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W17b

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August 5, 2016

VIA EMAIL WITH COPIES TO COMMISSION STAFF

Steve Kinsey, Chair
And Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

RE: CDP Appeal No. A-3-SLO-15-001 (Loperena, SLO County)
Hearing Agenda Item W17b
Date of Hearing: Wednesday August 10, 2016

POSTPONEMENT REQUEST

Dear Chair and Honorable Commissioners:

This office represents Jack Loperena, the 93 year old property owner who has applied for permission to build a single family residence on a lot in Cayucos, California. The Appellant's agents have been working for months with the Commission Staff in answering every possible question and providing additional information in response to every concern which has been raised.

The appellant's team has received a new staff report consisting of more than one hundred pages, including a detailed takings analysis and many revised conditions, analyses and discussion.

Pursuant to Code of Civil Procedure Section 1095.4(e), the limited amount of time to analyze the staff report details, due to the absence of the project architect, and the shear complexity of the issues, makes it impossible to produce

"relevant evidence", even exercising "due diligence" in advance of the hearing. Under those circumstances, CCP Section 1094.5 would require that the appellant provide that evidence and analysis to the Superior Court, which in turn would require the **futile exercise** of "remanding the case to be reconsidered in the light of that evidence". It would be **extremely unfair** to Mr. Loperena, especially at his age, to have this hearing proceed forward only to be remanded back to the Commission by the Superior Court.

"Mandamus would have allowed [the property owner] to submit additional evidence during the mandamus action 'if the evidence "could not have been produced or ... was improperly excluded at the hearing before "administrative agency." (*Hensler v. City of Glendale*, supra, 8 Cal4th at p. 15 quoting Code Civ. Proc., [Section 1094.5].'" *Mola Development Corporation v. City of Seal Beach* (1997) 57 Cal.App.4th 405, at 412. In *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, the Court held that denial of a continuance to allow the owner's attorney an opportunity to review and adequately respond to 100 pages of documents violated due process rights, and the agency was ordered to hold a new hearing. The United States Supreme Court in *In re Ruffalo* (1968) 390 U.S. 544, held that granting a continuance "to address the new allegations" and evidence was a minimal requirement of due process. The same constitutional standards apply to what would otherwise be a *per se* takings under *Lucas* and other Supreme Court decisions.

Mr. Loperena hopes that his due process rights will be observed, and sincerely hopes that based upon a thorough and competent review of the new staff report, the issues can be greatly narrowed and an appropriate and fair balance between Coastal Act policies and his property rights to building a viable single family residence on his property can be struck, and unnecessary and futile litigation avoided.

We sincerely thank you for your fairness and consideration of the difficult position the property owner is being placed in. We ask that this correspondence, together with all of the appellant's submittals, records, reports, emails, communications, maps, studies, and other documents and communications be included in the administrative record, including all formal objections, grounds of appeal, and other materials, and included herein by this reference.

Very truly yours,

WILLIAM S. WALTER

CC: Jack Ainsworth, Acting Executive Director
California Coastal Commission
South Central District Coast Office
89 S California Street #200, Ventura, CA 93001

Daniel Robinson, Coastal Program Analyst
Dan Carl, District Deputy Director
Central Coast District Office
725 Front Street #300
Santa Cruz CA 95060

(Via Email)

W17b

From: Mark Massara [mailto:markmassara@coastaladvocates.com]
Sent: Thursday, August 04, 2016 11:53 AM
To: Robinson, Daniel@Coastal
Cc: Sugimoto, Cindy
Subject: Loperena W17b

Hi Daniel

Thank you for your effort and work on the staff report. Attached please find our letter in response.

In addition, we want to point out a couple of minor things related to the staff report that might warrant inclusion in any addendum:

1. There appears to be a conflict between two special conditions that should be clarified/corrected.

a. Section III Special Conditions, paragraph 5 Monterey Cypress, references monitor a … "25-foot radius from the trunk" ….

b. Section III Special Conditions, paragraph 1 Final Plans, item l Cypress Tree Protection states "… show a 25-foot-diameter line around the trunk …".

We think the term "diameter" should be revised to "radius".

2. Section IV Findings and Declarations, Subsection H Approvable Project, page 53 notes that one reason the applicant does not want to pursue the ROW exchange option is because the relocation of the high pressure gas main would be expensive. However, it is noted on the original plans and in the Final EIR that the original project included relocating the gas main. Therefore, there would be no increased cost for the applicant to pursue the ROW exchange option.

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COPY TO STAFF

Via Internet
August 4, 2016
Agenda Item #: Wed17b
A-3-SLO-15-001
Appellant: Cynthia Sugimoto
Opposition to Loperena Project

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, California 95060-4508

Re: Loperena Project – Response to Staff Report
A-3-SLO-15-0001 (SC)
APN 064-253-007
Studio Drive, Cayucos
San Luis Obispo County
Wednesday, August 10, 2016 Agenda Item #17b

Dear Chairman Kinsey, Coastal Commissioners, and Staff:

We have reviewed the California Coastal Commission (CCC) Staff Report on the Loperena Project, dated July 29, 2016 and we appreciate the efforts of your staff to develop the Report and supporting analysis. We find the Report is generally a fair summary of the key issues. On behalf of Appellants Ethel Pludow & Cynthia Sugimoto, we **URGE YOU TO SUPPORT YOUR STAFF's RECOMMENDATION** for the project to ensure basic minimum protections for Morro Strand State Beach, adjacent community character on Studio Drive, and any semblance of coherent planning for sea rise and reasonable precedent for setback of bluff face development from the sandy beach. Additionally, we recommend that the Commissioners strongly encourage the applicant to reconsider pursuing a property exchange with County of SLO for the Right of Way (ROW) between their property and Studio Drive as described on page 53 of the Staff Report. This alternative could provide a similar site area while also providing greater setback, which would reduce the potential coastal hazards and provide additional mitigation for the environmental impacts of the project. Below are several comments to support these recommendations.

First, for the reasons set forth in the Staff Report and appeal documents, any construction on this site is in violation of the Coastal Act and the LCP. As noted in several places in the Staff Report, the site is located on a bluff face and no number or type of conditions can correct this fundamental and critical inconsistency.

We agree with the Staff Report that Applicant's Proposed Project is clearly improper and should not be approved as proposed. Its size of 2,100 sq. ft. is much too large for the site, and twice as large as previously approved by the County Supervisors. The 3-foot setback from the edge of the beach places the residence in a hazardous area as explained in Exhibit 6, 7, and 8 of the Staff Report. The setback requirements are safety critical and cannot be ignored. It is unacceptable for the project to be approved as proposed; a flooding incident may possibly put emergency responders and the general public at risk.

While we do not agree that a project should be approved on this site merely to avoid a "taking," to the extent that the CCC feels compelled to approve a project, we urge the Commission to approve of the project with the significant conditions included in the staff report. Special Condition #1a relates to using the staff recommended building footprint as shown in Exhibit 11 of the Staff Report, which is based upon using the "General trend of LCP Required Minimum 25-foot Blufftop Setback Extending Upcoast". This proposed methodology for determination of the minimum setback is a reasonable compromise for this rare case of a project allowed on a bluff face in order to avoid a "taking".

Simply put, this project has languished for many years due entirely to the applicant's insistence of building exclusively on the bluff face, across a well-used public access trail, and to within three feet of the sandy beach, with no setback from the blufftop edge whatsoever. Under any logical planning regime used anywhere in California coastal zone this project would be immediately rejected. However, in this case, in order to avoid Constitutional taking concerns[1], both San Luis Obispo County and staff of the Coastal Commission have spent years working with the applicant to try to reduce the devastating resource and environmental impacts the applicant continues to insist upon. To date these efforts have failed, almost in their entirety.

As a result, the staff recommendation and associated Special Conditions (p. 8-16) are by no means a panacea; nor will they entirely eliminate or even reasonably minimize the impacts associated with the project. They are, however, absolutely needed to ensure basic minimum protections for the sake of the surrounding natural resources, the State Beach, the existing neighborhood, and future planning for the area.

For example, staff's recommended project will *still* result in a house on the bluff face with a meager sandy beach setback that will absolutely ensure the house is subject to future wave attack. The house will be on top of and will destroy an existing public access trail across the property, and even as recommended the house will create significant adverse visual impacts from the highway to the beach, from the State Beach itself, and for adjacent longtime neighbors.

As a consolation, the most significant achievement gained by your support of the staff recommendation will be avoidance of a Constitutional "takings", ***and*** avoidance of the significantly worse alternative championed by the applicant.

---

[1] Staff has discussed Constitutional takings concerns at length in the staff report (p. 42-50), including specific acknowledgement that Applicant admits having paid only $10,000 for the property (p. 44), a fact demonstrating that the property has only minimum speculative value for development.

Among the most important factors for your consideration are:

1. The proposed development footprint is located entirely on the bluff face, with no legal setback whatsoever, and is therefore illegal on its face according to the San Luis Obispo Local Coastal Plan (SLO LCP). According to the applicant's proposal, a basement / seawall would be located within 5-ft of the sandy beach, and a cantilevered portion of the house would extend to within 3-ft of the sandy beach.
2. The applicant's proposal, at 2100-sq. feet, is approximately double the size of the project approved by the SLO Board of Supervisors.
3. The applicant's proposal fails to include use of the County's inland, adjacent Right of Way (ROW), which was suggested by the Board of Supervisors in order to reduce the obvious impacts of the project. To date the applicant has refused to consider the ROW exchange option, and has produced only self-serving and disingenuous reasoning for their failure to pursue a development alternative that would provide a greater setback alternative.
4. Applicant continues to propose a three-story structure, with a basement and mezzanine roof deck, despite the fact the LCP recommends a maximum of 2-stories in the Studio Drive area.
5. Staff's "general trend line" approximates a 25-ft *blufftop edge* setback (still leaving entire development footprint on bluff face) is the *absolute minimum* that this Commission should allow, in lieu of requiring the applicant to negotiate with SLO County for use the ROW.
6. The applicant's proposal will result in the patently unfair prospect of neighbors having their views blocked by applicant's unsightly and unfairly seaward development.
7. That despite Constitutional takings concerns, applicant paid a mere $10,000 for the property, and is not entitled to reward for resources unwisely expended in a long legal and lobbying effort associated with pursuit of an untenable, illegal development scheme.

At the end of the day, the Commission's task is to acknowledge the site is fundamentally undevelopable, and to ensure that any development allowed is the *minimum* to avoid a Constitutional "takings" and not an unjust reward at the public's expense for the Applicant's refusal to consider readily available alternatives. In that regard, and on that basis only, we support the staff recommendation allowing this unfortunate development, should the Commission decline to order the Applicant to genuinely apply for and pursue use of the SLO ROW, which County Supervisors have invited them to do.

We again thank you for your consideration and continued assistance with this application.

Sincerely,

Mark Massara, Esq.

cc: California Coastal Commission Commissioners
Jack Ainsworth
Dan Carl
Daniel Robinson
Cynthia Sugimoto, P.E.

W 17b

SIERRA CLUB
SANTA LUCIA

Aug. 3, 2016

California Coastal Commission
c/o Daniel Robinson
725 Front St., Ste. 300
Santa Cruz CA 95060

Re: Loperena APN 064-253-007, 3-SLO-15-0001, Studio Drive, Cayucos

Dear Commissioners,

Three years ago today, when a version of this project was before the County Planning Commission, we pointed out essentially the same things your staff points out now: The structure would not be consistent with Visual and Scenic Resources Policy 10: Development on Beaches and Sand Dunes; public views from the Morro Strand State Beach parking lot and the intervening public beach would be effectively blocked by the structure; and the structure would not be consistent with development patterns throughout Cayucos.

For these reasons, among others, the County rejected the proposed structure. It would appear the Applicant has spurned the County's offer to pursue the possibility of using the Right of Way in order to move the house off the beach, and is instead seeking to gain approval of a far larger structure that he knows the County would not have approved.

We share the incredulity that comes through in this passage of the staff report:

> "[T]he SLO County Board of Supervisors approved an approximately 1,100 square foot home, as a result of requiring a 25-foot setback for development from the edge of the sandy beach [but] the Applicant is proposing a larger residence than that approved by the County, namely an approximately 2,100 square foot home with a cantilevered main floor extending to within approximately three feet of the sandy beach, and a basement wall located within approximately five feet of the sandy beach. In other words, the Applicant's proposal is almost double the size of the residence previously approved by the SLO County Board of Supervisors, after almost a decade of review and analysis of the issues at the local level."

We fully concur with staff that the proposed project represents a "significant development anomaly for this stretch of coast," and permitting it would be "rewarding the fact that the lot is not residentially buildable under the LCP to the detriment of coastal resource protection." We urge you to adopt staff's recommended reduced footprint, set of conditions and public access easement as the only way development can be allowed to occur on this significantly constrained lot. Staff's recommendation will allow the applicant to build a house proportional to the site, providing a reasonable use of the property and avoiding a taking of private property for public use.

Thank you for your attention to these issues,

Karen Merriam
Chapter Chair

Item No. W17b
Application No. A-3-SLO-15-0001
Janet L. Arnold
Opposed to Project

I am the owner of property just south of the proposed house on Studio Drive. In 1999, my now deceased husband and I tore down our deteriorating residence on the property and rebuilt. The regulations for our new development were extremely stringent. It was determined that our property was approximately 32 feet above the sand and identified as a coastal bluff top property. As a result, we were required to have a 25 foot setback. We accepted this requirement for our own protection and the protection of San Luis Obispo county. We were further advised by the county that we were in an area designated as a "small scale neighborhood" and had to scale back the size of our proposed 2100 square foot dream retirement home to one that is now less than 1700 square feet. Our lot was surveyed and our property was determined to be approximately a 50' by 100' parcel. As a result, we now have a storage unit to accommodate some of our family keepsakes that we do not have sufficient room to house. We accepted this inconvenience to comply with all State and San Luis Obispo County rules and regulations, as we were certain all new development would also have to comply. What suckers we were to believe the county at that time, as new residential development appears to have new or amended requirements to follow for each newly proposed development. I however am not aware of any changes to the regulations as I am certain they would be available for public awareness. Can you then explain to me why we followed all building regulations and now because this individual's team and someone from the county have determined the parcel is not designated as bluff top as we were, he can actually build on the sand. His parcel is facing the ocean just as my property is. It does not make any common sense to me that I am classified as bluff top, 32 feet above the sand with a 25 foot setback because of projected coastal erosion, and how someone within a couple of hundred feet from me can build on a 6 foot bluff, no set back and cantilevered over the sand. If coastal and creek erosion is experienced at my location, why won't it impact the proposed property to be built on a sand pile. I firmly believe if this type of construction is permitted, it will definitely be precedent setting for all new development in this county and state. Is this the type of coastal construction residents favor. I really don't believe so. If this is approved, it certainly indicates that money speaks louder than regulations and laws. I am a retired civil servant and I understand government rules and regulations. They serve as guidelines and influential people can somehow figure they are above the law and not subject to established rules and regulations. I firmly believe it is time for the Coastal Commission to take a "common sense" approach to this proposed development, follow proper regulations, understand their liability if approved, and deny its construction.

Thank you for taking the time to hear my objections to this proposed construction and understand my concerns regarding fair and equitable treatment.

Janet L. Arnold

Janet L. Arnold
2698 Studio Drive
Cayucos, CA 93430

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W17b

Appeal Filed:	1/08/2015
Action Deadline:	None
Staff:	Daniel Robinson - SC
Staff Report:	7/29/2016
Hearing Date:	8/10/2016

STAFF REPORT: DE NOVO HEARING

Application Number:	**A-3-SLO-15-0001**
Applicant:	Jack Loperena
Local Government:	San Luis Obispo County
Project Location:	Seaward of Studio Drive at its northern end (approximately 250 feet southwest of the intersection of Studio Drive and Highway 1) fronting Morro Strand State Beach in the unincorporated Cayucos community of San Luis Obispo County (APN 064-253-007).
Project Description:	Construction of a new, roughly 2,100-square foot, 31-foot tall, three-story single-family residence extending almost to the sandy beach itself with an attached garage and an elevated driveway platform connecting to Studio Drive.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to construct an approximately 2,100 square-foot, 31-foot-tall, three-story, single-family residence on a 3,445 square foot oceanfront parcel on a bluff face, almost 50% of which is occupied by sandy beach. The proposed residence includes a basement floor, a main floor, and an upper floor, along with an attached garage and an elevated driveway platform, which would connect the subject property to the paved portion of Studio Drive across the County's undeveloped right-of-way property. The residence would extend from the eastern edge of the property to within approximately three feet of the edge of the sandy beach to the west (via a proposed cantilevered portion of the main floor). Drainage and landscaping improvements are also proposed.

On March 10, 2016, the Commission found that San Luis Obispo (SLO) County's action approving the residence and associated development raised a substantial issue of conformance with the County's Local Coastal Program (LCP) and took jurisdiction over the coastal development permit (CDP) application. The primary issues identified at that time were the project's LCP inconsistencies related to hazards, visual resource protection from Highway 1 and Morro Strand State Beach, and public access. In terms of hazards, the project was determined by the Commission to include development on a bluff face, blufftop setback requirements that could not be met at this location; and shoreline protection, all inconsistent with the SLO County LCP. With respect to public views, the approved project was found not to be visually compatible with the significant Highway 1 and beach viewsheds, and was deemed inconsistent with the existing pattern of one- and two-story residences along the blufftop located seaward of Studio Drive, raising substantial LCP scenic and visual resource and community character conformance issues, including with the Studio Drive Small Scale Neighborhood Design standards. Lastly, the SLO County-approved project was found to have eliminated at least one regularly used public access path that leads from Studio Drive to the sandy beach, and thus the project was found to raise a substantial issue with respect to conformance with Coastal Act and SLO County LCP public access policies.

The Applicant's currently proposed project differs significantly from that which was approved by SLO County. The SLO County Board of Supervisors approved an approximately 1,100 square foot home, as a result of requiring a 25-foot setback for development from the edge of the sandy beach (and when factoring in required side and upper floor setbacks). However, the Applicant is proposing a larger residence than that approved by the County, namely an approximately 2,100 square foot home with a cantilevered main floor extending to within approximately three feet of the sandy beach, and a basement wall located within approximately five feet of the sandy beach. In other words, the Applicant's proposal is almost double the size of the residence previously approved by the SLO County Board of Supervisors, after almost a decade of review and analysis of the issues at the local level.

The Applicant's site is very constrained, and occupies a very small area of bluff face near the beach and well seaward of the Studio Drive. As a result, it presents significant challenges to development as all at this location. Because the LCP does not allow residential development on a bluff face, the proposed project cannot be found consistent with the LCP, no matter the size. Similarly, the proposed project is unable to meet the LCP's blufftop setback requirements given the site is located entirely seaward of the blufftop edge. The proposed project raises other coastal resource concerns that would probably be able to be addressed via conditions, but because of these fundamental and fatal LCP inconsistencies, approval consistent with the LCP is not possible, and the LCP directs project denial in this case. However, consistent with the mandate of Coastal Act Section 30010, and since any economic use of the subject property would likely result in some degree of LCP inconsistency, staff recommends approval of a reduced residential development to provide for a reasonable use of the property intended to avoid a potential unconstitutional taking of private property for public use.

In this takings approval context, staff has tried its best to limit coastal resource impacts while still providing the Applicant with a reasonable residential project. Staff and the Applicant have had numerous communications and meetings in this respect and, as of the date of the staff report, are not in agreement on the approvable project, with the continuing issue being the size and

location of the building footprint and ultimately the residence. Since the March 10, 2016 Commission Substantial Issue hearing, the Applicant has resurveyed the line demarcating the edge of sandy beach (where it connects with the non-beach portion of the property) and submitted a new design, which includes an 814 square foot basement level, a 558 square foot main floor level with a 239 square foot garage, and a 431 square foot upper floor level; a total of 2,100 square feet over three stories, two stories of which would be cantilevered out towards and almost over the sandy beach. The project includes an approximately 10 foot cantilever over the basement level on the main and upper floor levels. The proposed footprint, incorporating this cantilever as lot coverage is 1,032 square feet and the total square footage – approximately 2,100 square feet – does not include a 93 square foot roof deck, a 146 square foot basement patio, and 200 square feet of on-site parking outside of the garage. The basement level would be as close as approximately five feet and the main floor cantilevering to within three feet toward the beach at their closest points. Thus, the Applicant here continues to press for the Commission to approve a version of the house similar to was approved by the County's Planning Commission, and much larger – almost double the size – than what was ultimately approved at the County level by the Board of Supervisors following multiple hearings on this matter. Staff does not believe that a project of this proposed scale that would be located as close as approximately three feet from the edge of the sandy beach would be appropriate, especially given the project's coastal hazard inconsistencies and its prominence in the public viewshed, particularly as seen from the north (i.e., along the State Beach, at the State Beach parking lot, and along Highway 1) and given its location at the end of the row of houses extending downcoast that only serves to increase its prominence in the public viewshed. The Applicant's proposal would place a significantly large three-story structure in the back beach area that would extend down the slope to roughly beach level, with a proposed main floor cantilever. This would be a significant development anomaly for this stretch of coast, and would appear significantly different than other residential development that better meets SLO County LCP requirements and objectives.

Staff instead supports a residential project that is pulled back off of the sandy beach so as to provide at least some visual separation between the beach and the residence, with berming and landscaping fronting the basement level so that the project appears to be a two-story structure as much as possible and in line with adjacent residential lots (and would not appear as a three-story structure, which is *not* allowed in blufftop cases). Staff's recommendation recognizes that this is not a typical fairly flat lot with space available to develop inland of the blufftop edge, as is more common along Studio Drive. On the contrary, the subject lot is comprised of almost 50% sandy beach area, or roughly 1,700 square feet, leaving only about 1,745 square feet (or $1/25^{th}$ of an acre) that is not beach sand. And this remaining bluff face area itself is a sloped area near the beach and well below Studio Drive itself. Thus, the portion of the lot that is not occupied by sandy beach is relatively small, not ideally conducive to development, and thus there is little space inland on the lot to achieve such separation from the beach area and to site residential development.

