental determination and approval of the Demolition Authorization, Heritage Tree Removal, Design Permit and Tentative Subdivision Map to based on the findings in the report and the Conditions of Approval listed in Exhibit "A".

**New Business — Public Hearing**

4. 407 Broadway CP09-0036 APN 005-302-24  
Design Permit for a 111-room hotel ("Hyatt Place"); Planned Development Permit to allow a hotel in the RM Zoning District, and to allow variations to some side yard setbacks, and to allow one additional building story to a height of 42 feet; and, an Administrative Use Permit for a low-risk alcohol outlet within the hotel. One heritage tree will be removed for the project. (Environmental Determination: Mitigated Negative Declaration) (California Coastal Resorts LLC, owner/filed: 10/14/2009) DL  
RECOMMENDATION: That the Planning Commission recommend that the City Council adopt the Mitigated Negative Declaration and approve the Planned Development, Design, and Administrative Use Permits, based on the Findings listed in the attached resolution and the Conditions of Approval listed in Exhibit "A".

**Informational Items —**

*No action shall be taken on these items.*

**Subcommittee/Advisory Body Oral Reports —**

*No action shall be taken on these items.*

- Chairperson's Report
- Planning Department Report

**Items Referred to Future Agendas —**

**Adjournment —**

The next Planning Commission meeting will take place on April 21, 2011 in the City Council Chambers.

Any writing related to an agenda item for the open session of this meeting distributed to the Planning Commission less than 72 hours before this meeting is available for inspection at the City Planning Department, 809 Center Street, Room 107 or on the City's website [www.cityofsantacruz.com](http://www.cityofsantacruz.com). These writings will also be available for review at the Planning Commission meeting in the public review binder at the rear of the Council Chambers.

**APPEALS** - Any person who believes that a final action of this advisory body has been taken in error may appeal that decision to the City Council. Appeals must be in writing, setting forth the nature of the action and the basis upon which the action is considered to be in error, and addressed to the City Council in care of the City Clerk.

Appeals must be received by the City Clerk within ten (10) calendar days following the date of the action from which such appeal is being taken. An appeal must be accompanied by a five hundred dollar (\$500) filing fee, unless the item involves a Coastal Permit that is appealable to the Coastal Commission, in which case there is no fee.





## PLANNING COMMISSION AGENDA REPORT

DATE: March 31, 2011

AGENDA OF: April 7, 2011

ITEM NO: 1 CP11-0015

104 4<sup>th</sup> Avenue

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**RECOMMENDATION:** That the Planning Commission acknowledge the environmental determination and approve the Variance, Slope Modification, Design Permit and Coastal Permit based on the Findings listed below and the attached Conditions of Approval (Exhibit A).

---

### PROJECT DATA:

Property Owner: William & Elizabeth Engelman APN: 010-301-06  
City of Santa Cruz Right-of-way

Application Type: Variance, Slope Modification, Design Permit and Coastal Permit to construct a cantilever road deck and retaining system on portions of a private lot and public right-of-way in the RL and OF-R zone districts.

Zoning: Multiple Residential (RL) and Ocean Front Recreational (OF-R) zone districts

Project Consistency: With approval of a Variance and Slope Modification, the proposed use is consistent with the Zoning Ordinance.

General Plan: Low-Medium Residential (LM), Coastal Recreation (CR)  
Project Consistency: With approval of a Variance and Slope Modification, the proposed use is consistent with the General Plan.

Land Use - Existing: Public access and residential uses  
- Proposed: Public access and residential uses  
- In area: Public access, recreation uses and residential uses

Parking: Not applicable

Lot Area: Public right-of-way

Environmental Review: Statutory Exemption (15269) Emergency Projects

Planning Staff: Michael S. Ferry, AICP

**FILE COPY**

Exhibit 6

A-3-STC-12-011

## PROJECT DESCRIPTION

The Slope Modification, Variance, Design and Coastal Permits are required to construct a cantilever road deck and retaining system to protect and stabilize the actively eroding bluff at the eastern terminus of East Cliff Drive just east of 4<sup>th</sup> Avenue. This section of road provides access to three homes and is located at the top of the destabilized bluff. The Assistant Public Works Director, in conjunction with a soils engineer and geologist has reported that this section of bluff is threatened by imminent and continued collapse of the coastal bluff.