To help identify an appropriate footprint area, staff looked to the surrounding area to understand the relative size and scale of structures in the neighborhood, and have applied this to the Applicant's site and its geography in a way meant to respect LCP objectives, including in terms of coastal hazards and the vision for blufftop development along Studio Drive. In terms of the latter, the LCP requires a *minimum* setback of 25 feet from the *blufftop edge*. Immediately adjacent development does not currently meet this setback (i.e., the next three houses extending

downcoast), but this setback will be required to in the future when these homes redevelop, similar to houses developed and redeveloped since the LCP has been in effect (e.g., the residences just past the first adjacent three residences that meet the minimum 25-foot setback requirement). In staff's view the general trend line of the 25-foot minimum setback is the primary mechanism to achieve an appropriate setback distance in this case, because it aligns the proposed residence with future redevelopment downcoast in an age of future sea level rise and overwhelming planning guidance to reposition development more inland from the sea. This setback trend line is also nearly coterminous with an approximate 25-foot setback from the edge of sandy beach, as was approved by the County Board of Supervisors, reflecting the County's vision and intent as well. When applied, the trend line would allow the Applicant an approximately 450-square-foot footprint, space within which to develop an approximately 1,100 square foot residence (similar in size of the house approved by SLO County) over three levels (depending on how the residence is designed), where the basement level is screened from public view so that the development appears as much like a two-story residence as possible. A house at roughly 1,100 square feet with a basement level screened from view would appear more proportional to the site, and more similar to surrounding development characteristics of adjacent residences in overall height. A home built landward of this trend line would also ensure relative safety from coastal flooding and hazards at the outset, as identified by the Commission's technical staff, including based on reviews by the Commission's Senior Coastal Engineer and Senior Geologist (Dr. Lesley Ewing and Dr. Mark Johnsson, respectively). To ensure coastal resource protection in the future, Staff recommends conditioning the project to allow it to remain for only as long as it remains safe for occupancy and use without additional measures beyond ordinary repair and/or maintenance to protect it from coastal hazards and to require that development is removed and the affected area restored under certain coastal hazard circumstances.

Even with these mitigations, the project will be highly visible, but it represents an appropriate compromise given the takings considerations, the physical characteristics of the site and the surrounding area, and LCP requirements for development associated with bluffs and blufftops. It also is more equitable than the Applicant's proposal inasmuch as the adjacent residences will be required to meet the minimum 25-foot blufftop setback when/if they redevelop, and doing so would mean they would be required by the LCP to be back *behind* the Applicant's proposed residence by some 20-25 feet (blocking views, etc.) if the Applicant's proposal were to be approved. Staff's proposal ensures that these setbacks for neighboring properties roughly match up by following the actual LCP blufftop setback line trend for this stretch of coast. This is a fair way of allowing residential development here at the same time as ensuring that its impacts do not unduly and unfairly harm either the surrounding public viewshed or neighboring property owners who are required to adhere to the LCP. To do otherwise, and to allow this Applicant to have significantly larger development significantly closer to the beach is akin to rewarding the fact that the lot is not residentially buildable under the LCP to the detriment of coastal resource protection, and is simply not appropriate. A revised project as staff recommends addresses these issues and the public viewshed issues at the same time, and represents a fair compromise in this case that respects both as much as possible if a residence is built on this significantly constrained lot.

In addition, staff recommends a series of conditions to address coastal hazards and public access, including conditions that require small-scale design techniques; that prohibit future shoreline

armoring and require the Applicant to assume all risks for developing at this location; that require construction BMPs to reduce impacts to trees and nesting birds; that require a post-construction drainage and runoff control plan; and that require a public access easement over the sandy beach area.

Staff believes that the project, as conditioned, will allow a reasonable residential use (on a site that would otherwise prohibit residential use) while still protecting coastal resources as much as possible in light of takings considerations, and appropriately responds to the unique circumstances and challenges of this case. Thus, Staff recommends that the Commission approve the CDP subject to the recommended conditions. The motion is found on page 7 below.

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EXHIBITS
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Exhibit 4: Applicant's Proposed Project Plans
Exhibit 5: Applicant's Proposed Project Visual Simulation
Exhibit 6: Commission Staff Geologist's July 28, 2016 Memorandum
Exhibit 7: Marine Erosion Site Photos
Exhibit 8: Commission Staff Engineer's July 25, 2016 Memorandum
Exhibit 9: Attachment 4 of the County's Final Local CDP Action Notice
Exhibit 10: Geologic Study Area (GSA) Combining Designation Map
Exhibit 11: Development Setback Trend Line and Recommended Building Footprint
Exhibit 12: Community Small Scale Design Neighborhood Standards – Studio Drive
Exhibit 13: Staff Recommended Basement Level Screening Locations
Exhibit 14: SLO County Right-of-Way Area (Between Property and Studio Dr.)
Exhibit 15: Public Access Easement Area
Exhibit 16: Correspondence

I. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development, subject to the conditions in this staff report. 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 in this staff report and adoption of the following resolution and findings. Conversely, failure of this motion would result in denial of the CDP application. 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-SLO-15-0001 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-SLO-15-0001 and adopts the findings set forth below on grounds that the development as conditioned is necessary to avoid a potential unconstitutional taking of private property while allowing for the proposed use. The development will otherwise be in conformity with San Luis Obispo County Local Coastal Program policies and Coastal Act access and recreation policies to the maximum extent possible. 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. **Final Plans**. PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Final Plans to the Executive Director for review and approval. The Final Plans shall be prepared by a licensed professional or professionals (i.e., architect, surveyor, geotechnical engineer, etc.), shall be based on current professionally surveyed and certified topographic elevations for the entire site, and shall include a graphic scale. The Final Plans shall clearly show the development's siting and design, including through elevation and site plan views and shall comply with the following requirements:

    a. **Approved Footprint.** All development (including all projecting elements, e.g., porches, cantilevers, etc.) on the subject property shall be located within the building footprint as shown on **Exhibit 11** (i.e., a closed polygon that extends along the 3-foot side setback lines, along the front property boundary, and along the minimum 25-foot development setback trend line)**.** All such development outside of the subject property (i.e., in the County's public right-of-way, including the driveway, retaining walls and drainage systems, etc.), shall be accompanied by evidence of all required San Luis Obispo County approvals, including in terms of encroachment permits.

    b. **Garage/Parking.** The driveway/parking area may be removed from the footprint (as described above and in **Exhibit 11**) and located between the subject property and Studio

Drive (on the County's right-of-way area as shown in **Exhibit 14**) provided it is minimized to the maximum degree feasible in size and scale while providing space for two standard-sized vehicles and pedestrian access from Studio Drive, and provided the Applicant submits evidence of a San Luis Obispo County encroachment permit to the Executive Director for review and approval.

c. Height. All development shall extend no higher than 15 feet above the elevation of the centerline of Studio Drive closest to the easternmost corner of the subject property.

d. Finished Floor Elevation. No development, including the basement, shall be constructed lower than elevation 18 feet NAVD88 on the subject site.

e. Upper Floor Setbacks. The Final Plans shall show upper floor setbacks of at least 2 ½ feet on each side.

f. Design. All development shall incorporate architectural details and varied materials to reduce the apparent mass of the residence. Building facades should be broken up by varied rooflines, offsets and building elements in order to avoid a box-like appearance. Variations in wall planes, roof lines, detailing, materials and siding should be utilized to create interest and promote a small scale appearance. Roof styles and roof lines for first and second stories should match. All siding shall be wood or wood-like in natural colors. All windows and other surfaces shall be as non-glare and non-reflective as possible, and all lighting shall be minimized to avoid light wash visible from public viewings areas, including the beach.

g. Foundation, Basement and Retaining Walls. All foundation, basement and retaining wall elements shall utilize standard basement, retaining wall and foundation design (e.g., perimeter foundation with cross beams; slab on-grade, etc.); shall not utilize extraordinary measures (such as deep piers or caissons); shall not be designed or engineered (e.g. with concrete basement walls) to address ocean-related forces (e.g., wave attack, ocean flooding, erosion, etc.) except to the extent that such design may facilitate future removal of the foundation and associated structures; and shall be sited and designed consistent with standard engineering and construction practices in such a way as to best meet the objectives and performance standards of these conditions (including to facilitate removal if required – see **Special Conditions 6** and **7**). All foundation and basement elements shall be sited and designed to be removable, including in terms of limiting extent of excavation or disturbance beyond the immediate development footprint, and including providing for modularity to the extent that it may facilitate removal of the foundation and associated structural development in response to an eroding shoreline.

h. Basement Level Screening. The Final Plans may show a basement level provided the basement level is constructed no lower than 18 feet NAVD88. The basement shall be located below grade as much as possible in order to limit views of the basement as seen from public viewing areas (e.g., the beach, the State Park parking lot upcoast, Highway 1, etc.). Any portion of the basement that extends above ground shall be screened with soil berming and landscaping (atop the berming where possible, and by itself where berming

is not possible) to the maximum extent feasible (see **Exhibit 13** for approximate berming and vegetation screening locations) over the lifetime of the project. All screening vegetation shall consist of native plants appropriate to the Cayucos area that are best capable of providing thorough screening (see also **Condition 1(i)** below). An ingress/egress safety door for building code purposes may be constructed on the northern side of the basement provided it is the minimum necessary to provide for a building code compliant basement and is designed to be minimally visible from public viewing areas (e.g., the beach, the State Park parking lot upcoast, Highway 1, etc.).

i. Landscaping. All non-native and/or invasive plants on the site, including iceplant, shall be removed and the site shall be kept free of such plants for as long as any portion of the approved development exists at this site. All landscaping areas outside of the approved building footprint (see **Special Condition 1(a)** above) and outside of the sandy beach area shall consist of appropriate drought-resistant California native species. All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition. All irrigation systems shall limit water use to the maximum extent feasible, including using irrigation measures designed to facilitate reduced water use (e.g., micro-spray and drip irrigation). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site.

j. Drainage and Runoff Control. A post-construction drainage and runoff control system shall be provided that is sited and designed: to collect, filter, treat, and direct all site drainage and runoff in a manner intended to protect and enhance coastal resources as much as possible; to prevent pollutants, including increased sediments, from entering coastal waters as much as possible; to filter and treat all collected drainage and runoff to minimize pollutants as much as possible prior to infiltration or discharge from the site; to retain runoff from roofs, driveways, decks, and other impervious surfaces onsite as much as possible; to use low impact development (LID) best management practices (BMPs) as much as possible; to be sized and designed to accommodate drainage and runoff for storm events up to and including at least the 85th percentile 24-hour runoff event (allowing for drainage and runoff above that level to be likewise retained and/or conveyed in as non-erosive a manner as possible).

k. Public Access. The Final Plans shall show the sandy beach public access easement area required by **Special Condition 9** below and as generally described in **Exhibit 15**. The public access easement shall cover all areas of the sandy beach located on the Permittee's property.

l. Cypress Tree Protection. The Final Plans shall show a 25-foot-diameter line around the trunk of the offsite Monterey cypress tree, where special requirements, including monitoring of the root zones during construction, are required (see **Special Condition 5**).

All requirements above shall be enforceable components of this CDP. The Permittee shall undertake construction in accordance with the approved Final Plans.

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

   a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors (to the construction site and staging areas) in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on public access and ocean resources, including by using inland areas for staging and storing construction equipment and materials as feasible.

   b. **Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from public recreational use areas (including using inland areas for staging, storage, and construction activities to the maximum extent feasible), and including using unobtrusive fencing (or equivalent measures) to delineate construction areas, and including all methods to be used to protect the beach and ocean. All erosion control/water quality best management practices to be implemented during construction and their location shall be noted. The Plans shall limit construction activities to avoid coastal resource impacts as much as possible, including verification that equipment operation and equipment and material storage will not significantly degrade public views during construction to the maximum extent feasible.

   c. **Construction Requirements.** The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan. Minor adjustments to the following construction 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.

      - All work shall take place during daylight hours, and lighting of the beach and ocean area is prohibited.

      - Development in sandy beach areas is prohibited, except that removal of existing debris, concrete, rubble, etc., is allowed in these areas.

      - Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

      - Equipment washing, servicing, and refueling shall only be allowed at a designated inland location as noted on the Plan. Appropriate best management practices shall be used to ensure that no spills of petroleum products or other chemicals take place during these activities.

- The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.).

- All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday. At a minimum, silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering the beach or ocean.

- All public recreational use areas impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any native materials impacted shall be filtered as necessary to remove all construction debris.

- The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction or maintenance activities, and immediately upon completion of construction or maintenance activities.

The Permittee shall undertake construction in accordance with the approved Construction Plan. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP.

3. **Construction Site Documents & Construction Coordinator.** DURING ALL CONSTRUCTION:

   a. **Construction Site Documents.** Copies of the signed CDP and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

   b. **Construction Coordinator.** A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the coordinator's contact information (i.e., address, email, phone numbers, etc.) including, at a minimum, a telephone number and email address that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas at the same time as limiting public view impacts as much as possible, along with an indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (e.g., name, address, email, phone number, etc.) and nature of all complaints

received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

4. **Sensitive Bird Species.** PRIOR TO COMMENCEMENT OF CONSTRUCTION activities taking place between February 1st and August 31st that have the potential for significant noise impacts, the Permittee shall ensure that a qualified biologist shall conduct a pre-construction survey for the presence of nesting birds at the project site. If an active nest of a Federal or State-listed threatened or endangered bird species, bird species of special concern, or any species of raptor is identified during such preconstruction surveys, or is otherwise identified during construction, the Permittee shall notify all appropriate State and Federal agencies within 24 hours, and shall develop an appropriate action plan specific to each incident that shall be consistent with the recommendations of those agencies. The Permittee shall notify the Executive Director in writing within 24 hours and consult with the Executive Director regarding the determinations of the State and Federal agencies. At a minimum, if the active nest is located within 250 feet of construction activities (within 500 feet for raptors), the Permittee shall submit a report, for Executive Director review and approval, that demonstrates how construction activities shall be modified to ensure that nesting birds are not disturbed by construction-related noise.

5. **Monterey Cypress.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall retain a certified arborist to conduct any site preparation activities requiring cuts or impacts to the root zone of the existing mature cypress tree on the site. The certified arborist shall monitor work within the root zone, including grading and excavation for the retaining wall and utility work, within a 25-foot radius from the trunk of the tree. The Permittee shall comply with methods identified by the certified arborist to avoid unnecessary damage to the tree's root zone, including use of hand tools as much as feasible within 25 feet of the trunk of the tree, protection and treatment of exposed roots during construction, and use of tunneling under shallow roots for utility installation in lieu of standard trenching.

6. **Coastal Hazards Risk.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of himself and all successors and assigns, to all of the following:

   a. **Coastal Hazards.** That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, sea level rise, ocean waves, tsunami, tidal scour, coastal flooding, liquefaction and the interaction of same.

   b. **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such coastal hazards in connection with this permitted development.

   c. **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards.

   d. **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the development

against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards.

e. Property Owner Responsible. That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owner.

7. Coastal Hazards Response. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of himself and all successors and assigns, that:

a. CDP Intent. The intent of this CDP is to allow for the approved development to be constructed and used consistent with the terms and conditions of this CDP for only as long as it remains safe for occupancy and use without additional measures beyond ordinary repair and/or maintenance (all as articulated in this condition below) to protect it from coastal hazards (as these hazards are defined by **Special Condition 6(a)** above). The intent is also to ensure that development is removed and the affected area restored under certain circumstances (including as further described and required in this condition), including that development is required to be removed, consistent with the Removal and Restoration Plan required in subsection (d) of this special condition.

b. Shoreline Protective Structures Prohibited. Shoreline protective structures (including but not limited to seawalls, revetments, retaining walls, tie backs, piers, groins, pilings, caisson, and grade beam systems, etc.) intended to protect the approved development from shoreline hazards are prohibited.

c. Shoreline Protective Structure Waiver. Any rights to construct such shoreline protective structures, including rights that may exist under the San Luis Obispo County Local Coastal Program, or any other applicable law, are waived.

d. Removal and Restoration Plan. The Permittee shall immediately submit two copies of a Removal and Restoration Plan (RRP) to the Executive Director for review and approval when any of the following criteria are met, which RRP shall also be implemented subject to all of the following:

1. Unsafe Conditions. If any portion of the approved development is damaged by coastal hazards (as these hazards are defined by **Special Condition 7(a)** above), and if a government agency has ordered that the damaged portion of the approved development is not to be occupied or used, and if such government agency concerns cannot be abated by ordinary repair and/or maintenance, the RRP shall provide that all development meeting the "do not occupy or use" criteria is removed to the degree necessary to allow for such government agency to allow occupancy to the remainder of the development, after implementation of the approved RRP. For purposes of this special condition, "ordinary repair and/or maintenance" shall include sealing and waterproofing and repair and/or maintenance that does not involve significant alteration to the building's major structural components, including exterior walls,

floor and roof structures, and foundation (as those terms are defined in **Special Condition 7(d)(2),** below).

2. **Major Structural Components.** If any portion of the approved development's major structural components (including exterior walls, floor and roof structures, and foundation) are subject to coastal hazards and must be significantly altered (including renovation and/or replacement) to abate those coastal hazards, then the RRP shall provide that such structural components be removed. For purposes of this special condition, "exterior wall major structural components" shall include exterior cladding and/or framing, beams, sheer walls, and studs; "floor and roof structure major structural components" shall include trusses, joists, and rafters; and "foundation major structural components" shall include any portion of the foundation and retaining walls.

3. **Daylighting.** If any portion of the approved foundation and/or subsurface elements (other than any approved above-grade basement elements, which must be screened with vegetation and/or berming as required by **Special Condition 1(h)**) becomes visible, then the RRP shall provide that such elements shall be screened consistent with the **Special Condition 1(h)**) or, in the event that such screening is not possible, that all development supported by these elements, as well as the elements themselves, that cannot be successfully screened as required be immediately removed.

In cases where one or more of the above criteria is met, the RRP shall be required to meet all requirements for all triggered criteria. In all cases, the RRP shall also ensure that: (a) all non-building development necessary for the functioning of the approved development (including but not limited to driveway/parking area and utilities) is relocated as part of the removal episode if necessary; (b) all removal areas are restored as natural areas consistent with this CDP; and (c) all modifications necessary to maintain compliance with the terms and conditions of this CDP, including the objectives and performance standards of these conditions, are implemented as part of the RRP.

If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required to implement the approved RRP, then the Permittee shall submit and complete the required application within 30 days. The RRP shall be implemented immediately upon Executive Director approval of the RRP, unless the Executive Director has identified that a CDP or CDP amendment is required for implementation. The Permittee shall undertake development in accordance with the approved RRP.

8. **San Luis Obispo County Conditions.** The proposed development was approved by San Luis Obispo County through its action on the Minor Use Permit/Coastal Development Permit Number DRC2015-00216. Any County conditions associated with that action that are imposed pursuant to an authority other than the Coastal Act (including the LCP) remain in full force and effect. In the event of conflict between any such conditions imposed by the County and the terms and conditions of this CDP, the terms and conditions of this CDP shall prevail.

9. **Public Access Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate to a political subdivision, public agency or private association approved by the Executive Director either fee title or an easement for public access (Public Access Dedication). The Public Access Dedication shall apply to all sandy beach access areas described in **Special Condition 1k** and generally depicted in **Exhibit 15**. The Public Access Dedication area shall be ambulatory, including that the easement area shall move inland if the sandy beach moves inland and shall move seaward if the sandy beach moves seaward. The Public Access Dedication shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The Public Access Dedication shall include a legal description and graphic depiction of the legal parcel subject to the CDP and a metes and bounds legal description and graphic depiction of the Public Access Dedication area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and shall be approved by the Executive Director.

10. **Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the properties governed by this CDP a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this CDP, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this CDP as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the legal parcel governed by this CDP. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this CDP shall continue to restrict the use and enjoyment of the property so long as either this CDP or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the property.

IV. FINDINGS AND DECLARATIONS

In this de novo review of the proposed CDP application, the standard of review is the San Luis Obispo County certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act.

A. PROJECT LOCATION AND DESCRIPTION

The proposed project is located at the northern end and on the seaward side of Studio Drive in the unincorporated community of Cayucos in San Luis Obispo County. Studio Drive is located between the Pacific Ocean and Highway 1, and runs parallel to both, and it provides intermittent public views of the ocean on one side and of the Cayucos foothills on the other, similar to views from Highway 1. The project site is located 150 feet southwest of the intersection of Studio Drive and Highway 1. Morro Strand State Beach is directly to the west and north of the site. Several informal trails exist between Studio Drive and the sandy beach, including both on the project site and on the adjacent State Beach property.

The subject parcel is a 3,445-square-foot sloping lot that includes both sandy beach and a mostly iceplant-covered upland area. This upland portion of the lot is comprised of primarily greywacke sandstone overlain by fill material.[1] The sandy beach portion of the lot occupies approximately 50% of the lot (i.e., 1,700 square feet of the lot is occupied by sandy beach). The non-sandy beach portion of the lot is about 1,745 square feet in size (or 0.04 acres or 1/25th of an acre).[2]

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

The parcel is within the Single-Family Residential (SFR) land use designation and is the northernmost parcel within the LCP's identified Community Small Scale Design Neighborhood (Studio Drive), which allows for single-family development subject to specific height, setbacks, parking, and other design parameters meant to limit size and scale, and to help maintain a community character defined by small beach homes.

The Applicant proposes to construct an approximately 2,100-square-foot, 31-foot-tall, three-story, single family residence. The proposed residence includes a 814 square foot basement floor, a 558 square foot main floor, and a 431 square foot upper floor, along with a 239 square foot attached garage and an elevated driveway platform that would connect to Studio Drive across an approximately 35-foot by 25 foot portion of County right-of-way (ROW) property (see **Exhibit 14**). The project also includes a 93 square foot roof deck, a 146 square foot basement patio, and 200 square feet of required on-site parking just south of the garage. The residence would extend from the eastern edge of the property to within as little as approximately three feet from the edge of the sandy beach to the west (via a proposed cantilevered portion of the main floor). Drainage and landscaping improvements are also proposed. The finished floor elevation is proposed at 15 feet NAVD88.

[1] Greywacke sandstone is composed mostly of sand-sized grains of more than one mineral in each grain—generally called "lithic fragments"—imbedded in a clayey matrix. Previous adjacent development has resulted in layers of fill material placed on the site, raising its height.

[2] For comparison purposes, the average size of the 30 immediately downcoast parcels is 5,130 square feet (or 0.11 acres or just over 1/10 of an acre), with virtually all of these parcels consisting of developable blufftop area.

The proposed project also includes new landscaping, as well as removal of existing ice plant, non-native grasses, and a small pine tree during grading activities, and retention of an existing mature Monterey cypress tree located just off the parcel on the adjacent County ROW.[3] The project's drainage plan includes removal of an existing drain and construction of a new storm drain system including a drain with a fossil filter, stormwater inlet, and stormwater outlet with energy dissipators. Rainfall from the roof would be collected by a gutter system and facilitated to an underground holding tank below the driveway grade. The Applicant also proposes a bridged driveway structure and supportive retaining walls on the adjacent County ROW property to provide access from Studio Drive to the residence. Retaining walls are also proposed along the northern and southern property boundaries. The residence would be served by County Service Area 10A for water supply and Cayucos Sanitary District for wastewater collection, treatment, and disposal. Cayucos Fire would provide fire protection.

See **Exhibit 4** for the Applicant's proposed project site plans.