## BACKGROUND

The project area is located at the eastern terminus of East Cliff Drive just east of 4th Avenue. Wave action along the base of the bluff several decades ago resulted in landslides undermining the right-of-way and causing the collapse of large sections of East Cliff Drive near the Santa Cruz Harbor and above Seabright Beach. The project site is a small section of the remaining East Cliff Drive right-of-way that provides the only access to three homes. The bluff where the roadbed is exposed no longer has active erosion by coastal waves; however, the bluff continues to erode and fail. This area has experienced shallow land sliding as the exposed earth materials lay back to a shallower slope angle and more stable configuration. As the bluff continues to retreat, access to the residences will be cut off as well as access for service and emergency vehicles. The City is responsible to provide access via the public right-of-way to these homes and would have to purchase and demolish them to relinquish that responsibility.

City staff worked with the State Coastal Commission staff to establish the Coastal Permit process and design requirements for the proposed road improvements. The discussions and site visits were primarily focused on the location and staging of the construction as well as the visual impacts of the project as seen from the beach. The need for coastal access for pedestrians from the project site to the beach via a stairway was also discussed.

Existing pedestrian access is provided via a stairway the City installed and maintains on East Cliff Drive, at the terminus of 3<sup>rd</sup> Avenue which is located 300 feet west of the project site. Additional public coastal access is provided via a pedestrian path adjacent to the Harbor and 450 feet east of the project site. Coastal access at this project site would primarily serve the property at 104 4<sup>th</sup> Avenue and several homes on Mariner Parkway. Because of the existing public coastal access in the immediate area, the City does not intend to construct additional pedestrian access at this location. Findings for approval of a Coastal Permit are attached to this report.

The project site is located within a mapped archeological sensitive area. The applicant submitted an archeological reconnaissance report dated January 28, 2011 that determined the project should not be delayed for archeological reasons and that standard language be included in the Conditions of Approval if resources are discovered during construction. That language is included in the Conditions of Approval.



AGENDA REPORT  
PLANNING COMMISSION – April 7, 2011  
SUBJECT: 104 4<sup>th</sup> Avenue, Application No. CP11-0015  
PAGE 3

Section 24.08.810 of the Municipal Code requires approval of a Slope Modification and a Variance by the Planning Commission for this project. Section 24.08.230 Municipal Code requires approval of a Coastal Permit and Section 24.08.410-12 requires approval of a Design Permit. Findings for approval of a Slope Modification, Variance, Coastal and Design Permits are attached to this report.

**ANALYSIS**

The slope regulations were enacted to minimize the risks associated with project development in areas characterized by combustible vegetation and steep and/or unstable slopes. Such areas include canyons, arroyos and any slope over thirty percent in grade. A further purpose is to avoid excessive height, bulk and mass normally associated with the construction of buildings on slopes. While the slope regulations primarily focus on buildings, a Slope Modification and Variance for structures such as this on slopes exceeding 30-percent is required. A Slope Modification and Variance can be approved where strict compliance with the slope modification regulations creates a particular physical hardship and there are no reasonable alternatives to the exception. The Slope Modification and Variance findings can be made under these circumstances.

The findings most applicable to projects such as this require impacts associated with development in environmental constraint areas to be mitigated and that the structures be designed by engineering professionals. The engineering geology firm of Zinn Geology and the civil engineering firm of RI Engineering have been retained as the City sub-contractors to provide the geologic and civil engineering services.

Pacific Crest Engineering, in conjunction with their sub-consultant, Zinn Geology prepared a Geotechnical and Geologic Investigation report dated June 11, 2009 that was submitted with the application materials. The report evaluated the geologic conditions at the project site, reviewed previous geologic and soils reports, and conducted site reconnaissance, field explorations and soil testing in order to develop bluff profiles as well as geotechnical criteria used in the design of the cantilever deck. The reports also provide drainage, erosion control and maintenance recommendations. The findings of the geologic and geotechnical report are incorporated into civil design plans prepared by RI Engineering.