B. COASTAL HAZARDS, BLUFF AND SHORELINE PROTECTION

The San Luis Obispo County LCP is premised on hazard avoidance, and requires that new development be sited and designed to ensure long-term structural integrity, minimize future risk, and to avoid landform-altering protective measures in the future, including:

> **Hazards Policy 1: New Development.** *All new development proposed within areas subject to natural hazards from geologic or flood conditions (including beach erosion) shall be located and designed to minimize risks to human life and property. Along the shoreline new development (with the exception of coastal-dependent uses or public recreation facilities) shall be designed so that shoreline protective devices (such as seawalls, cliff retaining walls, revetments, breakwaters, groins) that would substantially alter landforms or natural shoreline processes, will not be needed for the life of the structure. Construction of permanent structures on the beach shall be prohibited except for facilities necessary for public health and safety such as lifeguard towers.*
>
> **Hazards Policy 2: Erosion and Geologic Stability.** *New development shall ensure structural stability while not creating or contributing to erosion or geologic instability.*
>
> **Hazards Policy 4: Limitations on the Construction of Shoreline Structures.** *Construction of shoreline structures that would substantially alter existing landforms shall be limited to projects necessary for: a. protection of existing development (new development must ensure stability without depending upon shoreline protection devices); b. public beaches and recreation areas in danger of erosion; c. coastal dependent uses; d. existing public roadway facilities to public beaches and recreation areas where no alternative routes are feasible. These structures shall be permitted provided they are sited and designed to eliminate or mitigate adverse impacts on local shoreline sand supply, fish and wildlife provided that non-structural methods (e.g., artificial nourishment) have been proven to be infeasible or impracticable. Shoreline structures include revetments, breakwaters, groins, harbor*

[3] No landscaping or other development would take place seaward of the residence, or on the sandy beach portion of the property.

channels, seawalls, cliff-retaining walls and other such structures that alter natural shoreline processes. Retaining walls shall be permitted only where necessary to stabilize bluffs where no less environmentally damaging alternative exists or where necessary for those projects defined above. Where shoreline structures are necessary to serve the above, siting shall not preclude public access to and along the shore and shall be sited to minimize the visual impacts, erosive impacts on adjacent unprotected property, encroachment onto the beach and to provide public overlooks where feasible and safe. The area seaward of the protective devices shall be dedicated for lateral public access. The protective devices shall utilize materials which require minimum maintenance and shall specify within the plans the agencies or persons responsible for maintenance. …[THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Hazards Policy 6: Bluff Setbacks. *New development or expansion of existing uses on blufftops shall be designed and set back adequately to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures which would require substantial alterations to the natural landforms along bluffs and cliffs. A site stability evaluation report shall be prepared and submitted by a certified engineering geologist based upon an on-site evaluation that indicates that the bluff setback is adequate to allow for bluff erosion over the 75 year period. Specific standards for the content of geologic reports are contained in the Coastal Zone Land Use Ordinance.*

Hazards Policy 7. Geologic Study Area Combining Designation. *The GSA combining designation in coastal areas of the county is amended to include all coastal bluffs and cliffs greater than 10 feet in vertical relief and that are identified in the Assessment and Atlas of Shoreline Erosion (DNOD, 1977) as being critical to future or present development. Maps clearly distinguish the different geologic and seismic hazards which the county covers by the GSA combining designation. These hazards shall include steep slopes, unstable slopes, expansive soils, coastal cliff and bluff instability, active faults, liquefaction and tsunami. [THIS POLICY SHALL BE IMPLEMENTED BY DESIGNATING GSA AREAS ON THE COMBINING DESIGNATION MAPS AND PURSUANT TO SECTION 23.07.080 OF THE CZLUO.]*

Visual and Scenic Resources Policy 11: Development on Coastal Bluffs. ***New development on bluff faces shall be limited to public access stairways and shoreline protection structures.*** *Permitted development shall be sited and designed to be compatible with the natural features of the landform as much as feasible. New development on bluff tops shall be designed and sited to minimize visual intrusion on adjacent sandy beaches. (emphasis added)*

Estero Area Plan, Chapter 7, Areawide Standard I-4. Bluff Setbacks. The *bluff setback is to be determined by the engineering geology analysis required in I.1.a. above* ***adequate to withstand bluff erosion and wave action for a period of 100 years. In no case shall bluff setbacks be less than 25 feet.*** *Alteration or additions to existing development that is non-conforming with respect to bluff setbacks that equals or exceeds 50 percent of the size of the existing structure, on a cumulative basis beginning July 10, 2008, shall not be authorized unless the entire structure is brought into conformance with this setback requirement and all*

other policies and standards of the LCP. On parcels with legally established shoreline protective devices, the setback distance may account for the additional stability provided by the permitted seawall, based on its existing design, condition, and routine repair and maintenance that maintain the seawall's approved design life. Expansion and/or other alteration to the seawall shall not be factored into setback calculations. (emphasis added)

Estero Area Plan, Chapter 7, Areawide Standard I-5. Seawall Prohibition. *Shoreline and bluff protection structures shall not be permitted to protect new development. All permits for development on blufftop or shoreline lots that do not have a legally established shoreline protection structure shall be conditioned to require that prior to issuance of any grading or construction permits, the property owner record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development, and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235 and the San Luis Obispo County certified LCP.*

CZLUO Section 23.07.086. Geologic Study Area Special Standards: *All uses within a Geologic Study Area are to be established and maintained in accordance with the following, as applicable:…c. Erosion and geologic stability. New development shall insure structural stability while not creating or contributing to erosion, sedimentation or geologic instability.*

CZLUO Section 23.04.118(a). *Bluff retreat setback method: New development or expansion of existing uses on blufftops shall be designed and set back from the bluff edge a distance sufficient to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures that would in the opinion of the Planning Director require substantial alterations to the natural landforms along bluffs and cliffs. A site stability evaluation report shall be prepared and submitted by a certified engineering geologist based upon an on-site evaluation that indicates that the bluff setback is adequate to allow for bluff erosion over the 75 year period according to County-established standards.*

LCP Coastal Bluff Definition (Estero Area Plan-Appendix C). *A steep bank or cliff generally having a relief of 10 feet or more and the toe of the bluff may be subject to marine erosion.*

Analysis

The County's LCP requires hazard avoidance and hazard minimization for new development along the shoreline. This site is located in an area known for overall geologic instability (including due to wave runup, unconsolidated soils, erosion, tsunamis, etc.) and is located within an LCP-mapped Geologic Study Area (GSA), as defined in LCP Hazards Policy 7, which includes all areas of the County where coastal bluffs and cliffs are greater than 10 feet in vertical relief.

Estero Area Plan (EAP), Chapter 7, Areawide Standard I-4, LCP Hazards Policies 1 and 2, and Coastal Zone Land Use Ordinance (CZLUO)[4] Section 23.07.086 collectively require that new

[4] The County's CZLUO is the Implementation Plan (IP) portion of its LCP.

development ensure structural stability while not creating or contributing to erosion or geological instability. Areawide Standard I-5 and Hazards Policy 4 explicitly prohibit armoring to serve new development. Hazards Policy 6, CZLUO Section 23.04.118(a), and Areawide standard I-4 require new development to be set back to accommodate at least 100 years of erosion.[5] Lastly, LCP Visual and Scenic Resources Policy 11 prohibits residences on bluff faces.

Coastal Bluff Determination

The project parcel is comprised of an upland area and a sandy beach area, adjacent to Morro Strand State Beach, on the northern end and seaward side of Studio Drive. The general area surrounding the project site is characterized by coastal features, including beachfront adjacent to relatively low bluffs that range in elevation from approximately 30 to 50 feet. The mouth of Old Creek is located approximately 600 feet north of the project site and the project lies at the southern edge of the creek's broad mouth and alluvial valley, which appear to have historically been even wider than exists today. The site is located in a GSA, which LCP Hazards Policy 7 describes as areas of the County with coastal bluffs and cliffs greater than 10 feet in vertical relief that are subject to hazards, including "steep slopes, unstable slopes, expansive soils, coastal cliff and bluff instability, active faults, liquefaction and tsunami." The parcel is composed of sandy beach area and upland area, but the proposed project would be located only on the upland area that consists of bedrock (greywacke sandstone with minor shale interbeds), fill, and is covered mostly with iceplant. Project site elevations range from slightly less than 10 feet above mean sea level for the sandy beach portion of the site to approximately 26 feet above mean sea level for the portion of the site (not including the County's ROW area between the lot and Studio Drive) located closest to Studio Drive.[6]

The key geologic question for this site is its location relative to the coastal bluff, and to what degree the proposed project meets LCP requirements associated with hazard avoidance (e.g., required minimum coastal blufftop setbacks designed to ensure new development does not need shoreline protective devices, etc.). Determining the location of the blufftop edge presents difficulties because the natural bluff materials (bedrock and minor marine terrace deposits) on the site have been covered with artificial fill over the course of the last half century or so as a result of adjacent roadway and residential development. As shown in **Exhibits 1** and **2**, the site is located at the end of adjacent residential development along the seaward side of Studio Drive, but the site is physically unlike the blufftop lots to the south, which lie practically at grade with Studio Drive. The subject site appears more similar to the adjacent State Beach property immediately to the north, which slopes down almost 20 feet from the elevation of Studio Drive to the sandy beach. As mentioned above, the mouth of Old Creek is located approximately 600 feet north of the project site and the project lies at the southern edge of the creek's broad mouth and alluvial valley, and thus the project site is located near where the coastal bluff begins to turn inland to form the bluff associated with the historic creek bank.

[5] Note that the CZLUO standard identifies 75 years as the operative time frame, but that the Estero Area Plan requires a 100-year time frame. The LCP is structured so that the specific standards of the Area Plans take precedence over the standards of the CZLUO where they are different. **Thus, 100 years of stability is required at this location.**

[6] On its western seaward end, the lot lies at an elevation of approximately +10 feet NAVD88. On its eastern end (including the County's right-of-way along Studio Drive, where the driveway would be located) and southerly ends (near the adjacent neighboring home), the elevation is more in line with the grade of Studio Drive (i.e., approximately +31 feet NAVD88).

It is difficult, however, to visually distinguish between the coastal bluff and any inland facing fluvial bluff given that the site has been the subject of various fill placement episodes. In 1937, Cabrillo Highway (currently Highway 1) was a primitive road located east of its present location, along what are now Ocean Boulevard and Cabrillo Avenue. Studio Drive ran parallel to the coastline but did not exist in its current location (i.e., it turned northeast and connected to the highway approximately 200 feet south of the present property frontage). The lowland area immediately north of the project site appeared to contain alluvial sediments in the broad valley of Old Creek. In 1937, the area between and including the project site and the then-active creek channel inland of the beach, contained a low, broad, slightly vegetated dune. By 1949, Cabrillo Highway had been realigned slightly west within the Old Creek drainage, including a new bridge over Old Creek. By 1959, most of the lots on the west side of Studio Drive were developed (see **Exhibit 3** for some historical photos of the area).

Aerial photographs from 1963 show major roadway changes in the area (which were largely completed by 1965), including the realignment and widening of Highway 1 and the extension of Studio Drive approximately 450 feet northwest of where it was originally located, where it then intersected and connected to Highway 1. This is now the current alignment of Studio Drive and Highway 1 today (see aerial photo in **Exhibit 3**). The layers of fill that exist on the site today (with a fill thickness ranging between 4.5 and 10.5 feet) were pushed onto the project site during different periods of time, including as a result of these road projects and from subsequent development of the adjacent residential property immediately to the south.

Because of this history, much geologic study was undertaken to determine the site's pre-development geologic condition, irrespective of the fill that has been laid on top of it throughout the years, as it is this original configuration that applies for bluff determination purposes (i.e., artificial manipulation cannot move the coastal bluff location, and the Coastal Act/LCP bluff investigation is based on the bluff's historical condition). The initial geologic investigations of the site were meant to determine whether a coastal bluff exists on the site or whether the rock outcropping extending out to the western edge of the site is a fluvial (i.e., riverine) bluff. Later investigations were focused on determining the actual blufftop edge location.

Commission staff has tracked the progress of this project since it was pending at the local jurisdiction level, and has actively communicated concerns about project issues with County staff, including the submission of numerous comment letters and various discussions and meetings. Commission staff recommended that the Board of Supervisors deny the proposed project due to the significant issues associated with it. After the project was appealed to the Commission, staff worked with the Applicant and the Applicant's representatives to ensure sufficient information necessary to act on the project, as required by the County's LCP. In addition, the Commission's Senior Geologist, Dr. Mark Johnsson, has reviewed all the relevant materials (including over 20 geotechnical reports and associated material, as included in Appendix A), and has visited the site on numerous occasions to verify the reports and their conclusions. Dr. Johnsson has concluded that that the project site is part of a coastal bluff feature that meets the definition of a coastal bluff, as that term is defined in the Commission's implementing regulations and the LCP (see Estero Area Plan – Appendix C), and that the project site is seaward and northerly of the blufftop edge and consists entirely of bluff face and sandy beach (see Dr. Johnsson's memo in **Exhibit 6**).

The San Luis Obispo County LCP defines coastal bluffs in the EAP as: "A steep bank or cliff generally having a relief of 10 feet or more and the toe of the bluff may be subject to marine erosion." In addition, Title 14 of the California Code of Regulations (CCR) Section 13577(h), which is used to determine precise boundaries of jurisdictional areas for purposes of Coastal Act Section 30603, defines coastal bluffs as "those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion."[7]

Applying Section 13577(h) of the Coastal Commission Regulations (CCR), the site clearly has been subject to marine erosion within the last 200 years, which indicates that the western side of the property is part of a coastal bluff feature. Even with the existence of fill on the site, it is clear that the site would be subject to marine erosion. Evidence of this includes marine forces, high tides, storm surge, etc., upon the bluff and kelp wrack at the visual toe of and on the bluff face itself (see photos of the bluff face in **Exhibit 2**, and photos of marine erosion and wave action on the property in **Exhibit 7**). Dr. Johnsson states that although parts of the bluff are now covered by fill, it is likely that the portion of the site labeled by the Applicant's consultants as "fluvial bluff" (i.e., that portion of the bluff aligned more east/west) was also subject to marine erosion before placement of the fill. Therefore, the project site conclusively meets the definition of "coastal bluff" under CCR Section 13577(h), with the blufftop edge actually located inland and southerly of the parcel itself.

Under the EAP, coastal bluffs are defined as a steep bank or cliff generally having a relief of 10 feet or more and for which the toe of the bluff may be subject to marine erosion. As a preliminary matter, it is worth noting that the site is mapped within the LCP's GSA, which denotes areas containing coastal bluffs and cliffs greater than 10 feet in vertical relief (see Hazards Policy 7 above and the official combining designation map in **Exhibit 10**). By contrast, the Applicant's geotechnical consultant has stated that no portions of the site have a relief of 10 feet or more. However, Dr. Johnsson analyzed the project's geotechnical reports and visited the site to determine the height of the bluff on the site, and found no evidence indicating that the bluff at the property is consistently less than 10 feet in relief, either in its present state or prior to the fill deposition (see **Exhibit 6**). In fact, one report (the Cleath-Harris report – see Appendix A) shows that the estimated bedrock profile (i.e., the profile with fill material removed) is consistently between approximately 11 feet and 22 feet. Thus, according to Dr. Johnsson, although some parts of the bluff may intermittently dip slightly below the 10-foot metric, the majority of the bluff consistently exceeds 10 feet in height. In addition, the toe of the bluff, largely located at the sand/bluff interface has been subject to marine erosion, as demonstrated by the photos (again, see **Exhibit 2** and **Exhibit 7**). Thus, the project site includes a coastal bluff feature as defined by the LCP as well. Again, Dr. Johnsson has concluded that the site is located entirely seaward and northerly of the blufftop edge, and thus the portion of the site located nearest to Studio Drive consists of bluff face, with the remainder of the site, i.e. the portion of the site nearest the Pacific Ocean, made up of sandy beach.

[7] Section 13577(h) states in relevant part: Coastal Bluffs. Measure 300 feet both landward and seaward from the bluff line or edge. Coastal bluff shall mean: 1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and 2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2).

Thus, Dr. Johnsson's review concludes that the site does contain a coastal bluff, meaning that the LCP's bluff related requirements would apply to the project. Even if the bluff in this case were not subject to marine erosion generally over the last 200 years, which it clearly is and has been, the definition of "coastal bluff" under CCR Section 13577(h)(2) describes a process to ensure that minor indentations and undulations of the State's coastal bluffs are not excluded from meeting the definition of a coastal bluff just because they face a different direction than typical, stating:

> *The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations.*

In this case, the line that was used in the project's Final Environmental Impact Report (FEIR) to determine the location of the bluff edge was only 300 feet long as opposed to the minimum 500-foot-long line required by CCR Section 13577(h)(2) to determine the point at which the coastal and fluvial bluffs converge. The change in orientation of the bluff that the Applicant's geotechnical representatives use to delineate a coastal bluff from a fluvial bluff does not constitute a change in the bluff from a "coastal bluff" as defined in the CCR Section 13577(h)(2). Thus, the FEIR findings are based on an assessment of the bluff that does not comply with the requirements of CCR Section 13577(h).

CZLUO Section 23.04.118 requires that the *bluff edge* be used to identify the proper setback line. However, as indicated in Dr. Johnsson's memo, the cross sections and plan views provided by the Applicant show that the bluff top edge actually lies landward and southerly of the entire parcel, and thus the natural topography and ground surface of the entire parcel is either located on the natural *bluff face* or sandy beach[8] and the bluff edge lies inland and southerly of the subject site. LCP Visual and Scenic Resources Policy 11 allows *only stairways and shoreline protective devices on bluff faces.* A single-family residence is not an allowed use on a bluff face and thus the proposed project is inconsistent with Visual and Scenic Resources LCP Policy 11. In addition, the project is wholly inconsistent with the bluff setback requirements of EAP Areawide Standard I-4 given that the entire parcel is located *seaward* of the blufftop edge.

Coastal Bluff Conclusion

Thus, for all of the above reasons, the proposed project is inconsistent with LCP Visual and Scenic Resources Policy 11, which does not allow single-family development on a bluff face, and is also inconsistent with the minimum 25-foot bluff setback requirement of EAP Areawide Standard I-4. Further, there are no special conditions or project revisions that would fix such fundamental inconsistencies in this case.

Erosion Risks to the Proposed Development Site

[8] This is corroborated by more recent studies and mapping undertaken by Shoreline Engineering, Inc., and AT GeoSystems, which were done after completion of the FEIR, and which show the blufftop edge alignment in this location (see Appendix A for full citations).

While the main focus area of the project has been related to whether the site contains a coastal bluff feature or not, staff has also analyzed whether the proposed residence will be constructed in an area that will not allow it to withstand bluff erosion and wave action for the LCP-required period of **100 years** (without such shoreline protection) and whether the residence includes shoreline armoring in the form of a concrete basement wall and foundational structures. LCP policies related to these questions include Hazards Policy 6, CZLUO Section 23.04.118(a) and EAP Areawide Standard I-4, which require new development to withstand bluff erosion and wave action for a period of 100 years,[9] and Hazards Policy 1, EAP Areawide Standard I-5, and Hazards Policy 4, which explicitly prohibit armoring to serve new development.[10]

The Commission's Senior Engineer, Dr. Lesley Ewing, has reviewed the numerous reports and studies (see list in Appendix A) submitted by the Applicant and others, and undertaken a thorough analysis of the site in relation to coastal hazards (see Dr. Ewing's memorandum in **Exhibit 8**). As described in this memorandum, a site-specific study in 1981[11] estimated an erosion rate of 0.6 inches per year for the rock outcrop on the bluff face. The Applicant's 2011 GeoSoils, Inc. report concluded that, based on a review of aerial photographs, "due to the hard rock nature of the shoreline material there has been little erosion or retreat of the shoreline over the last 4 decades."

The U.S. Geological Survey's National Assessments of Shoreline Change for California (Open File Report 2006-1219 for coastal land loss along sandy shorelines and Open File Report 2007-1133 for coastal cliff retreat) found that the beach area in the vicinity of the proposed project had exhibited long-term stability (for the time period from the late 1800s to 1998/2002) and a maximum erosion trend of about two to three feet per year for the shorter time period of 1947/1976 to 1998/2002. Cliff retreat rates for Cayucos Beach over the seven decades from 1934 to 1998/2002 were less than six inches per year and no retreat rates were reported for the Studio Drive section of the coast. A 2014 study of bluff retreat at 3266 Studio Drive[12], about half a mile south of the proposed development site, reported a maximum bluff retreat during the last 100 years of 12.5 feet, which equals an erosion rate of 1.5 inches per year.

Historically this site has not experienced high rates of erosion. Despite these low historic rates of erosion, the Pacific Institute maps for shoreline change[13] indicate that the erosion could potentially extend inland to Highway 101 by 2100 with 4.5 feet (1.4 meters) of sea level rise.

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[9] Id (Estero Area Plan standards requiring a 100-year setback take precedence over CZLUO standards that would otherwise allow for a 75-year setback).

[10] The project site is not currently mapped in the County's flood hazard combining designation. Based on review of the current Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map for Cayucos, the area proposed for development is located above and outside the AE/VE hazard zone. Properties within the AE/VE zone are subject to flood insurance purchase requirements and floodplain management standards (FEMA 2012). On the project site, the AE/VE zone is approximately equivalent to elevation 12.92 feet NAVD88. FEMA elevations do not take into account sea level rise associated with global climate change, which has been estimated to be as high as 5.5 feet by the year 2100, and thus these current FEMA flood hazard elevations need to be understood in that context as well.

[11] Cited by Cleath and Associates (2006).

[12] GeoSolutions, Inc. "Geologic Coastal Bluff Evaluation," September 12, 2014, with an addendum January 29, 2016. Rate was confirmed by the County geologist (Landset Engineering, Inc.)

[13] Heberger, et al. 2009, Impacts of Sea Level Rise on the California Coast.(CEC-500-2009-024-F) http://www2.pacinst.org/reports/sea_level_rise/gmap.html

The Pacific Institute's depiction of potential erosion with sea level rise is not intended to provide site-specific details; however, the general characterization of the site suggests that the historic erosion trends might not be a good depiction of future risks. Thus, while historic erosion trends would indicate that development could be located on the site at a sufficient inland distance from the toe of the bluff to minimize the risks from erosion, the future trends indicated by the Pacific Institute Report suggest that development on this site might not be safe from erosion for the next 100 years.

Flooding Impacts to the Proposed Development Site
In order to assure stability, it is necessary to demonstrate that the building envelope will be safe from flooding under the most extreme conditions anticipated during its 100-year design life. The main focus of the flood risk analysis stems from EAP Areawide Standard I-4, LCP Hazards Policies 1 and 2, and CZLUO Section 23.07.086, which collectively require that new development ensure structural stability while not creating or contributing to erosion or geological instability. Hazards Policy 6, CZLUO Section 23.04.118(a), and EAP Areawide standard I-4 require new development to be set back to accommodate at least 100 years of erosion.[14]

Regarding flooding concerns, it is critical that the proposed project be located on an area of the site that will eliminate or minimize risks from flooding, where flooding encompasses, but is not limited to, exposure to water from wave impacts, inundation and temporary flooding from wave runup and overtopping. In this case, the proposed development site is located on a descending bluff face that terminates at the beach. Flooding and erosion are both possible risks to development on this site and these coastal hazards have been examined in several coastal hazard reports as noted above. Due to the geologic conditions, the flooding concerns for this site are complex.

As detailed in the Dr. Ewing's memorandum (see **Exhibit 8**), the Applicant's geotechnical consultant (GeoSoils, Inc.) has performed several wave run-up analyses for the site, with some of the results being included in the project's FEIR. All of the reports show that waves can impact the rock outcrop that is on the western portion of the bluff face and all of these reports consistently find that storm waves will affect the site up to about 18 feet NAVD88.[15] The reports also all note some amount of overtopping of the rock outcrop on the bluff face, with the inland formation of overland flow (a bore) that would cross inland of the outcrop. However, overland flow elevations inland of the rock outcrop do not increase significantly with sea level rise; once overtopping occurs, the overland flow elevations are consistently about 18 feet NAVD88.

[14] These policies embody Coastal Act Section 30253 that requires that "New development shall do all of the following [as excerpted]: a) *Minimize risks to life and property in areas of high geologic, flood and fire hazard;* b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

[15] Of particular note is the fact that all of the reports identify a potential wave runup elevation on the site of 20-26 feet NAVD88. The higher elevations are based on the assumption that runup will occur on an infinite slope, so that the wave energy can fully dissipate on the upward face of the inland slope. This represents the height that the water can reach on an infinitely high slope. In reality, slopes are often lower than the height of this potential runup. When the water has no additional resistant surface against which to rise, the lack of lateral resistance will provide the water with another "free surface". When there is no resistance to landward movement, the water will cease to follow the upward trajectory of the potential runup and will assume a more horizontal path.

However, as Dr. Ewing's memo describes, sea level rise will greatly influence the frequency and duration of site flooding and overtopping could occur from smaller waves and with rising sea level, when more frequent and possibly less significant waves will overtop the outcrop on the bluff face. Overtopping of the rock outcrop on the western portion of the bluff face will likely occur only infrequently during the first years of development, but will become more frequent with time on this and potentially adjacent properties.[16]

Flooding Summary and Shoreline Protection
The Applicant's reports collectively examined a range of site conditions and water level conditions. As Dr. Ewing describes in her memo, based on these various studies, the 18 foot NAVD contour represents an approximate inland limit of flooding for this range of scenarios. This overland flow limit is just one of the many development constraints that exist on the site and it should be considered in light of other resource concerns. However, for flood purposes, a finished floor elevation at or above the 18 foot NAVD88 contour would provide a limit for development to insure flood safety, as well as the safety of the development without the need for a shore protection structure. In this case, the proposed project's basement would be constructed as low as the 15 foot contour and thus would not insure flood safety. Due to the fact that it is proposed at this contour, the development would also include shoreline protection, inconsistent with the LCP.

In addition, all of the analyses provided by the Applicant assume that the rock outcrop extends across the entire bluff face that is exposed to ocean waves. However, no evidence of this has been provided. If the rock outcrop does not extend across the entire ocean-exposed bluff face, then wave runup would reach higher heights (i.e., up to 26 feet NAVD88 per the 2014 GeoSoils report). Similarly, the analysis did not examine the flood risks for the possible future when the rock outcrop has been removed by erosion. If the outcrop no longer provides a barrier to flooding, the runup and overtopping analysis might more closely resemble the potential runup that has been calculated for the infinite slope condition (again, up to 26 feet NAVD88) and the site would be even more vulnerable than it is now to flooding. Lastly, as discussed in the following section on erosion, significant shoreline change could occur in the future with rising sea level. Since future shoreline armoring cannot be allowed, development adaptation and possible incremental removal may be needed as the site erodes and coastal hazards threaten the development and eventually the entire site.

In summary, based on the analysis of Dr. Ewing (see **Exhibit 8** for the full analysis) portions of the residence will be subject to periodic but increasing wave runup and marine flooding over the next 100 years from elevation 18 to 26 feet NAVD88. The Applicant is proposing a standard slab-on-grade foundation. However, even with a standard foundation system at this location including concrete basement walls (i.e., to within approximately five feet of the sandy beach as shown on the Applicant's proposed project plans in **Exhibit 4**), under these circumstances this

[16] It is possible that the adjacent property could be exposed to increased flood risk from water reflecting off the adjacent development. The adjacent property is upslope from this site, so water diverted from this site is likely to flow west or north, rather than south. However, due to the orientation of the property boundaries and site conditions, the proposed development may cause water diversion onto an adjacent site. If the building envelop is inland of the anticipated reach of wave runup, no diversion of water would be expected.

type of system may act as protection against shoreline erosion, flooding and wave action, and may constitute shoreline armoring. The LCP does not allow such shoreline protective devices to protect new development (see LCP Policies Hazards Policy 1, EAP Areawide Standard I-5, and Hazards Policy 4), thus the proposed project is inconsistent with the LCP on these points.

Hazards Conclusion
For the multitude of reasons above, the proposed project is inconsistent with the above-cited LCP coastal hazard related policies and standards that prohibit residential development on a bluff face, that require 100-year and 25-foot minimum setbacks from the blufftop edge, that require development to be safely sited, and that prohibit shoreline protective devices to protect new development.

C. VISUAL RESOURCES

The San Luis Obispo County LCP includes strong protections for visual and scenic resources along the coast and requires that coastal structures be sensitive to the natural setting and that they minimize alteration of the natural shoreline:

> ***Scenic and Visual Resources Policy 1. Protection of Visual and Scenic Resources.*** *Unique and attractive features of the landscape, including, but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved and protected.*
>
> ***Scenic and Visual Resources Policy 2. Site Selection for New Development.*** *Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas.* ***Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors.*** *In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion. (emphasis added)*
>
> ***Scenic and Visual Resources Policy 3. Stringline Method for Siting New Development.*** *In a developed area where new construction is generally infilling and is otherwise consistent with Local Coastal Plan policies, no part of a proposed new structure, including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjoining structures; except where the shoreline has substantial variations in landform between adjacent lots in which case the average setback of the adjoining lots shall be used. At all times, this setback must be adequate to ensure geologic stability in accordance with the policies of the Hazards chapter. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.118 OF THE CZLUO.]*
>
> ***Scenic and Visual Resources Policy 5. Landform Alterations. Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized.*** *Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance. (emphasis added)*
>
> ***Scenic and Visual Resources Policy 6: Special Communities and Small-Scale Neighborhoods.*** *Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to complement and be visually compatible with existing characteristics of the community which may include concerns for*

the scale of new structures, compatibility with unique or distinguished architectural historical style, or natural features that add to the overall attractiveness of the community. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO CHAPTER 23.11 (DEFINITIONS) OF THE CZLUO.]

Scenic and Visual Resources Policy 11: Development on Coastal Bluffs. New development on bluff faces shall be limited to public access stairways and shoreline protection structures. Permitted development shall be sited and designed to be compatible with the natural features of the landform as much as feasible. *New development on bluff tops shall be designed and sited to minimize visual intrusion on adjacent sandy beaches. (emphasis added)*

ESHA Policy 29: Protection of Terrestrial Habitats. … *Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

In addition, the LCP provides more specific policies for "small scale design neighborhoods," which apply to the Studio Drive neighborhood (and the Pacific Avenue neighborhood immediately to the north). The intent of these policies is described on page 10-7 of the EAP, including that residential structures should maintain a lower profile to preserve community character:

Studio Drive and Pacific Avenue are residential neighborhoods characterized by 25 to 40 foot wide lots. ***Most of the structures are low profile one-story houses.*** *The Studio Drive area is immediately adjacent to Highway 1, from which a view of the ocean is usually available. Any structure within the northern portion of Studio Drive will block some view of the ocean, but two-story structures will also eliminate vistas of the distant ocean and the horizon, cutting off all visual connection with the ocean. One-story structures on Studio Drive, however, do not block vistas from the highway. Based on these criteria,* ***the Studio Drive area should remain as a lower profile area of one-story structures, where two-story structures would block these vistas, to preserve community character.*** *A public view of the ocean from Highway 1 exists for nearly all of the length of Pacific Avenue. An even more significant public view exists from the major public ocean front road, Pacific Avenue. In addition, the neighborhood is predominantly one-story houses. (emphasis added)*

The EAP thus identifies a small-scale community standard that is focused on allowing low-lying one-story structures to avoid public viewshed degradation. The EAP also provides specific policies including requirements for setbacks, size, height, parking, and other design features and additional guidelines for residential development on Studio Drive, including site layout, building design, landscaping, and fencing (see **Exhibit 12** for such standards).

Analysis

Per the LCP's Visual and Scenic Resources policies, new development must be sited and designed to protect views to and along the ocean and scenic coastal areas (Policies 1 and 2), to

avoid allowing development that would be visible from major public view corridors where possible (Policy 2), to minimize visual intrusion (Policy 2), and minimize grading, earthmoving, and landform alteration within public view corridors (Policy 5). In addition, LCP Visual and Scenic Resources Policy 6 requires that the siting and design of new development, including as it relates to scale and architecture of new structures, complement and be visually compatible with existing characteristics of the community, including with respect to scale and protection of natural features that add to the overall attractiveness of the community. The LCP also requires new development in this neighborhood to be designed and sited to complement and be visually compatible with the existing characteristics of the community per the LCP's Community Small-Scale Design Neighborhood for Studio Drive (see **Exhibit 12**). Scenic and Visual Resources Policy 11 prohibits residential development on bluff faces, and only allows allowed development on bluff faces if it is sited and designed to be compatible with the natural features of the landform as much as feasible. In addition, ESHA Policy 29 requires that development adjacent to state park and recreation lands be sited and designed to prevent impacts that would significantly degrade such areas.[17] Lastly, Visual and Scenic Resources Policy 3 of the LCP describes a stringline method for ensuring that, in developed areas, new development shall be built no farther onto a beachfront than a line drawn between the most seaward portions of the adjoining structures.

Local Setting

The community of Cayucos is located on a gently-sloped marine terrace situated between the Pacific Ocean and a series of low foothills rising up to the Santa Lucia Mountain Range. The diverse geologic features that characterize the region contribute to the high scenic quality of Cayucos and the coast. The most notable natural visual resources are Morro Rock near Morro Bay to the south, the fertile valleys and hills east of town, and shoreline area that includes the sandy beaches and the Pacific Ocean. Cayucos is a beach community that retains a small-town character and follows an overall linear form as it hugs the coast below the foothills. Highway 1, a State Scenic Highway and National Scenic Byway, generally parallels the coastline through Cayucos, and is located just inland of the subject site.

The residential neighborhoods that extend from the downtown area also contribute to the beach town aesthetic of the community. Relatively modest homes on relatively small lots help to form the small-town character of the area, including along Studio Drive. The buildings that help to greatly define the coastal community aesthetic tend to be one or (a maximum of) two stories, with gable roofs and horizontal wood siding, some of which include a mix of more modern-style architecture that employs flat or shed rooflines with clerestory windows. Increasingly over time, many of the older structures have been remodeled or replaced. Some newer buildings maintain the appearance of the small beach town in terms of architecture and scale; however, there has clearly been a trend toward newer structures that appear somewhat larger than the structures that have historically defined the aesthetic character of the community. The trend toward maximizing building envelopes, and the use of Mediterranean architecture and contemporary materials and

[17] ESHA Policy 29 is primarily an ESHA protection policy, but it is included here because it also includes a component (similar to Coastal Act Section 30240) that refers to protecting state park and recreation areas from inappropriate development adjacent to them, stating that "development adjacent to state park and recreation lands shall be sited and designed to prevent impacts that would significantly degrade such areas" (here, Morro Strand State Beach). Thus, public viewshed impacts associated with potential degradation of the visual resource elements of the State Beach fall into the general rubric of this policy as well.

colors, appears to be slowly changing the visual identity of Cayucos. The Studio Drive neighborhood is located south of the main town portion of Cayucos along the beach (and south of the Pacific Avenue Small Scale Design Neighborhood), and it reflects this current aesthetic and scale debate.

Proposed Project
The proposed project constitutes an approximately 31-foot tall, three-story design (basement, main floor, upper floor) which extends from Studio Drive (via a raised driveway platform across a portion of the 35-foot-long by 25-foot-wide County ROW as shown in **Exhibit 14**) to within approximately three feet of the edge of the sandy beach via a proposed cantilever and approximately five feet from the beach via the basement wall. The proposed project is to be built in a nautical architectural style with "natural appearing siding and to comply with the Small Scale Design Neighborhood standards for height, setbacks, upper floor setbacks, and gross structural area requirements. Associated approved development includes retaining walls and a bridged driveway to provide access to the residence from the paved portion of Studio Drive across the undeveloped and vegetated County ROW. The proposed project also includes a new stormwater drain that would daylight at the northern end of the project site in the County's ROW. See **Exhibit 4** for Applicant's proposed project plans. See **Exhibit 5** for a visual simulation of the proposed project.

Major public views related to this project are from Highway 1, a State Scenic Highway and National Scenic Byway at this location, which runs inland of the subject lot and parallel to the ocean, from Morro Strand State Beach, which lies immediately adjacent to the lot to the west and north, from the State Beach parking lot (to the north of the site) and from Studio Drive itself.

Visual Impacts from Highway 1
Because of its location west of Highway 1 and because there are no significant structures or vegetation between it and the Highway, the project would be visible in varying degrees from both the northbound and southbound lanes of Highway 1. Visitors traveling southbound will be able to view the main and upper floors of the project, but the basement level would be constructed below the grade of Studio Drive (which itself lies at a lower grade than Highway 1) and therefore would be partially blocked in the southbound Highway 1 view. Traveling northbound, only the upper floor and a portion of the main floor would be visible due to view blockage by adjacent development to the south and due to the grade of Highway 1 being higher than Studio Drive and the subject lot. Thus, both the main and upper floors of the proposed residence would block some of the existing beach and blue water ocean views from both the northbound and southbound lanes of Highway 1, and all three stories would be at least partly visible in the southbound view. These impacts are tempered somewhat because existing residential development along Studio Drive currently limits views of the ocean and beach from Highway 1, and this project adds only incrementally (one new home) to this impact. In addition, the project would constitute one additional residence[18] along the most upcoast portion of Studio Drive, before the area transitions to State Beach immediately to the north.

[18] This is the last residential parcel on the upcoast end of Studio Drive.

Even so, however, the proposed project will incrementally degrade Highway 1 views, including in terms of its three-story design, and thus the project: has not been sited and designed to protect views to and along the ocean and scenic coastal areas (inconsistent with Scenic and Visual Resources Policies 1 and 2); allows development that would be visible from this major public view corridor (inconsistent with Scenic and Visual Resources Policy 2); has not minimized visual intrusion (inconsistent with Scenic and Visual Resources Policy 2); has not minimized grading, earthmoving, and landform alteration within the Highway 1 public view corridor (inconsistent with Scenic and Visual Resources Policy 5); is not sited and designed to complement and be visually compatible with existing characteristics of the community, including with respect to scale and protection of natural features that add to the overall attractiveness of the community (inconsistent with Scenic and Visual Resources Policy 6); appears as three levels instead of one or two (inconsistent with the LCP's Community Small-Scale Design Neighborhood standards for Studio Drive); allows residential development on the bluff face that is not compatible with the natural features of the landform (inconsistent with Scenic and Visual Resources Policy 11); and would significantly degrade the Morro Strand State Beach public viewshed (inconsistent with ESHA Policy 29).

Visual Impacts from Morro Strand State Beach and Parking Lot
Because of its location at the far northern end and seaward side of Studio Drive, the proposed project would be starkly visible from Morro Strand State Beach, which is an extremely popular public beach and includes a scenic overlook/parking lot located just north of the project site. Visitors enjoying the beach and looking toward the project would see beach sand and a coastal bluff in the foreground, residential areas in the fore- and mid-ground, and open space hills as a backdrop. From many vantage points (e.g., from the west, southwest, north and northwest), the approved residence would appear as a massive, approximately 31-foot-tall, three-story development. This is because, due to the sloping nature of the site from Studio Drive to the sandy beach, the basement, main floor and upper floor would all be visible above grade as seen from the beach. Thus, from most anywhere on the sandy beach, the residence would appear as a three-story, approximately 31-foot tall structure stepping down the bluff face with clear views of the basement, main, and upper floors. This view would be in dramatic contrast to the current makeup of residential development along Studio Drive, which includes houses of one or two stories maximum located on and inland of the blufftop. These homes, for the most part, do not show a full basement and thus they appear as relatively smaller-scale one- or two-story residences as seen from the beach, as required by the LCP's small scale design parameters that apply to Studio Drive. This site is unique compared to adjacent residential development in that it is located on the bluff face and not the blufftop, and the sloping nature of the site will allow all three stories to be starkly visible from beach vantage points. As such, the project will negatively impact important State Beach and State Beach parking lot views inconsistent with the above-referenced policies (including significantly degrading the Morro Strand State Beach public viewshed, inconsistent with Policy 29).

Studio Drive Views and Compatibility
Views from Studio Drive would be impacted in similar ways as those from Highway 1, just from a closer perspective, raising similar LCP conformance issues. In addition, Chapter 10 of the County's Coastal Plan Policies identifies "special communities and neighborhoods" along the

coast. The project site is located along Studio Drive, an LCP-defined Small Scale Design Neighborhood, for which the LCP states:

> *Studio Drive (and Pacific Avenue) are residential neighborhoods characterized by 25 to 40 foot wide lots. Most of the structures are low profile and one story houses. The Studio Drive area is immediately adjacent to Highway 1, from which a view of the ocean is usually available. Special coastal communities and neighborhoods are an integral part of the experience of the coast, and are often built on the most scenically-desirable areas. Coastal neighborhoods with distinctive qualities are a value to both local residents as well as visitors. Maintaining their present qualities will often require retaining the present scale and mix of development. Within the urban areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to complement and be visually compatible with existing characteristics of the community which may include concerns for the scale of new structures, compatibility with unique or distinguished architectural historical style, or natural features that add to the overall attractiveness of the community.*

Because the proposed project is located within a Small Scale Design Neighborhood, a number of requirements for new development must be adhered to in order to ensure that the scale, design, and architectural style of new development are compatible with the existing characteristics of the community. Specifically, to ensure homes built in this area do not appear starkly in contrast to the neighborhood, the standards contain strict requirements, including for size, front and side setbacks, upper floor setbacks for two-story construction, building height limitations, and parking requirements (see **Exhibit 12)**. Importantly, the standards also speak to maintaining single story design and scale, with the LCP stating: *"the Studio Drive area should remain as a lower profile area of one-story structures, where two-story structures would block these vistas, to preserve community character."* In this case, although the proposed project appears to be consistent with height requirements of the Small Scale Design Neighborhood standards (15 feet as measured from the centerline of Studio Drive), it would appear as a three-story building in contrast to the small scale policy direction, inconsistent with the Scenic and Visual Resources Policy 6 and the Small Scale Design Neighborhood standards of the EAP. Regarding size, the Small Scale Design Neighborhood standards allow for different maximum residential gross structural area square footages depending on whether the home is located on a blufftop lot or non-blufftop lot.[19] However, these size standards inherently apply only to lots in which residential uses are allowable under the LCP in the first place. As discussed above, the project site is located on a bluff face and the LCP does not allow residential use on a bluff face. By virtue of this fact, the approved project cannot be found consistent with the Small Scale Design Neighborhood standards regarding size, regardless of whether a blufftop or non-blufftop standard is considered.

[19] For homes on blufftop lots, a maximum gross structural area (GSA) of 3,500 square feet is allowed. On non-blufftop lots, a maximum of 2,500 square feet of GSA is allowed (or 55% percent of the usable lot, whichever is less). GSA is defined as the measurement of all interior areas, expressed in square feet of floor area, within the volume of the structure including living areas, storage, garages and carports, and does not include open exterior decks or interior mezzanines added within the height limitation to gain additional square footage.

Stringline Method
LCP Visual and Scenic Resources Policy 3 requires the use of a "stringline" method to ensure that new development does not extend seaward beyond adjoining structures. In this case, homes are only located to the south of the site; no adjoining development is located on the upcoast side of the lot due to the presence of Morro Strand State Beach. The objective of the stringline method is to ensure that development does not encroach in front of certain adjacent homes and is kept in line with required blufftop setbacks. The stringline method is also important to discuss in relation to homes that were previously approved prior to the LCP. These include the three homes immediately downcoast of the subject property. These homes were constructed prior to certification of the LCP and the institution of 100-year required setbacks with a minimum setback requirement of 25 feet. These requirements apply to new development and to existing structures that undergo 50% or more redevelopment cumulatively from July 2008 onward. In this case, the proposed home cannot be found consistent with this policy because the entire development would be sited seaward of the blufftop.

Landform Alteration
LCP Visual and Scenic Resources Policy 5 requires that: 1) any grading, earthmoving, major vegetation removal and other landform alterations within public view corridors be minimized and; 2) where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance. In this case, the proposed project is a three-story residence which will be built on a sloping lot in view of Highway 1, Morro Strand State Beach, and other public viewing areas. The proposed project would scrape existing artificial fill and the basement level would be dug into the lot at a finished floor elevation of 15 feet NAVD88. Such a project does not minimize landform alteration. Instead, it proposes to create a cavity in the bluff face into which residential development would be placed. This cannot be considered 'minimizing landform alteration' as is required by the LCP and thus the proposed project is inconsistent with Scenic and Visual Resources Policy 5. Special conditions could potentially resolve this issue, e.g., by requiring less landform alteration via a redesign of the proposed residence, but the project is still fundamentally inconsistent with the hazard policies described above.

Conclusion
As described above, the proposed project will appear as a relatively massive, approximately 31-foot-tall, three-story residence as seen from almost all areas of adjacent Morro Strand State Beach and Highway 1. Furthermore, the proposed residence will not be visually compatible with the existing one- and two-story residences along Studio Drive, and it does not minimize landform alteration. Thus, the project is inconsistent with the LCP's visual resource protection requirements, including Visual and Scenic Resources Policies 1, 2, 3, 5, 6, and 11, ESHA Policy 29 and the Studio Drive Small-Scale Design Standards, including with respect to size and number of stories.

D. BIOLOGICAL RESOURCES

San Luis Obispo County's LCP requires protection of terrestrial habitats (ESHA Policy 29), native vegetation (ESHA Policy 30), rare and endangered species (CZLUO Section 23.07.176), and requires restoration of damaged habitats when feasible (ESHA Policy 3). ESHA Policy 1

also requires that new development within or adjacent to locations of ESHA shall: 1) not significantly disrupt the resource; 2) demonstrate that there will be no significant impact on sensitive habitats; and 3) be consistent with the biological continuance of the habitat. ESHA Policy 2 requires that new development will not have a significant impact on sensitive habitats. The Estero Area Plan establishes required development setbacks from coastal streams. Lastly, ESHA Policy 29 also requires development adjacent to state park and recreation lands to be sited and designed to prevent impacts that would significantly degrade such areas and be compatible with the continuance of such habitat areas.