The proposal is to install an anchored girder system that will support the new roadbed. This design allows the roadbed to cantilever out over the face of the bluff to provide safe access for residents while providing the necessary turn radius for emergency vehicles. The cantilever road bed slopes back away from the bluff to allow drainage to enter the existing storm system that leads away from the bluff to the Yacht Harbor. This design also eliminates the need for construction of a retaining wall or rip rap boulders at the base of the slope. All construction work can be completed on the top of the bluff rather than having to work from the beach. The project design includes construction of a screen wall that will hang from the edge of the cantilever road bed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation attached to this report.

## SUMMARY

The proposed road improvement will provide safe access for residents and emergency vehicles while providing a textured and colored screen wall that will blend in with the existing geology peculiar to the site. Staff recommends that the Planning Commission approve this project based on the attached Findings and Conditions of Approval.

## FINDINGS

### Slope Modification, Section 24.08.820

1. **Measures have been included within the design of the project to mitigate impacts on environmental constraint areas identified in the Environmental Quality Element of the General Plan and the Local Coastal Program.**

Pacific Crest Engineering, in conjunction with their sub-consultant, Zinn Geology prepared a Geotechnical and Geologic Investigation report dated June 11, 2009 that was submitted with the application materials. The report evaluated the geologic conditions at the project site, reviewed previous geologic and soils reports, and conducted site reconnaissance, field explorations and soil testing in order to develop bluff profiles as well as geotechnical criteria used in the design of the cantilever deck. The reports also provide drainage, erosion control and maintenance recommendations. The findings of the geologic and geotechnical report are incorporated into civil design plans prepared by RI Engineering.

2. **Landscaping of an appropriate type, size and quality is proposed to mitigate any adverse environmental effect.**

The building permit plans will include erosion control as directed by the soils engineer. The final plans shall include native, drought tolerant planting on areas of the slope that have been disturbed.

3. **Usable open space is proposed in an amount equal to that normally required.**

This application concerns a steep slope and does not affect open space.

4. **To conform to existing land forms and topography, streets, buildings, and other man-made structures have been designed by a registered civil engineer or other qualified professional.**

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The plans were developed by a registered soils engineer in conjunction with a geologist and a registered civil engineer. The plans reflect the recommendations of those individuals as well as the City of Santa Cruz Public Works Department.

5. **Adequate fire safety measures as required by the city fire department have been incorporated into the design of the proposed development, when located in a designated fire hazard area.**

According to Section 24.14.030.1.d, this finding applies to buildings that would be occupied by people. Since this application is for a road improvement, this finding does not apply.

6. **The proposed project employs architectural and design elements which in total serve to reduce the mass and bulk of structures.**

The project design includes construction of a screen wall that will hang from the edge of the cantilever road bed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation in the project file.

7. **If a project proposed for construction is in a designated landslide area, before granting a modification to Section 24.14.030, subsection (1)(d), findings must be made that mitigation measures necessary to fulfill the purpose of this part have been incorporated into project design, based on the project's environmental review.**

The project is not within a designated landslide area. The Assistant Public Works Director, in conjunction with a soils engineer and geologist has reported that this section of bluff is threatened by imminent and continued collapse of the coastal bluff. This project qualifies for a CEQA Statutory Exemption (15269) as an emergency project.

Variance, Section 24.08.130

8. **That a hardship peculiar to the property, not created by any act of the owner, exists. In this context, personal, family or financial difficulties, loss of prospective profits, and neighboring violations, are not hardships justifying a variance.**

The road failure is the result of wave action eroding the bluff and subsequent land sliding and erosion over the years. The road repair requires approval of a variance to construct the cantilever section of replacement road.

9. **That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and in the same**

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**vicinity; and that a variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his neighbors.**

The granting of a variance for the road repair is necessary for the preservation and enjoyment of the property rights possessed by others in the area. As the bluff continues to retreat, access to the three residences will be cut off as well as access for service and emergency vehicles. The City is responsible to provide access via the public right-of-way to these homes and would have to purchase and demolish them to relinquish that responsibility.

10. **That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purpose and intent of this title or the public interest, nor adversely affect the General Plan.**

Granting this variance will not be detrimental to adjacent properties in that a geotechnical investigation and geologic report has been completed for the road improvement that addressed grading, erosion control, drainage and design recommendations. Those recommendations will be incorporated into the building plans and the construction will be supervised and inspected by the Public Works Department.