ESHA Policy 1. Land Uses Within or Adjacent to Environmentally Sensitive Habitats. *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

ESHA Policy 2: Permit Requirement. *As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. … [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]*

ESHA Policy 3: Habitat Restoration. *The county or Coastal Commission should require the restoration of damaged habitats as a condition of approval when feasible. …[THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO.]*

ESHA Policy 29: Protection of Terrestrial Habitats*. Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site. Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

ESHA Policy 30: Protection of Native Vegetation. *Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

CZLUO Section 23.07.176. Terrestrial Habitat Protection. *The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.*

a. Protection of vegetation. Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.

b. Terrestrial habitat development standards:

(1) Revegetation. Native plants shall be used where vegetation is removed.

(2) Area of disturbance. The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.

(3) Trails. Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.

Estero Area Plan Sensitive Resource Area (SRA) Setbacks – Coastal Streams. *Development shall be setback from coastal streams as shown in Table 7-2. Riparian setbacks shall be measured from the upland edge of riparian vegetation or the top of stream bank where no riparian vegetation exists.*

Table 7-2 COASTAL STREAM SETBACK (FEET) Old Creek - 50 feet

Analysis
The subject parcel includes an upland portion comprised of unconsolidated fills atop greywacke sandstone and a lowland portion comprised of sandy beach. The upland portion of the site is primarily covered with invasive iceplant and other non-native grasses. The site also includes a portion of sandy beach.

Sensitive Species and ESHA
The FEIR indicates that the sandy beach portion of the parcel provides foraging habitat and potential nesting habitat for a variety of birds, including the federally threatened western snowy plover. However, the proposed project does not include any development on the beach and thus should not impact the ability of birds to forage and/or nest on the beach. In addition, the site does not contain any sensitive plant species.

Monterey Cypress
LCP ESHA Policy 30 and CZLUO Section 23.07.176 require protection of rare and endangered terrestrial vegetation or terrestrial vegetation that serves as habitat for rare and endangered species. One mature Monterey cypress tree is located in the County's ROW but has roots that extend into the project site. In this case, the Monterey cypress is neither a rare or endangered tree species, nor is there any evidence that this tree serves as habitat for rare and endangered species. The project also includes a bridged driveway to protect the tree's root zone, further minimizing the chances for impacts to the Monterey cypress tree. However, during construction, the project would impact the tree's root zones as well as impact nesting birds at certain times of the year, and thus the project is inconsistent with the LCP.

Drainage
Drainage plans associated with the approved project include removal of an existing drain along Studio Drive and construction of a new storm drain system in the same general location to include a drain with a fossil filter, stormwater inlet, and stormwater outlet with energy dissipators. Similar to the existing drainage pattern on the site, stormwater would flow from the outlet in a northwesterly direction offsite and onto the County's ROW immediately to the north of the subject lot. Rainfall from the roof would be collected by a gutter system and facilitated to an underground holding tank below the driveway grade. Captured runoff would be used as gray water for toilet flushing and landscape watering.

In this case, runoff would be expected to increase both in volume and discharge rate because the proposed project would result in additional impervious surface and would move the existing drainage infrastructure from a vegetated depression into a culvert. In addition, pollutants in runoff could be expected to increase at the site from residentially related activities, including due to oil from additional cars at the site as well as potential fertilizers used for plants at the site, ultimately potentially resulting in increased degradation of the beach. The project's retaining walls, designed to support the driveway, and constructed on the adjacent County property, could also hypothetically divert flows to the beach. While these inconsistencies could be addressed by conditions of approval requiring drainage and runoff control plans, the project is fundamentally inconsistent with the other aforementioned LCP policies and standards with respect to hazards.

Creek Setbacks
The mouth of Old Creek generally lies approximately 600 feet to the north of the project site, with occasional flows, primarily in the wintertime, extending out from the mouth onto a wider portion of the beach. The main channel of the creek is located even farther from the project site than the creek mouth. The EAP requires a minimum creek setback of 50 feet. The project site, however, is located approximately 600 feet from the closest portion of the creek (i.e., the creek mouth). While the creek mouth fluctuates widely during the rainy season, the intent of this section of the EAP is to provide adequate setbacks for residential development located adjacent to the creek. In general these are the homes located north of the site near and east of Pacific Avenue, on 24th Street in Cayucos. Thus, given the project site's distance from creek bed of Old Creek, the proposed project is consistent with the EAP in this regard.

Conclusion
In summary, the proposed project would have construction impacts to a Monterey cypress tree located on the County's ROW and potentially to nesting birds. The proposed project could also have impacts to existing drainage patterns on the site. While these inconsistencies with the LCP could be addressed by conditions of approval, the project is fundamentally inconsistent with the other aforementioned LCP policies and standards with respect to hazards.

E. PUBLIC ACCESS

Coastal Act Section 30604(c) requires that every CDP 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 (Studio Drive). The following cited Coastal Act sections are applicable to the project. The San Luis Obispo County LCP includes similar requirements, including Shoreline Access Policy 1.

> ***Section 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.*
>
> ***Section 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.*
>
> ***Section 30212.****(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. …*
>
> ***Section 30214.*** *(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following: (1) Topographic and geologic site characteristics. (2) The capacity of the site to sustain use and at what level of intensity. (3)The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses. (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
>
> *(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. …*

Consistent with public access policies contained within the Coastal Act, the LCP also requires that public access be protected and maximized through a variety of policies, including:

> ***Shoreline Access Policy 1.*** *Protection of Existing Access. Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions which incorporate access measures into new development.*
>
> ***Shoreline Access Policy 2.*** *Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur*

where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as those accessways that provide for public access and use along the shoreline. Vertical access is defined as those accessways which extend to the shore, or perpendicular to the shore in order to provide access from the first public road to the shoreline.

CZLUO Section 23.04.420(d)(3) Lateral Access Dedication. *All new development shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than 25 feet, lateral access shall extend from the mean high tide to the toe of the bluff. Where the area between the mean high tide line (MHTL) and the toe of the bluff is constrained by rocky shoreline or other limitations, the County shall evaluate the safety and other constraints and whether alterative siting of accessways is appropriate. This consideration would help maximize public access consistent with the LCP and the California Coastal Act*

Analysis

The project site fronts Morro Strand State Beach, which is a very popular coastal recreational destination. The project site contains at least one informal public access path that stretches from Studio Drive to the sandy beach below (see **Exhibit 2** for photos of the project site that show this trail). It appears that residents, visitors, and surfers have used this path informally to access the beach for decades. Use of this informal vertical access trail would be effectively precluded by the proposed development. While there are other trails on the adjacent State Parks property, it is clear that this trail is in regular use by members of the public, who park along Studio Drive and walk down the site to the beach. In addition, the retaining walls proposed to be constructed on the County's ROW property would also preclude some vertical access. Although other public access to Morro Strand State Beach is available in the vicinity, the loss of the existing access trail on the property will result in a reduction of access opportunities in the vicinity.

As part of its approval, the County Board of Supervisors did require the Applicant to execute and record an offer of dedication for lateral access which includes the area from "the western property line adjacent to the public beach to the toe of the bluff to be available at all times during the year (pursuant to the requirements of the Estero Area Plan and Section 23.04.420 of the CZLUO)," but this lateral access easement does not compensate for the extinguishment of the existing informal vertical access trail onsite because it would not account for all of the sandy beach area of the lot.[20] The approved residence, when built, would interfere with a trail leading from Studio Drive to the beach in this area.

Conclusion

Thus, the project as proposed is inconsistent with the above-cited Coastal Act and LCP policies that protect maximum public access. While special conditions could be placed on the project to address such inconsistencies, the project is still fundamentally inconsistent with the LCP's hazards policies and standards, as described above.

[20] CZLUO Section 23.04.420 requires a 25-foot wide lateral access dedication when the topography does not limit the dry sandy beach to less than 25 feet. Here the topography does not limit the dry sandy beach to less than 25 feet, and thus the County's condition would effectively not include the entirety of the sandy beach to the toe of the bluff, contrary to the stated language of the condition.

F. PERMIT DETERMINATION CONCLUSION

As discussed in the sections above, the proposed project is inconsistent with the LCP. Most critically, the residence is proposed to be built on the bluff face portion of the parcel, which is not allowed under LCP Visual and Scenic Resources Policy 11. LCP Visual and Scenic Resources Policy 10[21] also prohibits residential development on the beach. The subject parcel only consists of bluff face and sandy beach. Thus ***any*** residence proposed in a de novo review would also be inconsistent with the LCP. In addition, the proposed project is inconsistent with the access policies of the LCP and Coastal Act. These inconsistencies are summarized below:

Residential development on a bluff face and Hazards
The LCP includes numerous policies directed at this shoreline interface, including policies limiting allowable development on the beach and bluff, requiring blufftop setbacks, requiring siting and design to provide 100 years of stability, and prohibiting certain types of shoreline structures (including LCP Visual and Scenic Resources Policies 10 and 11, Hazards Policies 1, 2, and 6, and EAP Areawide standards I-4 and I-5). As described above, the proposed project cannot meet these LCP requirements.

First, and most critically, the LCP contains strict requirements for what is allowed on both coastal bluff faces and open sandy beaches. LCP Visual and Scenic Resources Policy 11 allows very limited development on bluff faces (i.e., public beach staircases/accessways and shoreline protection devices), none of which is residential development. As described above, the proposed project would be located on a coastal bluff face seaward of Studio Drive. Thus, the proposed project is fundamentally inconsistent with LCP Visual and Scenic Resources Policy 11 and on that basis alone warrants denial.

Second, as described above, the LCP requires residential development to be set back from the bluff top edge a sufficient distance as to be safe for at least 100 years, and requires a *minimum* setback of at least 25 feet from the blufftop edge to meet this requirement for residential development (LCP Hazards Policy 6, EAP Areawide standard I-4, and CZLUO Section 23.04.118). Clearly, a primary intent of this policy and LCP standards is to avoid shoreline hazards (erosion, bluff retreat, flooding, etc.) by siting new development away from the shoreline hazards and far enough back from the bluff edge to be safe for 100 years. As such, the LCP does not even contemplate development on a bluff face, given that a bluff face is de facto located within a shoreline hazard area that must be avoided through application of the above-cited blufftop setback policies and standards. The project cannot be set back as required by the LCP (i.e., a minimum of 25 feet from the blufftop edge) because the parcel is located seaward and northerly of the blufftop. Thus, the proposed project is fundamentally inconsistent with the above cited policies and standards, and on those bases warrants denial.

Third, the LCP prohibits development that would require shoreline protection now or within the next 100 years (LCP Hazards Policies 1 and 6, and EAP Areawide standard I-5). As described above, the subject parcel is within the range of numerous hazards (including coastal flooding,

[21] Visual and Scenic Resources Policy 10. Development on Beaches and Sand Dunes. Prohibit new development on open sandy beaches, except facilities required for public health and safety (e.g., beach erosion control structures). Limit development on dunes to only those uses which are identified as resource dependent in the LCP. Require permitted development to minimize visibility and alterations to the natural landform and minimize removal of dune stabilizing vegetation.

episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, bluff and geologic instability, and the interaction of these elements). The proposed home, with as little as an approximately three-foot setback via the main floor cantilever and a five-foot setback from the beach (not the bluff edge) via the basement wall on the northwestern side of the project, cannot meet the setback provisions of the LCP (as discussed in the preceding paragraph). Because the northwestern portion of the residence is proposed to be constructed at this distance to the sandy beach, at least a portion of the proposed project would be impacted by direct wave action over the required LCP evaluation period of 100 years. This area on concrete wall and slab (i.e., the basement area and walls) may function as a shoreline protective device over this time frame, and thus the residence's walls and foundation system may themselves constitute shoreline protection. Even if these structures weren't considered shoreline protection, the proposed project will very likely require shoreline protection within the next 100 years because of its proposed location (directly adjacent to the beach). Lastly, the proposed project would substantially alter the natural landform at this site, because the landform would not be able to adjust naturally to the dynamic shoreline processes playing out at this location, and instead would be unnaturally altered for as long as the development was in place at this location, inconsistent with the above-cited LCP policies. Thus, the proposed project is inconsistent with the above-cited LCP provisions and on those bases warrants denial.

Public Views

Because of its location at the far northern end and seaward side of Studio Drive, the project would be starkly visible from many public viewpoints and from many viewing directions, including Morro Strand State Beach and Highway 1. Because the site slopes down to the beach from Studio Drive, the basement, main floor and upper floor would all be partly visible from significant public viewpoints. Thus, from most locations on the adjacent beach and inland, the residence would appear as a three-story, 31-foot-tall structure stepping down the bluff face to beach level. This visual impact would be in dramatic contrast to the current makeup of residential development along Studio Drive, which includes houses that appear as one or two stories maximum located on and inland of the blufftop edge. This site is unique compared to nearby residential development in that it is located on the bluff face, and the sloping nature of the site will allow all three stories to be starkly visible from multiple public viewing areas. As such, the approved project will negatively impact important public views inconsistent with the LCP's visual resource protection requirements, including Visual and Scenic Resources Policies 1, 2, 3, 5, 6, and 11, ESHA Policy 29 and the Studio Drive Small-Scale Design Standards, including with respect to size and number of stories.

Public Access

As described above, the project site fronts immediately adjacent to Morro Strand State Beach, a very popular coastal recreational site. The project site contains at least one informal public access path that stretches from Studio Drive to the sandy beach below. Use of this informal trail would effectively be precluded by the development. While there are other trails on the adjacent State Parks property, it is clear that this trail is in regular use by members of the public who park along Studio Drive and walk down the site to the beach. In addition, the retaining walls proposed to be constructed on the County's ROW property would also preclude some access. Thus, the proposed project is inconsistent with Coastal Act and LCP access policies cited above.

Conclusion

Although some of the above inconsistencies could be remedied by special conditions if the project were otherwise able to be sited in such a way as to be consistent with the LCP and Coastal Act, a fundamental issue exists that requires denial of the project. Namely, the project is sited on a bluff face, and no number or type of conditions can correct this fundamental and critical inconsistency. Thus, the LCP directs that the project should be denied.

G. TAKINGS

Avoiding a Potential Unconstitutional Taking of Private Property

As discussed above, the proposed project is inconsistent with the LCP and Coastal Act in a way that cannot be rectified by conditions of approval. Therefore, as a matter of LCP consistency, the project should be denied. However, when the Commission considers denial of a project, a question may arise as to whether the denial results in an unconstitutional "taking" of the Applicant's property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

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

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Coastal Act imposes on the Commission the duty to assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project with some confidence that its actions are consistent with Section 30010. If the Commission determines that its action could constitute a taking, then the Commission could also find that application of Section 30010 would overcome the presumption of denial. In this latter situation, the Commission will oftentimes propose modifications to the development to minimize its Coastal Act and LCP inconsistencies while still allowing some reasonable amount of development.[22]

In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, its denial of all development on the single parcel could constitute a taking. As discussed further below, the Commission finds that to avoid a takings in compliance with Section 30010, the Commission will allow a reasonable residential development on the subject property that is designed to avoid coastal resource impacts and LCP inconsistencies as much as possible.

[22] For example, in CDP A-1-MEN-03-029 (Claiborne and Schmitt), the Commission in 2004 approved residential development on a site that was entirely ESHA, even though it was not resource-dependent development and thus was inconsistent with the LCP (which was the standard of review in that case).

General Takings Principles

The Fifth Amendment of the United States Constitution provides that private property shall not "*be taken for public use, without just compensation.*"[23] Article 1, section 19 of the California Constitution provides that "*[p]rivate property may be taken or damaged for public use only when just compensation…has first been paid to, or into court for, the owner.*"

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* ("if regulation goes too far it will be recognized as a taking").[24] Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories.[25] First, there are the cases in which government authorizes a physical occupation of property or actually takes title.[26] Second, there are the cases whereby government regulates the use of property such that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole.[27] A taking may be less likely to be found when the interference with property "arises from some public program adjusting the benefits and burdens of economic life to promote the common good" (in other words, application of a regulatory program) rather than a physical appropriation.[28]

In its recent takings cases, the Supreme Court has identified two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint. The first involves regulations that compel the property owner to suffer a physical "invasion" of property.[29] The second involves regulation that denies all economically beneficial or productive use of property.[30] Courts have recognized, however, that government land-use regulations result in a taking only under extraordinary circumstances.[31] The *Lucas* court emphasized that a regulation resulting in *no* permitted productive or economically beneficial use of land is an "extraordinary circumstance" and a "relatively rare situation."[32]

Outside of the "total" categorical takings identified in *Lucas*, courts have "generally eschewed any set formula for determining how far is too far, preferring to engage in essentially ad hoc, factual inquiries."[33] The *Penn Central* court identified several factors for determining whether a

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[23] The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

[24] (1922) 260 U.S. 393, 415.

[25] See *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523.

[26] See, for example, *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419, 426.

[27] *See, e.g., Penn Central Transportation C. v. NYC* (1978) 438 U.S. 105, 123-25 ("*Penn Central*").

[28] *Keystone Bituminous Coal Ass'n v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18.

[29] *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1015.

[30] Id, at p. 1014.

[31] *See, e.g., U.S. v. Riverside Bayview Homes* (1985) 474 U.S. 121, 126 ["governmental land-use regulation may under extreme circumstances amount to a 'taking' of the affected property"].)

[32] *Lucas, supra*, 505 U.S. at 1017-18. Even when a challenged regulatory act prohibits all economically beneficial use of land, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation. (*Id*. at pp. 1028-32.)

[33] *Penn Central, supra*, 438 U.S. at 124.

regulation has gone "too far," including: an examination into the character of the government action; its economic impact; and its interference with reasonable, investment-backed expectations.[34] In sum, where physical occupation of land is not an issue, the *Lucas* "denial of all economically beneficial or productive use of land" test and the *Penn Central* multi-factor inquiry constitute the "two basic forms of regulatory taking."[35]

Final Government Determination Required ("Ripeness")
Before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, however, it must demonstrate that the taking claim is "ripe" for review. This means that the takings claimant must show that government has made a "final and authoritative" decision about the use of the property.[36] Premature adjudication of a takings claim is highly disfavored, and the Supreme Court's cases "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it."[37] Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review.[38]

In this case, and as discussed further below, because the LCP instructs the Commission to deny ***any*** development (other than vertical stairs or shoreline protective devices) that would be located on a coastal bluff face, the Commission's denial of the single-family residence would similarly mean that any subsequent resubmitted application for residential development by the Applicant would be futile because the LCP would again require project denial. However, as discussed further below, the subject property, APN 064-253-007, is planned and zoned for residential use, and to deny the Applicant a residential use of the parcel would significantly limit economic use of the property, thus resembling a *Lucas*-type "denial of all economically beneficial or productive use of land" takings situation. In these circumstances, the Applicant could potentially successfully argue that the Commission has made a final and authoritative decision about the use of the subject property. Therefore, the Applicant could successfully argue that the Commission's denial is a taking because a taking claim is "ripe."

Determination of Unit of Property Against Which Takings Claim Will be Measured
As a threshold matter, before a taking claim can be analyzed, it is necessary to define the parcel of property against which the taking claim will be measured. In this case, the Applicant owns the subject vacant parcel proposed to be developed with a single-family residence (APN 064-253-007). Mr. Loperena purchased APN 064-253-007 for approximately $10,000 from Joe and Jean Warnagieris on January 2, 1975, and a Grant Deed was recorded in Book 1812, page 178 of the Official Records, San Luis Obispo County Recorder's Office, effectively transferring and vesting fee-simple ownership to the Applicant. In 2002, the County of San Luis Obispo issued a single

[34] Id, at p. 124; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005.

[35] *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 648 [Ginsburg dissenting opinion].

[36] For example, see *Williamson County Regional Planning Com. v. Hamilton Bank* ((1985) 473 U.S. 172, 186), and *MacDonald, Sommer & Frates v. County of Yolo* ((1986) 477 U.S. 340, 348 ("*Macdonald*")).

[37] *MacDonald, supra*, 477 U.S. at p. 351.

[38] *See, e.g., Id.*

non-conditional Certificate of Compliance for the parcel.[39] Commission staff independently confirmed through chain of title analysis that the parcel is a legal lot.

The adjoining parcels are owned by others. The adjoining parcel directly to the south (APN 064-253-006) is owned by Pludow and Sugimoto. The parcel to the east is owned by the County, and the adjacent parcel to the west and north is owned by the California Department of Parks and Recreation (Morro Strand State Beach).

Therefore, the evidence, including the evidence of lot legality, establishes that the Commission should treat APN 064-253-007 as a single parcel for the purpose of determining whether a taking occurred.

Reasonable Residential Development to Avoid a Taking

Categorical Taking

Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "total categorical taking" was addressed by the U.S. Supreme Court in *Lucas*.

In *Lucas*, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of <u>all</u> economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use, unless the proposed project would constitute a nuisance under State law.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if an applicant demonstrates that Commission denial of the project would deprive his or her property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act or LCP provision would otherwise prohibit it, unless restrictions on the proposed project inhere in the title of the property. In other words, unless the proposed project would be inconsistent with background principles of State property and nuisance law, the applicable provisions of the certified LCP cannot be read to deny all economically beneficial or productive use of land because these sections of the certified LCP cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property owner of some economically viable use.

Table O in the San Luis Obispo County LCP's Framework for Planning document sets forth the permitted uses in the residential land use category, which include: 1) single-family dwellings; 2) supportive housing; 3) transitional housing; 4) temporary dwellings; 5) secondary dwellings, 6) residential vacation rentals; 7) residential care; 8) residential accessory uses; 9) mobile home; 10) mobile home parks; 11) home occupations; 12) homestays; 13) pre- to secondary schools; 14) food and beverage sales; 15) temporary offices; 16) personal services; 17) public safety

[39] Certificate of Compliance Number C02-113, Doc #2002041431, May 26, 2002.

facilities; 18) accessory storage; 19) temporary construction yards; 20) public utility facilities; 21) churches; 22) communication facilities; 23) water wells and impoundments; 24) pipelines and transmission lines; 25) animal raising and keeping; 26) crop production and grazing; 27) specialized animal facilities; 28) outdoor sports and recreation; 29) passive recreation; and 30) coastal accessways.

The Commission finds that in this particular case, none of the other permitted uses at the subject property would avoid development on a bluff face while at the same time providing the property owners with a reasonable investment backed and economically viable use. The Applicant's property is located adjacent to a State-owned park and open space area. This fact suggests there may be an impetus for a public agency to purchase the Applicant's property. However, there is no evidence in the record suggesting that the State's purchase of the Applicant's property is an economically feasible option. Other allowed uses (as a matter of zoning), such as a mobile home, which would require a foundation, would likely come with the same types of impacts to coastal resources as a small single-family residence. Moreover, approval of a mobile home instead of a small single-family residence would be out of character with the other homes downcoast on Studio Drive. Finally, the fact that the project site is situated half on sandy beach and half on a coastal bluff face (which precludes any development besides public access stairways and shoreline protective devices) means that a mobile home could not be approved on the site as a matter of LCP consistency. Although it is possible that some form of more temporary development (as a matter of zoning), such as a kiosk for food and beverage sales, or for beach equipment rental or similar purposes associated with beach and shoreline activities, that could be brought to the site during times of heavier beach use, could provide an appreciable economic use, it is somewhat speculative as to the ability of such an approval to avoid a takings claim (i.e., the Applicant's investment-backed expectation when purchasing the property likely was not to operate a temporary food and beverage sales kiosk onsite). Finally, as discussed, the fact that the project site is situated half on sandy beach and half on a coastal bluff face (which precludes any development besides public access stairways and shoreline protective devices) means that a temporary kiosk could not be approved on the site as a matter of LCP consistency.

Thus, the Commission finds that it is reasonable to conclude that denial of a residential use could be determined to deprive the Applicant of all economically viable use of his property. In fact, LCP Visual and Scenic Resources Policy 11 prohibits ***any*** development on the property (since it is situated half on sandy beach and half on a coastal bluff face) other than a public access stairway or shoreline protective device on the coastal bluff face portion of the property. Neither of these options would appear to provide an economically viable or productive use of the subject property at the current time. Therefore, regardless of whether denial of the permit would constitute a taking under the *ad hoc* inquiry required by *Penn Central* (as discussed below), the Commission finds it necessary to approve some residential use of the property to avoid a categorical *Lucas*-type taking.

Taking Under Penn Central

Although the Commission has already determined it is necessary to approve some residential use to avoid a categorical taking under *Lucas*, a court may also consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in *Penn Central*.[40] This ad hoc inquiry

[40] (1978) 438 U.S. 104, 123-125.

generally requires an examination into factors such as the sufficiency of the applicant's property interest, the regulation's economic impact, and the regulation's interference with reasonable, investment-backed expectations.

Sufficiency of Interest
The Applicant purchased APN 064-253-007 for approximately $10,000 with a closing date of January 2, 1975. The same day, a Grant Deed was recorded in Book 1812, page 178 of the Official Records, San Luis Obispo County Recorder's Office, effectively transferring and vesting fee-simple ownership to the Applicant, Jack Loperena. Upon review of these documents, the Commission concludes that the Applicant has demonstrated that he has sufficient real property interest in the subject parcel to allow pursuit of the proposed project.

Reasonable Investment-Backed Expectations
In this case, the Applicant may have had an investment-backed expectation and a reasonable expectation that the subject property could be developed with a residence; however it could be argued that a reasonable person would not have had a reasonable expectation to build a house of the size and scale as that proposed.

To determine whether the Applicant had an investment-backed expectation to construct a house on APN 064-253-007, it is necessary to assess what the Applicant invested when he purchased the lot. To determine whether an expectation to develop a property as proposed is reasonable, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed for the Applicant's proposed use, taking into account all the legal, regulatory, economic, physical, and other restraints that existed when the property was acquired.

The Applicant purchased APN 064-253-007 a 3,445 square foot parcel, for a single purchase price of approximately $10,000.[41] The $10,000 price is comparable to what other vacant parcels of a similar size in the Studio Drive community sold for in the same timeframe as when the Applicant purchased the subject property. For example, evidence in the record suggests that the neighboring property to the south, which is 7,757 square feet (according to Realquest.com), or slightly more than double the size of the subject property, was for sale for around $22,000 in the same timeframe.[42]

Aside from the purchase price itself, the size, shape, and physical orientation of the lot (which slopes away from Studio Drive down to sandy beach as opposed to providing any relatively flat blufftop area), and the distance from the road itself to the lot across undeveloped ROW (a strip of ROW land some 35 feet long by 25 feet wide, as shown in **Exhibit 14**), there is no evidence that has been provided to date to suggest that the Applicant knew that the property might be undevelopable at the time of purchase. When the Applicant purchased the property in 1975, other homes had been built or were being built in the surrounding vicinity. In fact, many of the blufftop homes along Studio Drive had been built by the time the Applicant had purchased the

[41] Approximately 1,700 square feet of the parcel, or almost exactly half, is occupied by sandy beach, with the remaining approximately 1,745 square feet of the parcel constituting bluff face.

[42] This is based on the Applicant's data. It is not clear to what degree parcels with sandy beach portions, like the subject parcel, enjoyed discounted purchase prices as a result.

property.[43] In 1980, the Applicant applied for and received a building permit for a single family residence on the site, which later expired without the residence being built. No coastal development permit, however, was ever applied for or issued for that project.[44] Finally, in 2002, a Certificate of Compliance (COC) was recorded, which could also indicate that the Applicant may have been led to believe that some form of development would be possible even with the constraints of the site. Consequently, the Applicant may have had a reasonable investment-backed expectation that he had purchased a lot that could be developed with a residence, and his investment was made under the assumption that the future development of a residential use could be approved on APN 064-253-007. Given that other homes were in existence along the seaward side of Studio Drive at the time of the property purchase, and given that the property was zoned for residential use, viewed objectively, a reasonable person could thus have had a reasonable expectation that APN 064-253-007 could be developed as a residential parcel.

While the *Penn Central* inquiry looks to a purchaser's expectations at the time of purchase, in the absence of detailed information in the Commission's record in this case on the size of surrounding homes when the Applicant's predecessor-in-interest purchased the subject lot, staff researched the current size and bulk of existing homes in the area. Thus, to assess whether the Applicant had a reasonable expectation to build an approximately 2,100 square foot house on the subject lot, Commission staff calculated the average square footage of homes and the average residential lot size of parcels located seaward of Studio Drive. The average square footage of the nearest 30 homes in the surrounding area (seaward of Studio Drive and south of the subject site) is 1,963 square feet. The average lot size of these 30 parcels is 5,130 square feet, with virtually all of these parcels consisting of developable blufftop area. By contrast, here, nearly half of the subject lot is undevelopable sandy beach (only 1,745 square feet of the 3,445 square foot lot is off the beach). Of these 30 surveyed parcels, nine parcels are similar in size to the subject lot (with lot sizes between 3,000 and 3,999 square feet). The average square footage of the residences on these nine LCP-developable blufftop lots is 1,702 square feet. Again, however, the developable areas of these other lots are not restricted by being half-situated on sandy beach such as the subject lot (which consists of approximately 1,700 square feet of sandy beach on the 3,445 square foot lot), and thus this average 1,702 square foot figure is ***proportionally*** lower to the relevant surveyed lot sizes as compared to the developable area on the subject parcel. In other words, the Applicant is proposing a house that is substantially larger than the average home in the vicinity on a parcel that is substantially smaller than the average-sized residential parcel in the area. The subject parcel also includes almost 50% sandy beach unlike other parcels along Studio Drive, and thus the upland bluff face portion of the lot is much smaller than adjacent parcels of similar size.

Thus, a purchaser of the subject parcel would not have had a reasonable expectation that he or she could build on or over the beach, when no other homes in the vicinity were built on the beach at the time this property was purchased.[45] Thus, while it can be argued that the Applicant had an

[43] Photos from 1973 show almost the entire blufftop strip along Studio Drive developed with single family residences.

[44] In 1980, which was prior to certification of the County's LCP, the Coastal Commission would have needed to issue the CDP.

[45] One home at 2614 Studio Drive, originally built in 1969, does contain a slight cantilever over the bluff, but this is an exception to the rule along Studio Drive, where the majority of homes are set back from the top of bluff without the use of cantilevers and do not include development on the sandy beach seaward of their homes. In addition, post-LCP development is fairly uniformly sited inland of the minimum 25-foot blufftop setback line.

investment-backed expectation and a reasonable expectation that the subject property could be developed with a residence, a reasonable person would ***not*** have a reasonable expectation to build a house of the size and scale as that proposed by the Applicant, given the average size of surrounding homes and lots, and given the size of the portion of the lot that does not constitute sandy beach area (i.e., what might have been inferred by the Applicant as a developable area even though it is actually bluff face and not residentially developable under the LCP).

Economic Impact
In this case, the evidence in the record suggests that Commission denial of any residential development on this parcel would likely have a substantial impact on the value of the subject property, as well as the Applicant's investment backed expectations.

Considering the above, to preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this CDP allows for the construction of a reduced-scale residential development to provide a reasonable economic use of the subject property. This determination is based on the Commission's finding in this report that some form of residential development is commensurate with the investment-backed expectations for the property, and that none of the uses otherwise allowable under the certified LCP would provide an adequate economic use.

Background Principles of State Property Law to Avoid a Taking
As an alternative basis for avoiding a taking of property, *Lucas* provides that a regulatory action does not constitute a taking if the restrictions inhere in the title of the affected property; that is, "background principles" of state real property law would have permitted government to achieve the results sought by the regulation.[46] These background principles include a State's traditional public nuisance doctrine or real property interests that preclude the proposed use, such as restrictive easements. Here, it does not appear that the proposed project would constitute a public nuisance, or that other background principles of real property law are implicated, so as to preclude a finding that the Commission's denial of the project would constitute a taking.

California Civil Code Section 3479 defines a nuisance as follows:

> *Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.*

California Civil Code Section 3480 defines a public nuisance as follows:

> *A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.*

[46] *Lucas, supra,* 505 U.S. at pp. 1029-30.

There is no evidence that construction of a residence on the subject property would create a nuisance under California law. The site is located in a residential area where some form of small-scale single-family residential development would be compatible with adjacent land uses to the south. Additionally, water service will be provided to the single-family residential development by the CSA 10 and sewer service will be provided by the Cayucos Sanitary District, and both districts have confirmed that there is service available for the property. This ensures that the proposed new residence would not create public health problems in the area. Furthermore, the proposed use is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. It also appears that development can be sited, designed, and conditioned at this location in such a way as to avoid becoming damaged and falling onto the beach, or to be removed if this were to occur, which if this occurrence could not be avoided might suggest a public nuisance (due to debris, as well as impacts from severed infrastructure, etc.).

Therefore, the Commission finds an appropriately conditioned single-family residence would not constitute a public nuisance that would preclude a finding that the regulatory action constitutes the taking of private property without just compensation.

Takings Conclusion

To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this CDP approval allows for the construction of a residential development to provide a reasonable economic use of the subject property. In view of the evidence, there is a reasonable possibility that a court might determine that the Commission's denial of a residential use, based on the inconsistency of this use with the LCP, would constitute a taking (since reapplication would be futile). Therefore, the Commission determines that the inconsistency with the County's LCP in this case does not preclude a residence that is appropriately conditioned to minimize coastal resource impacts and LCP inconsistencies as much as possible on the basis of potential takings.

Having reached this conclusion, however, the Commission also finds that the LCP only instructs the Commission to construe the resource protection policies of the San Luis Obispo County LCP in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on this appeal. Thus, the Commission must still comply with the requirements of the LCP by avoiding, to the maximum extent feasible, coastal resource impacts and LCP inconsistencies.

H. APPROVABLE PROJECT

Maximizing LCP Conformity while Avoiding Takings

Though applicants are entitled under Coastal Act Section 30010 to an assurance that the Commission will not act in such a way as to result in an unconstitutional taking of their property, this section does not authorize the Commission to otherwise abandon application of the policies and standards of the certified LCP and the Coastal Act, including LCP policies related to coastal hazards and visual and scenic resources, for example. Instead, the Commission is only directed to avoid construing these applicable policies in a way that would unconstitutionally take private property for public use. Aside from this limitation, the Commission is still otherwise directed to enforce the requirements of the LCP and the Coastal Act. Therefore, in this situation, the

Commission must still comply with other applicable LCP and Coastal Act policies by requiring measures to mitigate adverse environmental effects on coastal bluffs, public access, and scenic views from the development of a single-family residence.

Minimizing Adverse Coastal Resource Impacts
To achieve consistency with the LCP's policies in light of constitutional takings issues, the Commission approves development of a single-family residence with special conditions to minimize adverse effects on the coastal bluff face, public access and visual resources.

As discussed in previous sections of this report, the proposed residence is inconsistent with the coastal hazards, public access, and visual resources policies and standards of the LCP. However, the Commission finds it will approve a residence on the site in order to avoid a potential constitutional takings claim. In general, when a project is approved to avoid a taking, the project will still include implementation of mitigation measures necessary to minimize the impacts of development on sensitive coastal resources, such as coastal bluffs, public access and scenic views.

The siting of the single-family residence on the most inland portion of the lot adjacent to Studio Drive allows for a reasonable economic use of the property while ensuring the project is consistent as possible with hazards avoidance and visual protection policies of the LCP. Such a residential project that is pulled back off of, and substantially away from, the sandy beach so as to provide at least some visual separation between the beach and the residence, with berming and landscaping fronting the basement level so that the project at least appears to be a two-story structure such as might be allowed at most on nearby residential lots (and would not appear as a three-story structure which is not allowed in blufftop cases). Because the portion of the lot that is not occupied by sandy beach is relatively small (some 50% of the lot, or roughly 1,700 square feet, is sandy beach, leaving only about 1,745 square feet that is not beach sand), there is little space inland on the lot to achieve such separation from the beach area.

To help identify an appropriate footprint area, Commission staff looked to the surrounding area to understand the relative size and scale of structures in the neighborhood, and have applied this to the Applicant's site and its geography in a way meant to respect LCP objectives, including in terms of coastal hazards and the vision for blufftop development along Studio Drive. In terms of the latter, the LCP requires a minimum setback of 25 feet from the blufftop edge. Immediately adjacent development does not currently meet this setback (i.e., the next three houses extending downcoast), but will be required to in the future when they redevelop, similar to houses developed since the LCP has been in effect (e.g., the houses just past the first adjacent three that meet the minimum 25-foot setback requirement). Thus, the residence should be set back consistent with the 25-foot development setback trend line shown in **Exhibit 11**. This 25-foot minimum setback trend line is the primary mechanism to achieve an appropriate setback distance in this case because it aligns the proposed home with the minimum 25-foot blufftop setback line that will be required when the houses located just downcoast from the project site redevelop in the future. Furthermore, a 25-foot minimum setback is appropriate given ongoing sea level rise and overwhelming planning guidance and direction to place development father inland from the ocean to avoid hazards. This setback trend line is also nearly coterminous with an approximate 25-foot setback from the edge of the sandy beach on the parcel. A home built landward of this trend line would also ensure relative safety from coastal flooding and hazards as identified by the

Commission's Senior Engineer, Dr. Lesley Ewing (see **Exhibit 8**). When applied, the 25-foot minimum setback trend line would allow the Applicant space within which to develop an approximately 1,100-square-foot[47] residence over three levels, with the basement level screened from public view so that the development appears as much like a two-story residence as possible (see below).

Even with these mitigations, the project will be highly visible, but it represents an appropriate compromise to otherwise maximize LCP and Coastal Act consistency given the takings considerations and the physical characteristics of the site and surrounding area. It also is more appropriate than the Applicant's proposal inasmuch as the adjacent residences will be required to meet the minimum 25-foot blufftop setback when/if they redevelop, and doing so would mean they would be back *behind* the Applicant's proposal by some 20-25 feet (blocking views etc.) if it were to be approved. Such an approval ensures that these setbacks for neighboring properties roughly match up by following the actual blufftop setback line trend for this stretch of coast. This is a fair way of allowing residential development here at the same time as ensuring that its impacts do not unduly and unfairly harm either the surrounding public viewshed or neighboring property owners. To do otherwise, and to allow this Applicant to have significantly larger development significantly closer to the beach counter-intuitively allows for unnecessary development that does not otherwise maximize LCP and Coastal Act consistency.

Thus, **Special Condition 1** requires revised final plans to be submitted prior to issuance of the coastal development permit. **Special Condition 1(a)** requires Final Plans to show all development set back inland of the minimum 25-foot development setback trend line, thus ensuring the residence is located as far back on the lot as possible while still providing a reasonable economic use. This setback also is very similar to a 25-foot setback line from lines demarcating the edge of the sandy beach and generally conforms to the general orientation of the shoreline at this location, making it an appropriate feature from which to address potential development on this site. In other words, this setback is similar in distance to the LCP's minimum 25-foot blufftop setback requirements for adjacent homes along Studio Drive. Development landward of this line should be relatively stable in the future, although, as discussed above and as expressed in Dr. Ewing's memo (see **Exhibit 8**), it may be subject to periodic and ever-increasing wave runup and flooding.

This setback will allow for an approximately 1,100 square-foot residence, including a garage and exterior parking space with three-foot side setbacks and 2 ½ foot setbacks on the upper floor. However, within the Commission's approved development parameters, the Applicant has the option to remove the parking areas from the footprint and park on the County's right-of-way via a County encroachment permit (see **Special Condition 1b**). This would provide approximately 400 more square feet for living space (approximately 200 square feet for the interior garage space and 200 square feet for the exterior space). In discussions with County Planning staff,

[47] This square footage is similar to that of San Luis Obispo County's approval of the project (for which the County had conducted an exhaustive analysis) before the Commission found that the County's approval raised a substantial issue of conformance with the LCP and took jurisdiction over the CDP for the project.

securing an encroachment permit for parking in the County's right-of way would be allowed and is common throughout the County.[48]

In addition, the Commission is also amenable to re-reviewing the project for LCP and Coastal Act consistency if the Applicant pursues a much-discussed abandonment of a portion of the County's approximately 35-foot-long by 25-foot wide right-of-way area located between the subject property and Studio Drive (see **Exhibit 14**), perhaps leaving about a 10-foot-wide section of right-of-way for County use. This would potentially grant the Applicant, or future owner of the site, a larger building footprint. However, the Applicant has steadfastly refused to pursue this abandonment option citing on many occasions over several years that: 1) the abandonment process is unpredictable and an infeasible proposition that will be met with intense opposition and approval is uncertain; 2) that there is a high pressure gas main traversing through the right-of-way which would be extremely expensive to relocate; and 3) the Morro Bay-Cayucos Bikeway Connector is proposed along this section of Studio Drive and will be constructed within the right-of-way. However, the Commission finds that these issues raised by the Applicant can be addressed. The County's abandonment process can be time-consuming, multiple public hearings would be necessary, and the subject land would legally need to be offered up first to public agencies. Yet, the abandonment process was first suggested by a County Supervisor back in 2014 looking to assist the Applicant in building a house more in line with the size and scale he desired, and the County is certainly aware of this option that is available to the Applicant. Commission staff has had multiple conversations with SLO County planning and public works staff regarding the abandonment option, and believes that, while success is not assured, the County staff (and local decision makers) would facilitate this process as much as possible to help resolve this issue. In terms of the gas main, there is no evidence that this cannot be relocated. In fact, gas lines are relocated frequently to accommodate new development. In this case, the gas main could be relocated about 20 feet inland and placed under Studio Drive or under the remaining road's ROW. Regarding the proposed bikeway, SLO County Parks staff has indicated that the proposed bikeway could be located within an approximately 10-foot-wide area adjacent to the roadway of Studio Drive, which could potentially be the remaining width of the ROW after abandonment of the remaining ROW to the Applicant. Given all of the above, it appears that the ROW abandonment process could provide the Applicant with additional residential square footage while meeting the 25-foot development setback trend line discussed above. However, the Applicant would need to request initiating an abandonment process from SLO County and at this time has not agreed to do so.

Special Conditions 1(c)(e)(f) require the residence to: extend no higher than 15 feet as measured from the centerline of Studio Drive; include setbacks for the upper floor of at least 2 ½ feet; and be designed in a manner that reduces the apparent massing of the residence, including through the use of variations in wall planes, roof lines, detailing, materials and siding to promote a small scale appearance. To ensure visual compatibility with the surrounding small scale neighborhood, **Special Condition 1h** requires the Applicant to locate the basement level below grade as much as possible and to screen any above-grade basement elements with berming and/or the planting of native vegetation so that the basement is not visible from public views as much as possible,

[48] Phone conversations between Coastal Commission staffer Daniel Robinson and Ryan Hostetter of the County's Planning and Building Department (January 2016), and with Fred Andrews of the County's Public Works Department (February 2016). In addition, the Applicant could also pursue through the County abandonment of the County's portion of the ROW.

and the residence presents visually as a two-story residence. The Applicant has indicated that the fill needed to construct a berm on the west side of the property will require a 2:1 slope to make it work and has generally expressed disagreement with this condition because: 1) the fill material placed close to the edge of the rocky outcrop to create a berm will look unnatural and create a visual impact; 2) there is no way to easily retain the fill at the point it intersects with the northwest building corner and that the Applicant cannot place fill on the adjacent State Park property to the north to help with this requirement; 3) the berm will prohibit the installation of a door or windows necessary to make the basement County code compliant; and 4) placing a berm on the west side of property will create a hazard because it will facilitate and worsen wave runup conditions that will impact the house.

In terms of the recommended berming of the basement, the Applicant should be able to comply with **Special Condition 1h** over the life of the project because the required 25-foot development setback trend line will provide ample room for a 2:1 slope for the berm. This condition requires the basement to be screened to the maximum extent feasible and the 2:1 slope may allow only the bottom half or two-thirds of the basement to be bermed on the western side of the residence. The condition recognizes this and requires additional vegetation screening to hide the remaining portion of the basement level. On the northern side of the property, the use of berming to screen the residence will be infeasible, including because of a limited three-foot-wide setback and also because State Parks has indicated that it will not allow the berm to extend onto State Parks property. Staff recognizes that vegetation will only be used on this side of the proposed home (see **Exhibit 13**), and in addition, allows for one ingress/egress safety door to be constructed on the northern side of the basement provided it too is the most minimal necessary to provide for a building code complaint basement and is designed to limit views as seen from public viewing areas (e.g., the beach, the State Park parking lot upcoast, Highway 1). Together, this condition will ultimately lead to an acceptable level of screening for visual purposes as well as allow the Applicant to use the basement. Staff also believes that the Applicant can berm this area to look natural and to avoid creating additional visual impacts, however, staff recognizes that this will take effort over time, including because marine erosion and forces will likely impact the berm over time, and thus **Special Condition 1h** requires upkeep to maintain the berm and vegetation over the lifetime of the project. Finally, in terms of hazards, staff's analysis of the wave runup at this location concludes that flooding may occur up to the 26 foot NAVD88 elevation, which is essentially the entire site. Thus, staff's conclusion that the home is to be constructed in an area of high risk remains unchanged whether the Applicant is required to berm the western portion of the property or not.

Finally, **Special Condition 1i** requires all nonnative and invasive plants to be removed from the site and the site to be landscaped with drought-resistant native species and **Special Condition 1l** requires Final Plans to show a 25-foot-diameter line around the trunk of the offsite Monterey cypress tree on the property, where special requirements, including monitoring of the root zones and the use of hand tools as much as feasible during construction, are required.