**Coastal Permit, Section 24.08.250**

11. **Maintain views between the sea and the first public roadway parallel to the sea.**

The view of the ocean will remain unchanged as the project involves roadbed alterations only. The project design includes construction of a screen wall that will hang from the edge of the roadbed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation in the project file.

12. **Protect vegetation, natural habitats, and natural resources consistent with the Local Coastal Land Use Plan.**

The project site is an existing road bed that does not contain landscaping. Only a small portion of the project would disturb the existing vegetation on the bluff and that will be replanted with native species. The project site is located within a mapped archeological sensitive area. The applicant submitted an archeological reconnaissance report dated January 28, 2011 that determined the project should not be delayed for archeological reasons and that standard language has been included in the Conditions of Approval if resources are discovered during construction.

13. **Be consistent with any applicable design plans and/or area plans incorporated into the Local Coastal Land Use Plan.**

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The project is consistent with the Seabright Area Plan in that it will provide safe public access and emergency vehicle access to existing homes in the Seabright area.

**14. Maintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan.**

The proposed project will maintain the existing public and emergency access to three homes. Existing public coastal access is provided via a stairway the City installed and maintains on East Cliff Drive, at the terminus of 3<sup>rd</sup> Avenue which is located 300 feet west of the project site. Additional public coastal access is provided via a pedestrian path adjacent to the Harbor and 450 feet east of the project site. Coastal access at this project site would primarily serve the property at 104 4<sup>th</sup> Avenue and several homes on Mariner Parkway. Because of the existing public coastal access in the immediate area, the City does not intend to construct additional pedestrian access at this location.

**15. Be consistent with the Local Coastal Land Use Plan goal of providing visitor-serving needs as appropriate.**

The project will provide safe access to three dwellings in the Coastal Zone. There is no visitor serving needs at this location.

**16. Be consistent with the Local Coastal Land Use Plan goal of encouraging coastal development uses as appropriate.**

The project will provide safe access for existing residents and emergency vehicles.

**Shoreline Protection Overlay District, Section 24.10.2430**

**17. The proposed development will protect trees and vegetation and sensitive wildlife habitat.**

The project site is located on a developed road bed that contains paving with little or no vegetation. A small portion of the bluff will be disturbed but that area will be landscaped with native species at the conclusion of construction.

**18. Be consistent with the following criteria for bluff or cliff development: (a) The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms; (b) The development will not create or contribute significantly to problems or erosion or geologic instability on the site or on surrounding geologically hazardous areas; (c) The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement; (d) The development which proposes use of**

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retaining walls shall be allowed only to stabilize slopes. Sea walls at the toe of sea cliffs to check marine erosion shall be allowed only where there is no less environmentally damaging alternative; and (e) The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.

The project site was reviewed by qualified geologic and geotechnical and civil engineering professionals to ensure that the project design and construction would not create or significantly contribute to erosion or geologic instability on the site. The project has been conditioned to follow all the recommendation of the geologic and geotechnical reports to protect the bluff face from further erosion, thereby protecting vegetation, natural habitats, and natural resources.

19. **Provide maximum erosion protection, using accepted engineering practices and other methods and specifications set forth in this title.**

Geologic and geotechnical reports were prepared for this proposal that included erosion protection in conjunction with the proposed road improvement. The proposed project has been conditioned to follow and the recommendations in the geologic and geotechnical reports to maximize protection of the bluff. An engineered erosion control plan will be reviewed and approved as part of the building plans.

20. **Maintain public view corridors between the sea and the first public roadway parallel to the sea and maintain natural views of the coastline.**

The view of the ocean will remain unchanged as the project involves roadbed alterations only. The project design includes construction of a screen wall that will hang from the edge of the roadbed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation attached to this report.

21. **Protect paleontological resources as prescribed in the Land Use Plan.**

The project site is located within a mapped archeological sensitive area. The applicant submitted an archeological reconnaissance report dated January 28, 2011 that determined the project should not be delayed for archeological reasons and that standard language be included in the Conditions of Approval if resources are discovered during construction.