As described previously, the site is not without hazards risk. The proposed project is located in an area that is subject to coastal hazards due to the inherent nature of its beachfront location. Due to storm surges, future sea-level rise, and other potential uncertainties, the site may be vulnerable to infrequent inundation due to wave runup and storms, particularly due to sea level rise complications. In terms of recognizing and assuming the hazard risks for shoreline development,

the Commission's experience in evaluating proposed developments in areas subject to hazards has been that development has continued to occur despite periodic episodes of heavy storm damage and other such occurrences. Development in such dynamic environments is susceptible to damage due to such long-term and episodic processes. Past occurrences statewide have resulted in public costs (through low-interest loans, grants, subsidies, direct assistance, etc.) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden for damages onto the people of the State of California, applicants are regularly required to acknowledge site hazards and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this location (see **Special Condition 6**).

The next test is whether the proposed project meets LCP requirements prohibiting new development from using shoreline protective devices, both now and in the future. To meet this requirement, the project must be consistent with two requirements: it must not include shoreline armoring in its approved design and configuration, and it must include appropriate restrictions prohibiting armoring in the future. With respect to the former, in addition to more traditional armoring measures such as rock revetments and seawalls, the Commission has seen proposals for foundations and other structural elements designed to withstand hazards in a manner that the structural elements themselves would constitute shoreline protection. Typically, these "superstructures" are made up of deep pier/caisson foundations. This type of support is commonly required by FEMA requirements when building within flood hazard areas, whereby components of structures are required to be elevated in such a way that habitable space is kept some distance above expected maximum flood elevations, and areas below that are not allowed to be habitable. For purposes of the County's LCP, which does not allow shoreline protection for new development, when piers/caissons or any other type of structure serve to elevate a new structure above ocean waters and protect against erosion risks, this type of elevation allowance serves as shoreline protection, inconsistent with Estero Area Plan, Chapter 7, Areawide Standard I-5, and Hazards Polices 1 and 4. In other words, elevation can be a type of shoreline protection, and elevation strategies aimed at protecting new development from erosion and hazards would therefore be inconsistent with LCP requirements that do not allow such protection for new development and that prevent new development in hazardous locations.

Although the Applicant is proposing a standard foundation, there are times when the foundation and lower portion of residential structure itself (i.e., the basement) would constitute a shoreline protection device when it would act in that manner in response to hazards. This is not allowed for new development under the LCP. Instead, new development is required to avoid shoreline protection over its lifetime. **Special Condition 1(g)** thus requires the construction of foundational, basement, and retaining wall elements that use a standard design and prohibits the use of piers and caissons and any other foundation elements, such as concrete basement walls, that are designed or engineered to address ocean and related forces, including wave attack, ocean flooding, or erosion. Instead these ocean-related forces are to be addressed through the project's setback and removal over time, as described below. For flood purposes, a finished floor elevation at or above the 18 feet NAVD88 contour would provide a limit for development to insure flood safety, as well as the safety of the development within the need for a shoreline protection device. Thus, **Special Condition 1d** requires the finished floor elevation to be no lower than 18 feet NAVD88.

With respect to whether the approved project includes appropriate restrictions against future armoring, the condition must define the specific trigger points to determine when the site is deemed hazardous, what the allowable repair and maintenance actions are to address any potential damage from coastal hazards, and when the residence's structural elements serve as shoreline armoring. Clear and unambiguous language defining these trigger points is particularly important for determining when a structure is at risk, particularly when it implicates the removal of portions or even all of a single-family residence.

In order to ensure that the proposed development maintains its prohibition on shoreline armoring in the future, **Special Condition 7(b)** prohibits all shoreline protective structures, including but not limited to seawalls, revetments, groins, and caisson/grade beam systems in the event the development is threatened in the future. **Special Condition 7(c)** extinguishes any rights that may exist to construct such shoreline protective devices. **Special Condition 7(a)** articulates that the intent of the CDP is to ensure that development does not use structural armoring as a mechanism to cope with any potential coastal hazards, and that, in lieu of armoring, the response to abate such hazards is through removal and restoration over time. **Special Condition 7(d)** ensures that the development will only be allowed to remain onsite if it is safe for occupancy and use without additional measures beyond ordinary repair and maintenance and without shoreline protection. The condition is meant to define when the project (or a portion of the project) is impermissibly located within a hazardous location necessitating shoreline protection and when the project (or a portion of the project) itself is impermissibly functioning as shoreline armoring. When either or both of these situations arise, the project will then be inconsistent with LCP requirements that prevent development within hazardous locations and that do not allow new development from using shoreline protective devices to abate any coastal hazards. Specifically, the condition requires the Applicant to submit a plan for removal of development if any of three triggers is met: (1) if a government agency has ordered that any portion of the approved residence is not to be occupied or used due to one or more coastal hazards, and such government agency concerns cannot be abated by ordinary repair and/or maintenance;[49] (2) if any portions of the residence's major structural components, including exterior walls, floor and roof structures, and foundation, must be significantly altered (including renovation and/or replacement) to abate coastal hazards[50]; or (3) if any portion of the approved foundation becomes visible.

Special Condition 7(d) emanates from recent Commission actions for large shoreline resort hotel facilities[51] that seek to define when a development is located in a hazardous location and would need armoring, and/or when the structure itself is impermissibly acting as shoreline armoring. As previously discussed, elevation is a form of shoreline protection when it functions in this way; that is, when it is meant to protect against erosion and other coastal hazards.

[49] The condition defines "ordinary repair and maintenance" as including sealing and waterproofing repair, and/or maintenance that does not involve significant alteration to the building's major structural components, including exterior walls, floor and roof structures, and foundation.

[50] The condition defines "exterior wall major structural components" as including exterior cladding and/or framing, beams, sheer walls, and studs; "floor and roof structure major structural components" as including trusses, joists, and rafters; and "foundation major structural components" as including any portion of the mat foundation, retaining walls, columns, and grade beams.

[51] Including for A-3-SNC-98-114 (Monterey Bay Shores Resort), approved by the Commission in April 2014.

Therefore, **Special Condition 7(d)(3)** articulates that if any of the approved foundation and/or subsurface elements (other than approved above-grade basement elements) become visible, then these elements shall be screened, and if such screening is not possible, that these elements be removed. Furthermore, **Special Conditions 7(d)(1)** and **(2)** define when the project site is subject to hazards at a frequency and/or magnitude at which the site would be deemed hazardous and therefore when it would require shoreline protection. The condition defines the point at which this determination would be made by the extent of damage, and the resultant type of necessary repair work, caused by coastal hazards. The condition specifies that ordinary repair work, including waterproofing and alterations to non-structural components, would be authorized. Thus, if high seas and waves from a large storm caused some minor damage to the facility, but that damage was very minimal and addressed by simple repair work, then such a situation does not rise to the threshold for deeming the site hazardous and unsafe for continued use and/or requiring shoreline protection. However, when the hazard causes enough damage that significant alteration, including replacement, of the residence's major structural components is necessary, then the site is subject to hazards at a level unsafe for continued human use and occupancy without some type of shoreline protection. Essentially, the repair work defines the point at which the site is deemed hazardous. When hazards are infrequent and/or weak enough to where simple repair work is needed, such work is allowed. Conversely, if such hazards are strong and/or frequent enough in which major repair work to fix damaged structural elements is necessary, the trigger point for determining that the development is located in an LCP impermissible hazardous site has been reached, and therefore removal of the affected portion of the development must take place. Allowing for repair work from a coastal hazard event(s) that is strong/frequent enough in which the residence's major structural elements, including its foundation and/or wall studs, are damaged to an extent at which such elements would need to be replaced is a trigger point that defines when allowing such work would inappropriately perpetuate structural development and human occupancy within a hazardous location absent some type of shoreline protection. With respect to what defines and differentiates ordinary repair and/or maintenance versus major structural alteration, the condition is modelled after language approved in recent LCP updates, including for both Marin County and Solana Beach[52] that differentiated between these two types of repair work, including by specifying the types of building components that would be considered structural. Therefore, **Special Condition 7(d)** relies on recent Commission actions on both LCPs and CDPs to define when the site is hazardous and would need structural protection, and/or when the structure itself is acting as impermissible shoreline protection, and thus, in either case, when the structure must be removed and the site restored.

With these conditions, the development will not utilize shoreline protection now or in future, and will instead abate potential future hazards through removal and site restoration when defined trigger points are reached. Therefore, with respect to shoreline erosion and related coastal hazards, the project, as conditioned, can be found consistent with applicable LCP hazard policies.

[52] Marin County LCP Amendment LCP-2-MAR-13-0224-1 Part A (Marin LUP Update), approved by the Commission in May 2014; City of Solana Beach Land Use Plan, approved by the Commission in March 2012; and City of Solana Beach LCP Amendment SOL-MAJ-1-13, approved by the Commission in January 2014.

To provide consistency with the performance standards of the LCP, **Special Conditions 2 and 3** require submission of a construction plan to ensure Best Management Practices (BMPs) are implemented during construction to avoid water quality and other coastal resource impacts during construction, to prohibit construction encroachment on the beach, to require that copies of the CDP and the approved construction plan be maintained at the site during construction, and to require a construction coordinator to be available to respond to any inquiries that arise during construction. Also to protect sensitive bird species and the Monterey cypress tree during construction, **Special Conditions 4 and 5** require a qualified biologist to conduct pre-construction surveys for nesting birds, and the retention of a certified arborist to ensure protection of the Monterey tree's root zones.

Special Condition 1(j) requires stormwater and drainage infrastructure and related water quality measures (e.g., pervious pavements, etc.), with preference given to natural BMPs (e.g., bioswales, vegetated filter strips, etc.), to minimize any adverse impacts to the adjacent beach and ocean. Such infrastructure and water quality measures shall provide that all project area stormwater and drainage is: filtered and treated to remove expected pollutants prior to discharge to protect coastal resources as much as possible. The condition requires runoff from the project to be retained onsite to the maximum extent feasible. Infrastructure and water quality measures shall be sized and designed to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event, which is a standard water quality protection metric.

The Commission's action on this CDP has no effect on conditions imposed by San Luis Obispo County pursuant to an authority other than the Coastal Act. Thus, **Special Condition 8** specifies that in the event of conflict between the terms and conditions imposed by the local government pursuant to an authority other than the Coastal Act/LCP and those of this CDP, the terms and conditions of coastal development permit A-3-SLO-15-0001 shall prevail.

Coastal Act Section 30604(c) requires that every CDP issued for any development between the nearest public road and the sea "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 single-family residence would be located seaward of the first through public road and thus such a finding is required for a CDP approval. Coastal Act Sections 30210 through 30213 and 30221 specifically protect public access and recreation. The LCP includes policies with similar requirements. These overlapping policies protect the adjacent County park and open space area, the beach (and access to and along it) and offshore waters for public access and recreation purposes, including lower-cost access and recreational opportunities.

The proposed project will eliminate an existing public access trail that has been in use for years by the public which extends across the property to the beach and adjacent access via proposed retaining walls on the adjacent County ROW. Although other public access to Morro Strand State Beach is available in the vicinity, the loss of the existing public access trail on the property will result in a reduction of public access opportunities in the vicinity. The Estero Area Plan and Section 23.04.420 of the CZLUO require lateral access which includes the area from the western property line adjacent to the public beach to the toe of the bluff to be available at all times during the year. Thus, to mitigate for the project's impacts to this existing access trail, **Special Condition 9** requires a public access easement over the sandy beach portion of the property, as

depicted on **Exhibit 15** and as referenced in **Special Condition 1k**, and requires the recordation of a document granting or irrevocably offering to dedicate either fee title or an easement for the sandy beach area of the property.

Finally, to ensure that future property owners are properly informed regarding the terms and conditions of this approval, this approval is also conditioned for a deed restriction to be recorded against the property involved in the application (see **Special Condition 10**). This deed restriction will record the conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property.

The Commission finds that, as conditioned, the project represents a reasonable use of the property (on a site that would otherwise prohibit residential use) that will avoid an unconstitutional taking of private property for public use, will avoid coastal resource impacts and provide consistency with the LCP and the Coastal Act to the maximum extent feasible, and appropriately responds to the unique circumstances of this case.

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.

San Luis Obispo County, acting as lead agency, completed an Environmental Impact Report (EIR) for this project. This document analyzed the impacts for a single-family residence of 3,097 square feet, which included a basement and a mezzanine and a cantilevered portion of the main floor which extended out over the sandy beach portion of the subject lot. Key significant impacts and mitigation measures were identified for the following issue areas: 1) aesthetic resources; 2) air quality; 3) biological resources; 4) geology and soils; 5) noise; and 6) water. Four project alternatives were identified as well: 1) no project alternative; 2) Design Alternative A – Reduced Project, Pilings; 3) Design Alternative B – Reduced Project, Traditional Design; and 4) Design Alternative C – Vegetation and Articulation. The proposed project was deemed to be the Environmentally Superior Alternative. Additionally, revised CEQA findings were included in the County's Final Local Action Notice upon approval of the project at the Board of Supervisor's meeting on December 9, 2014, as well as previously for the Planning Commission approval on April 10, 2014. The latest revised County findings (see Attachment 2 of Exhibit 3) included changes to the EIR's Geology and Soils section, related to coastal hazards. The Commission's analysis in this report is consistent with the *revised* CEQA findings for hazards which indicate the site includes a coastal bluff.

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) Final Environmental Impact Report (FEIR), December 2013, and as revised pursuant to San Luis Obispo County Board of Supervisor Approval and Certification, December 9, 2014.

2) Cleath and Associates, 2006. “Geologic Conditions at the Loperena Property, Studio Drive, Cayucos, California, Assessor’s Parcel Number 064-253-007.”

3) GSI Soils, 2007. “Geotechinical Investigation, Proposed Residence, Lot 41 Studio Drive, Cayucos, California, Project No. 6-4210” and Addendum, 2007.

4) Haro Kasunich and Associates, 2007, "Review of residential development on coastal bluff and supporting geologic and geotechnical reports prepared for development, Loperena property, APN 064-253-07, Lot 41, Studio Drive, Cayucos, San Luis Obispo County, California", 5 p. letter report dated 12 November 2007 and signed by J. E. Kasunich (GE 455).

2) GeoSoils, 2011, "Discussion of coastal hazards and wave runup, northwest and immediately adjacent to 2612 Studio Drive (APN 064-253-07), Cayucos, San Luis Obispo County, California", 12 p. report dated 14 March 2011 and signed by D. W. Skelly (RCE 47857).

3) Cotton Shires and Associates, 2011, "Technical Report, geotechnical and coastal hazards review, Loperena Minor Use Permit/Coastal Development Permit, APN 064-253-07), Studio Drive, Cayucos, San Luis Obispo County, California", 34 p. report dated 31 May 2011 and signed by M. B. Phipps (CEG 1832) and P. O. Shires (GE 770).

4) GeoSoils, 2011, "Updated geotechnical investigation, Proposed residence, Lot 41, Studio Drive, Cayucos, California", 18 p. geotechnical report dated 27 December 2011 and signed by R. Church (GE 2184).

5) Shoreline Engineering, 2012, "Engineering evaluation, Studio Drive residence, Cayucos, APN 064-253-007", 38 p. report dated January 2012 and signed by B. S. Elster (CE 32981).

6) Haro Kasunich and Associates, 2012, "Review of additional documents, residential development on coastal bluff, Loperena property, APN 064-253-07, Lot 41, Studio Drive, Cayucos, San Luis Obispo County, California", 6 p. letter report dated 13 March 2012 and signed by J. E. Kasunich (GE 455) and M. Foxx (CEG 1493).

7) Cleath-Harris Geologists, 2012, "Updates to engineering geology reports for the proposed Loperena residence, Lot 41, Studio Drive, Cayucos, California", 3 p. letter report dated 25 June 2012 and signed by D. R. Williams and T. S. Cleath (CEG 1102).

8) Cotton Shires and Associates, 2012, "Supplemental geotechnical peer review for Environmental Impact Report preparation, Loperena Minor Use Permit/Coastal Development Permit, Studio Drive, Cayucos, San Luis Obispo County, California", 4 p. letter report dated 21 August 2012 and signed by M. B. Phipps (CEG 1832) and D. T. Schrier (GE 2334).

9) Cleath-Harris Geologists, 2012, "Update #2 to engineering geology reports for the proposed Loperena residence, Lot 41, Studio Drive, Cayucos, California", 3 p. letter report dated 19 September 2012 and signed by D. R. Williams and T. S. Cleath (CEG 1102).

10) Shoreline Engineering, 2012, "Loperena, County of San Luis Obispo, Response to supplemental geotechnical peer review for EIR preparation, 8/21/12", 1 p. report dated 20 September 2012 and signed by B. S. Elster (CE 32981).

11) GeoSoils, 2012, "Response to supplemental geotechnical peer review, Loperena residence, Lot 41, Studio Drive, Cayucos, California", 2 p. letter report dated 1 October 2012 and signed by R. Church (GE 2184).

12) Cotton Shires and Associates, 2012, "Second supplemental geotechnical peer review for Environmental Impact Report preparation, Loperena Minor Use Permit/Coastal Development Permit, Studio Drive, Cayucos, San Luis Obispo County, California", 2 p. letter report dated 31 October 2012 and signed by M. B. Phipps (CEG 1832) and D. T. Schrier (GE 2334).

13) GeoSoils, 2013, "Supplemental discussion of coastal hazards and wave runup, APN 064-253-07, Cayucos, San Luis Obispo County, California", 7 p. report dated 10 April 2013 and signed by D. W. Skelly (RCE 47857).

14) Cotton Shires and Associates, 2013, "Additional geotechnical and coastal engineering review and response to technical comments, Loperena Minor Use Permit/Coastal Development Permit, Studio Drive, Cayucos, San Luis Obispo County, California", 5 p. letter report dated 17 May 2013 and signed by M. B. Phipps (CEG 1832) and P. O. Shires (GE 770).

15) Haro Kasunich and Associates, 2013, "Loperena Minor Use Permit, Coastal Development Permit DRC 2005-00216, SCH No. 2007081044", 8 p. letter report dated 1 August 2013 and signed by J. E. Kasunich (GE 455) and M. Foxx (CEG 1493).

16) GeoSoils, 2014, "Sea level rise and coastal hazard discussion, northwest and immediately adjacent to 2612 Studio Drive (APN 064-253-07) Cayucos, San Luis Obispo County, California", 6 p. report dated 12 March 2014 and signed by D. W. Skelly (RCE 47857).

17) Haro Kasunich and Associates, 2014, "Mark Foxx, CEG 1493, John E. Kasunich, GE 455 comments on March 12, 2014 sea level rise and coastal hazard letter from GeoSoils and the revised plans for the Loperena residence by C.P. Parker dated 3/14/2014, Loperena Minor Use Permit/Coastal Development Permit DRC 2005-00216, SCH No. 2007081044", 10 p. letter report dated 31 March 2014 and signed by J. E. Kasunich (GE 455) and M. Foxx (CEG 1493).

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20) Shoreline Engineering, 2014, "Evaluation of bluff geometry adjacent to Loperena property, Minor Use Permit/Coastal Development Permit DCR2005-00216", 14 p. report dated 28 September 2014 (revised 6 December 2014) and signed by B. S. Elster (CE 32981).

21) Haro Kasunich and Associates, 2014, "Review of 'Evaluation of Bluff Geometry Adjacent to Loperena Property' prepared by Shoreline Engineering dated 9/28/14", 6 p. review letter dated 2 December 2014 and signed by J. E. Kasunich (GE 455) and M. Foxx (CEG 1493).

22) Central Coast Aerial Mapping, 2015, "Loperena Mapping Procedures and Estimated Accuracies", 2 p. letter dated 14 July 2015 and signed by R. Lafica (CP).

23) ATGeoSystems, 2015, "Loperena Survey Control", 1 p. letter dated 14 July 2015 and signed by A. L. Volbrecht (PLS).