22. **Protect and enhance free public access to or along the beach, and sign such access when necessary.**



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The proposed project will maintain the existing public and emergency access to three homes. Existing public coastal access is provided via a stairway the City installed and maintains on East Cliff Drive, at the terminus of 3<sup>rd</sup> Avenue which is located 300 feet west of the project site. Additional public coastal access is provided via a pedestrian path adjacent to the Harbor and 450 feet east of the project site. Coastal access at this project site would primarily serve the property at 104 4<sup>th</sup> Avenue and several homes on Mariner Parkway. Because of the existing public coastal access in the immediate area, the City does not intend to construct additional pedestrian access at this location.

23. **Be consistent with the design review guidelines of this title and the policies of any applicable area plan.**

The replacement road includes construction of a screen wall that will hang from the edge of the roadbed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation attached to this report.

24. **Be consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act.**

The proposed reconstruction of the existing road meets the intention of many of the Local Coastal Program and General Plan policies concerning public access, public right-of-ways and emergency access.

Design Permit, Section 24.08.430

25. **The site plan shall be consistent with physical development policies of the General Plan, any required or optional element of the General Plan, any area plan or specific plan or other city policy for physical development. If located in the Coastal Zone, a site plan shall also be consistent with policies of the Local Coastal Program.**

The project is consistent with the General Plan and the Seabright Area Plan it that it will provide safe public access and emergency vehicle access to existing homes in the Seabright area.

26. **The exterior design and appearance of buildings and structures and the design of the site plan shall be compatible with design and appearance of other existing buildings and structures in neighborhoods which have established architectural character worthy of preservation.**

The replacement road includes construction of a screen wall that will hang from the edge of the roadbed, over the slope to prevent public access to the cantilevered road bed from

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below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation in the project file.

27. Design of the site plan shall respect design principles in terms of maintaining a balance of scale, form and proportion, using design components, which are harmonious, materials and colors that blend with elements of the site plan and surrounding areas. Location of structures should take into account maintenance of view; rooftop mechanical equipment shall be incorporated into roof design or screened from adjacent properties. Utility installations such as trash enclosures, storage units, traffic-control devices, transformer vaults and electrical meters shall be accessible and screened.

The replacement road includes construction of a screen wall that will hang from the edge of the roadbed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation in the project file.

28. Where a site plan abuts, or is in close proximity to, uses other than that proposed, the plan should take into account its effect on other land uses. Where a nonresidential use abuts or is in close proximity to a residential use, the effect of the site plan should maintain the residential quality of adjacent or nearby areas.

This finding is not applicable.

29. The orientation and location of buildings, structures, open spaces and other features of the site plan shall be such as to maintain natural resources including significant trees and shrubs to the extent feasible, maintain a compatible relationship to and preserve solar access of adjacent properties, and minimize alteration of natural land forms, building profiles, location, and orientation must relate to natural land forms.

The view of the ocean will remain unchanged as the project involves roadbed alterations only. The project design includes construction of a screen wall that will hang from the edge of the roadbed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation attached to this report. The project site is located within a mapped archeological sensitive area. The applicant submitted an archeological reconnaissance report dated January 28, 2011 that determined the project should not be delayed for archeological reasons and that standard language be included in the Conditions of Approval if resources are discovered during construction. Disturbed slope areas will be replanted with native, drought tolerant species at the conclusion of work.

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- 30. The site plan shall be situated and designed to protect views along the ocean and of scenic coastal areas. Where appropriate and feasible, the site plan shall restore and enhance visual quality of visually degraded areas.**

The view of the ocean will remain unchanged as the project involves roadbed alterations only. The project design includes construction of a screen wall that will hang from the edge of the roadbed, over the slope to prevent public access to the cantilevered road bed from below. That screen wall will be textured and colored to match the native soil as shown on the photo simulation in the project file.

- 31. The site plan shall minimize the effect of traffic conditions on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances, exit drives and walkways; through the adequate provision of off-street parking and loading facilities; through an adequate circulation pattern within the boundaries of the development; and through the surfacing and lighting of off-street parking facilities.**

The proposed project will protect and enhance access to three homes and emergency vehicles.

- 32. The site plan shall encourage alternatives to travel by automobile where appropriate, through the provision of facilities for pedestrians and bicyclists, including covered parking for bicycles and motorcycles where appropriate. Public transit stops and facilities shall be accommodated as appropriate, and other incentive provisions considered which encourage non-auto travel.**

The project will protect and enhance a public right-of-way providing access to three homes.

- 33. The site shall provide open space and landscaping which complement buildings and structures. Open space should be useful to residents, employees, or other visitors to the site. Landscaping shall be used to separate and/or screen service and storage areas, separate and/or screen parking areas from other areas, break up expanses of paved area, and define open space for usability and privacy.**

The applicant will be required to provide a landscape plan for review and approval by the Zoning Administrator. The landscape plan shall be developed to provide native drought tolerant species on those portions of bluff disturbed by the construction.

- 34. The site plan shall reasonably protect against external and internal noise, vibration and other factors, which may tend to make the environment less desirable. The site plan should respect the need for privacy of adjacent residents.**

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The applicant will have to provide construction plans that protect against external and internal noise, vibration and other factors, which may tend to make the environment less desirable.

35. Signs shall complement the site plan and avoid dominating the site and/or existing buildings on the site or overwhelming the buildings or structures to which they are attached. Multiple signs on a given site should be of a consistent theme.

There are no signs proposed with this project.

36. Building and structures shall be so designed and oriented to make use of natural elements such as solar radiation, wind, and landscaping for heating, cooling and ventilation.

This finding does not apply.

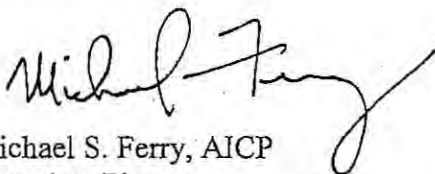
37. The site plan shall incorporate water-conservation features where possible, including in the design of types of landscaping and in the design of water-using fixtures. In addition, water restricting showerheads and faucets shall be used, as well as water-saving toilets utilizing less than three gallons per flush.

This finding does not apply.

38. In all projects in Industrial (I) Zones, all buildings and structures shall be so designed and oriented to make use of natural lighting wherever possible.

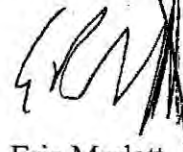
This finding does not apply.

Submitted by:



Michael S. Ferry, AICP  
Associate Planner

Approved by:



Eric Marlatt  
Principal Planner

Attachments:

- ~ Conditions of Approval
- ~ Photo simulation of proposed project

EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT

**104 4th Avenue – Application No. CP11-0015**

**Variance, Slope Modification, Design Permit and Coastal Permit to construct a cantilever road deck and retaining system on portions of a private lot and public right-of-way in the RL and OF-R zone districts.**

1. If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.
2. All plans for future construction which are not covered by this review shall be submitted to the City Planning and Community Development Department for review and approval.
3. The applicant shall be responsible for the completeness and accuracy of all forms and supporting material submitted in connection with any application. Any errors or discrepancies found therein may result in the revocation of any approval or permits issued in connection therewith.
4. The final plans shall include all recommendations listed in the Geotechnical and Geologic Investigation Report dated June 11, 2009 prepared by Pacific Crest Engineering and Zinn Geology, including drainage, erosion control and maintenance.
5. During all grading and subsurface excavations (including utility-line trenching), construction will be halted if significant archaeological resources are discovered. For the purpose of this use permit, significant archaeological resources shall include the remains of previous Indian living areas or human burials. In the instance of Indian living areas, these objects shall be recorded and mapped prior to further excavation on that portion of the site. In the event human burials are discovered during excavation, work shall be halted and the County Coroner, the Northwest Indian Cemetery Protective Association (NICPA), and other appropriate authorities shall be notified. Mitigation measures developed by the applicant and authorized archaeologists shall be subject to the approval of the Planning Department.
6. Any information developed as a result of this survey shall be forwarded to the County Archaeological Society, the County Historical Museum, and the Santa Cruz Collection, University of California Library.
7. The final plans shall include native, drought tolerant plantings on areas of the slope that have been disturbed.