Figure ES-1. Project Vicinity Map

Figure ES-2. Project Location Map

Figure 3-1. Site Map


Loperena Project Site
APN (064-253-007)
Pre LCP - does not meet
25 foot minimum setback

FIGURE 4 - 2013 GOOGLE EARTH IMAGE (APPROXIMATE SCALE: 1 INCH = 50 FEET)

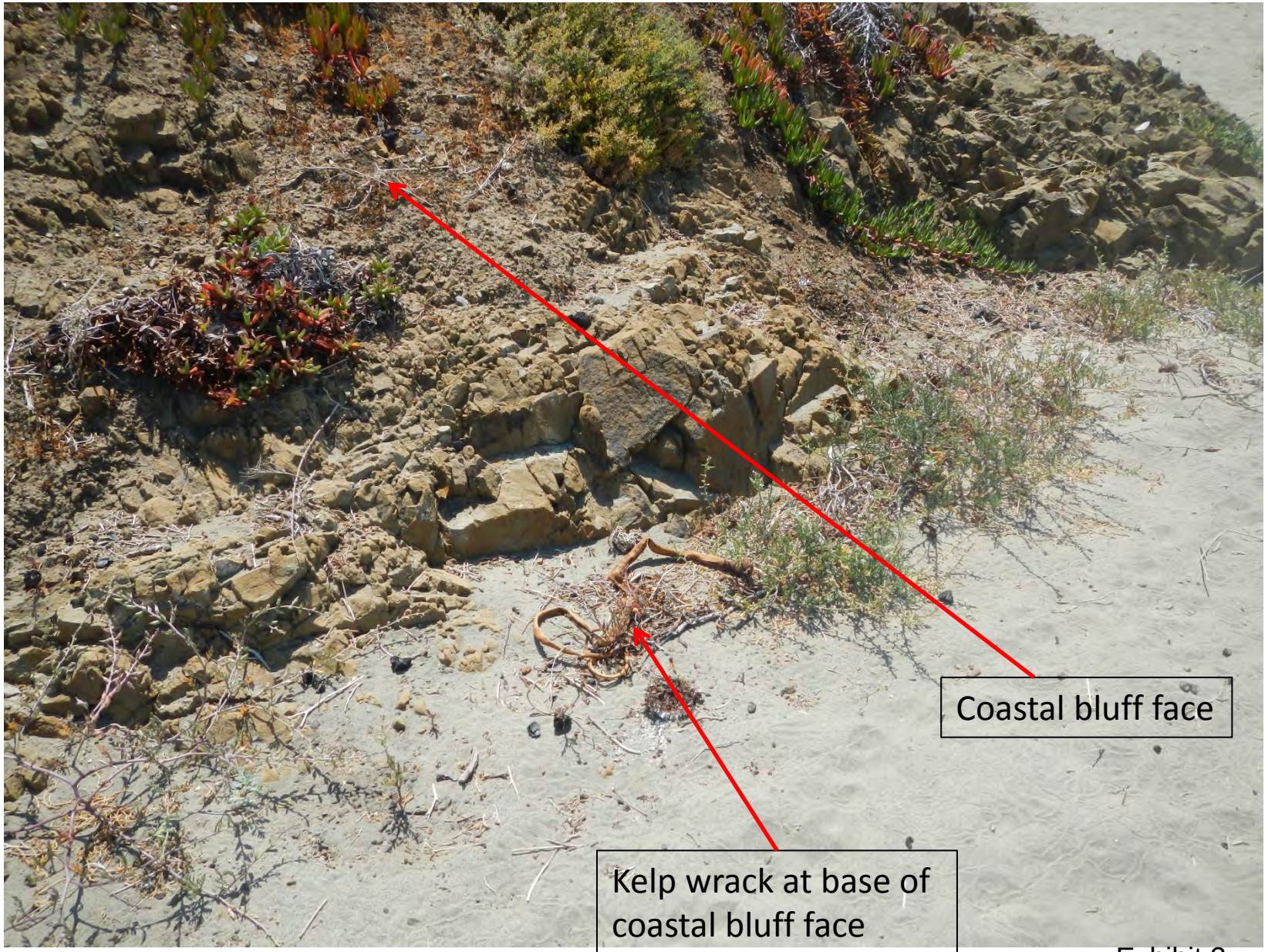
(PROPERTY BOUNDARIES ARE APPROXIMATE)


Loperena Project Site
APN (064-253-007)


Loperena Project Site
APN (064-253-007)


Loperena Project Site
APN (064-253-007)
Pre LCP – House does not meet 25-foot minimum setback


Coastal Bluff Face


Coastal bluff face
Kelp wrack at base of coastal bluff face


Kelp wrack on coastal bluff face


Pre LCP – Houses do not meet 25-foot minimum setback
Loperena Project Site APN (064-253-007)

Typical view from adjacent beach parking lot at Morro Strand State Beach (Studio Drive lot)


Morro Strand State Beach parking lot
Pre LCP – Houses do not meet 25-foot minimum setback
Loperena Project Site APN (064-253-007)

Typical view from beach parking lot at
Morro Strand State Beach (Pacific Avenue lot)

Exhibit 3
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FIGURE 6 - 1953 CALTRANS AERIAL PHOTOGRAPH (APPROXIMATE SCALE: 1 INCH = 50 FEET)

(PROPERTY BOUNDARIES ARE APPROXIMATE)

Project Site
(1965)

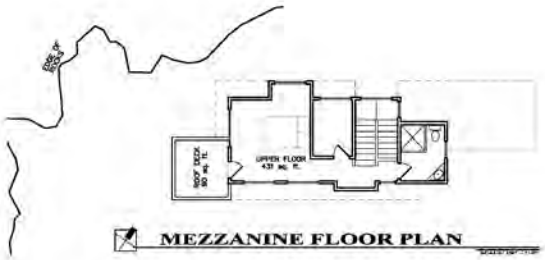
Exhibit 3
A-3-SLO-15-0001
Page 3 of 5

FIGURE 7 - 2013 GOOGLE EARTH IMAGE (APPROXIMATE SCALE: 1 INCH = 200 FEET)

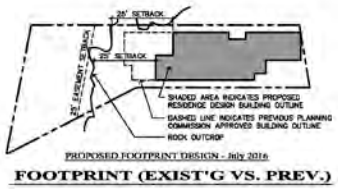
(PROPERTY BOUNDARIES ARE APPROXIMATE)

FIGURE 4 - 2013 GOOGLE EARTH IMAGE (APPROXIMATE SCALE: 1 INCH = 50 FEET)

(PROPERTY BOUNDARIES ARE APPROXIMATE)

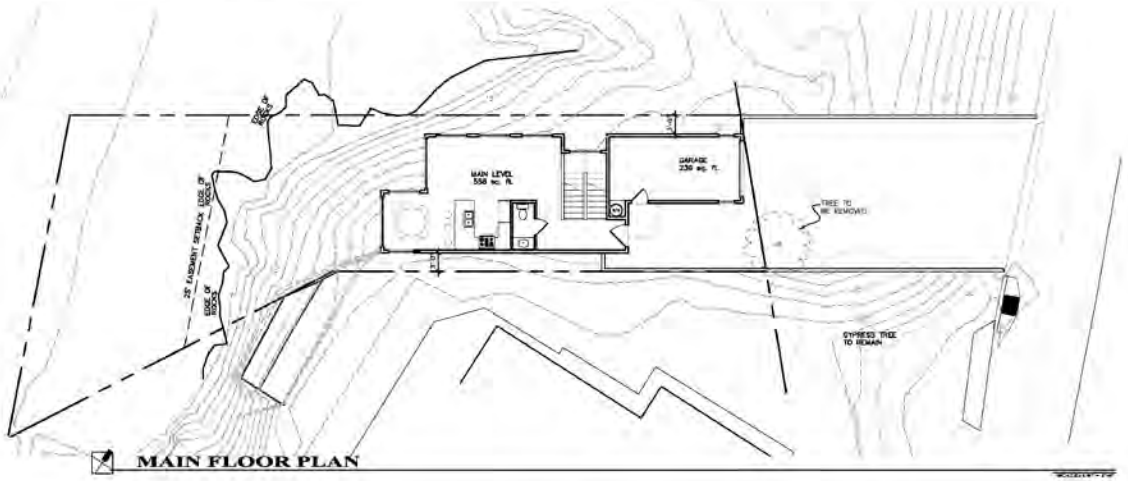


MEZZANINE FLOOR PLAN

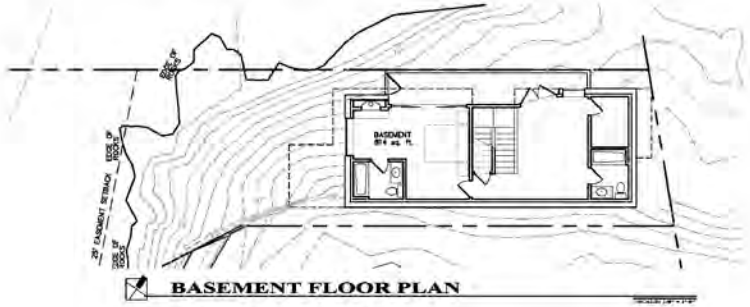


PROPOSED FOOTPRINT DESIGN - July 2016

FOOTPRINT (EXIST'G VS. PREV.)



MAIN FLOOR PLAN



BASEMENT FLOOR PLAN

PROJECT INFO.

LOT SIZE:	3,444 SQ. FT.
CONDITIONED AREAS:	
BASEMENT LEVEL:	814 SQ. FT.
MAIN LEVEL:	558 SQ. FT.
UPPER LEVEL:	431 SQ. FT.
	1,803 SQ. FT.
EXTERIOR AREAS:	
OPEN ROOF DECK:	90 SQ. FT.
OPEN BASEMENT PATIO:	146 SQ. FT.
	236 SQ. FT.
HEIGHTS:	
ALLOWED HEIGHT:	46.34'
PROPOSED HEIGHT:	46.25'

TOPOGRAPHIC SURVEY INFORMATION:

THE TOPOGRAPHY DEPICTED IS AN OVERLAY FROM A TOPOGRAPHIC SURVEY CREATED BY VOLBREICHT SURVEYS, DATED JUNE 13, 2003.

BENCHMARK: USC AND GS BRASS DISK P693-1943, ELEVATION =23.86' NAVD-88
FIELD SURVEY DATE : MAY 2003

2013 CALIFORNIA RESIDENTIAL CODE DEFINITIONS:

BASEMENT:
A STORY THAT IS NOT A STORY ABOVE GRADE PLANE (SEE STORY ABOVE GRADE PLANE)

STORY ABOVE GRADE PLANE:
ANY STORY HAVING ITS FINISHED FLOOR SURFACE ENTIRELY ABOVE GRADE PLANE, OR IN WHICH THE FINISHED SURFACE OF THE FLOOR NEXT ABOVE IS:

1. MORE THAN 6 FEET ABOVE GRADE PLANE; OR
2. MORE THAN 12 FEET ABOVE THE FINISHED GROUND LEVEL AT ANY POINT.

C. P. PARKER
ARCHITECT

CHRISTOPHER P. PARKER
ARCHITECT
810 QUINTANA RD #810
MORRO BAY, CA.
93442 - 1943
(805) 772 - 5700

STAMPS

CONSULTANTS

SHORELINE ENGINEERING
STRUCTURAL AND CIVIL

PROJECT

JACK LOPERENA RESIDENCE

STUDIO DRIVE
CAYUCOS, CALIF.
APN: 064-253-007

DRAWING PHASE:
DESIGN DEVELOPMENT

Project No.	11-117
Drawn By	CPP
Dwg. Date	07/27/16
Updated	-
Scale	AS NOTED

REVISIONS

SHEET TITLE:
FLOOR PLANS

SHEET NO.
A1.1

Exhibit 4
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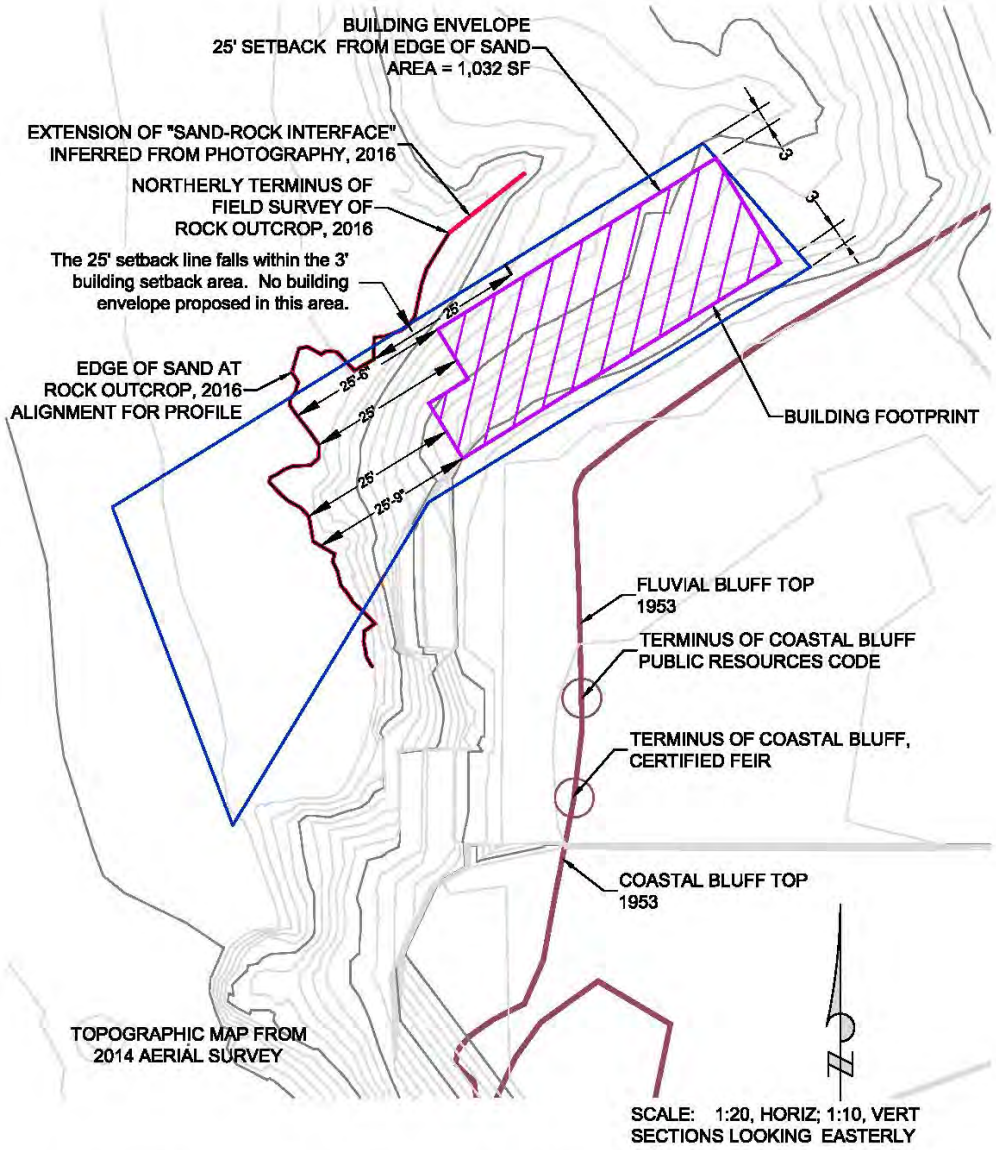
Page 1 of 2



Shoreline Engineering, Inc
Structural/Civil/Forensic/Engineer-Divers

Loperena: Studio Drive, Cayucos

2014 Topography

Date: June 7, 2016

Exhibit 4
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Note: proposed home is setback (82 sq. ft. removed from main floor in the northwest corner) greater than simulation shows. Basement floor is accurate.

Applicant's Visual Simulation of Proposed Project

28 July 2016

GEOTECHNICAL REVIEW MEMORANDUM

To: Daniel Robinson, Coastal Program Analyst
From: Mark Johnsson, Staff Geologist
Re: Loperena Appeal (A-3-SLO-15-0001)

In connection with the above-referenced permit, I have reviewed the following documents:

1) Haro Kasunich and Associates, 2007, "Review of residential development on coastal bluff and supporting geologic and geotechnical reports prepared for development, Loperena property, APN 064-253-07, Lot 41, Studio Drive, Cayucos, San Luis Obispo County, California", 5 p. letter report dated 12 November 2007 and signed by J. E. Kasunich (GE 455).

2) GeoSoils, 2011, "Discussion of coastal hazards and wave runup, northwest and immediately adjacent to 2612 Studio Drive (APN 064-253-07), Cayucos, San Luis Obispo County, California", 12 p. report dated 14 March 2011 and signed by D. W. Skelly (RCE 47857).

3) Cotton Shires and Associates, 2011, "Technical Report, geotechnical and coastal hazards review, Loperena Minor Use Permit/Coastal Development Permit, APN 064-253-07), Studio Drive, Cayucos, San Luis Obispo County, California", 34 p. report dated 31 May 2011 and signed by M. B. Phipps (CEG 1832) and P. O. Shires (GE 770).

4) GeoSoils, 2011, "Updated geotechnical investigation, Proposed residence, Lot 41, Studio Drive, Cayucos, California", 18 p. geotechnical report dated 27 December 2011 and signed by R. Church (GE 2184).

5) Shoreline Engineering, 2012, "Engineering evaluation, Studio Drive residence, Cayucos, APN 064-253-007", 38 p. report dated January 2012 and signed by B. S. Elster (CE 32981).

6) Haro Kasunich and Associates, 2012, "Review of additional documents, residential development on coastal bluff, Loperena property, APN 064-253-07, Lot 41, Studio Drive, Cayucos, San Luis Obispo County, California", 6 p. letter report dated 13 March 2012 and signed by J. E. Kasunich (GE 455) and M. Foxx (CEG 1493).

7) Cleath-Harris Geologists, 2012, "Updates to engineering geology reports for the proposed Loperena residence, Lot 41, Studio Drive, Cayucos, California", 3 p. letter report dated 25 June 2012 and signed by D. R. Williams and T. S. Cleath (CEG 1102).

8) Cotton Shires and Associates, 2012, "Supplemental geotechnical peer review for Environmental Impact Report preparation, Loperena Minor Use Permit/Coastal Development Permit, Studio Drive, Cayucos, San Luis Obispo County, California", 4 p. letter report dated 21 August 2012 and signed by M. B. Phipps (CEG 1832) and D. T. Schrier (GE 2334).

9) Cleath-Harris Geologists, 2012, "Update #2 to engineering geology reports for the proposed Loperena residence, Lot 41, Studio Drive, Cayucos, California", 3 p. letter report dated 19 September 2012 and signed by D. R. Williams and T. S. Cleath (CEG 1102).

10) Shoreline Engineering, 2012, "Loperena, County of San Luis Obispo, Response to supplemental geotechnical peer review for EIR preparation, 8/21/12", 1 p. report dated 20 September 2012 and signed by B. S. Elster (CE 32981).

11) GeoSoils, 2012, "Response to supplemental geotechnical peer review, Loperena residence, Lot 41, Studio Drive, Cayucos, California", 2 p. letter report dated 1 October 2012 and signed by R. Church (GE 2184).

12) Cotton Shires and Associates, 2012, "Second supplemental geotechnical peer review for Environmental Impact Report preparation, Loperena Minor Use Permit/Coastal Development Permit, Studio Drive, Cayucos, San Luis Obispo County, California", 2 p. letter report dated 31 October 2012 and signed by M. B. Phipps (CEG 1832) and D. T. Schrier (GE 2334).

13) GeoSoils, 2013, "Supplemental discussion of coastal hazards and wave runup, APN 064-253-07, Cayucos, San Luis Obispo County, California", 7 p. report dated 10 April 2013 and signed by D. W. Skelly (RCE 47857).

14) Cotton Shires and Associates, 2013, "Additional geotechnical and coastal engineering review and response to technical comments, Loperena Minor Use Permit/Coastal Development Permit, Studio Drive, Cayucos, San Luis Obispo County, California", 5 p. letter report dated 17 May 2013 and signed by M. B. Phipps (CEG 1832) and P. O. Shires (GE 770).

15) Haro Kasunich and Associates, 2013, "Loperena Minor Use Permit, Coastal Development Permit DRC 2005-00216, SCH No. 2007081044", 8 p. letter report dated 1 August 2013 and signed by J. E. Kasunich (GE 455) and M. Foxx (CEG 1493).

16) GeoSoils, 2014, "Sea level rise and coastal hazard discussion, northwest and immediately adjacent to 2612 Studio Drive (APN 064-253-07) Cayucos, San Luis Obispo County, California", 6 p. report dated 12 March 2014 and signed by D. W. Skelly (RCE 47857).

17) Haro Kasunich and Associates, 2014, "Mark Foxx, CEG 1493, John E. Kasunich, GE 455 comments on March 12, 2014 sea level rise and coastal hazard letter from GeoSoils and the revised plans for the Loperena residence by C.P. Parker dated 3/14/2014, Loperena Minor Use Permit/Coastal Development Permit DRC 2005-00216, SCH No. 2007081044", 10 p. letter report dated 31 March 2014 and signed by J. E. Kasunich (GE 455) and M. Foxx (CEG 1493).

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19) Shoreline Engineering, 2014, "Current and historic mapping of Loperena property", 4 p. letter report dated 24 August 2014 and signed by B. S. Elster (CE 32981).

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21) Haro Kasunich and Associates, 2014, "Review of 'Evaluation of Bluff Geometry Adjacent to Loperena Property' prepared by Shoreline Engineering dated 9/28/14", 6 p. review letter dated 2 December 2014 and signed by J. E. Kasunich (GE 455) and M. Foxx (CEG 1493).

22) Central Coast Aerial Mapping, 2015, "Loperena Mapping Procedures and Estimated Accuracies", 2 p. letter dated 14 July 2015 and signed by R. Lafica (CP).

23) ATGeoSystems, 2015, "Loperena Survey Control", 1 p. letter dated 14 July 2015 and signed by A. L. Volbrecht (PLS).

To summarize, with respect to the geotechnical review for the proposed project, the Applicant has retained Shoreline Engineering, Cleath-Harris Geologists, AT GeoSystems, Central Coast Aerial Mapping, and GeoSoils for services over the years. A former Appellant has retained Haro, Kasunich Associates. The County has retained Cotton Shires and Associates for help in preparing the Environmental Impact Report (to my knowledge, the only EIR yet prepared for a single family home in coastal California).

This revised memo deletes my analysis of wave runup and flooding, which have been covered in a much more thorough analysis prepared by the Commission's coastal engineer, Dr. Lesley Ewing, and are provided in a memo from her dated 25 July 2016. In addition, as part of her analysis, she reviewed available information on coastal erosion. Thus, this revised memo is concerned primarily with the designation of the coastal bluff at the site.

In addition, I have reviewed the EIR, the "Geology and Soils" section of which was derived from materials provided by the applicant and reviewed by Cotton Shires and Associates. I have had numerous in-person and telephone meetings with representatives of both the Applicant and a former Appellant, County planners, County Supervisor Bruce Gibson, and interested third parties over the past eight years. I have visited the proposed project site numerous times, most recently on 2 February 2015. It is fair to say that I am intimately familiar with the project site, its geologic conditions, and the issues related to this appeal.

The most important geologic issues associated with the site involve: the definition of the bluff at the site (i.e., whether or not it is a coastal bluff as defined by the LCP and Coastal Act regulations), determining the location of the bluff edge, the geologic stability of the site, and determining the appropriate setback from the bluff edge necessary to address coastal hazard issues and to meet the requirements of the LCP. I previously summarized many of these issues in an email to staff from a review of references 20, 22 and 23 by analyst Joe Street. These comments are repeated (slightly modified) and formalized here:

1) The Shoreline Engineering report [reference 20] made use of orthophotorectified aerial photographs obtained from Caltrans and flown in 1953, in conjunction with an aerial survey flown in 2014, to define the ground surface on and adjacent to the subject parcel in 1953 and 2014. The former approximates the natural topography, before the addition of large amounts of fill during the relocation of Highway 1 and Studio Drive in the early 1960s, that obscured the natural bluff edge throughout much of the area. I concur that the methodologies employed in the Shoreline Engineering report [references 20, 22, and 23] were appropriate.

2) Coastal Commission staff made several recommendations for obtaining information regarding obtaining the natural topography beneath the artificial fill during a meeting with County staff on 31 July 2014. Using historic orthophoteorectified aerial

photographs, as was done in reference 20, was one method staff recommended at that time. Staff also identified other methods that might have provided helpful information on the State Park parcel to the northwest, but such information has thus far not been provided by the applicant.

3) Although the edge of both the "coastal bluff" and the "fluvial bluff" are only broadly identified on the cross sections that are provided in reference 20, the plan views show the natural bluff edge to lie landward of the entire Loperena parcel. Thus, the natural topography and ground surface of the entire parcel is either on the natural bluff face or beach.

4) For reasons indicated repeatedly in previous Coastal Commission staff letters to the County, and at the 31 July 2014 meeting, staff, including myself, believes that the bluff definitely meets the definition of a Coastal Bluff in Section 13577 (h) of the Coastal Act regulations (CCR Title 14, Division 5.5). That is, the bluff clearly has been subject to marine erosion in the recent past. Although parts of the bluff are now covered by fill, it is reasonable to believe that the portions labeled "fluvial bluff" by the applicant's consultants were subject to marine erosion before placement of the fill.

5) The Shoreline Engineering report [reference 20] reaches the following conclusions, without commenting on their significance:

a. The Loperena property is not located on a coastal bluff.
b. The bluffs (both coastal and fluvial) landforms have been altered by development adjacent to the Loperena property.
c. No portion of the pre-development coastal bluff or the fluvial bluff is more than ten feet in height.

With regard to (a), no evidence is provided that the property is not located on a coastal bluff. As described above in (3) and (4), and previously, I continue to believe that the property is located on a coastal bluff face or beach, entirely seaward of the bluff edge.

With regard to (b), it is not clear why the author of the report believes that the landforms have been altered by development adjacent to the property. If the author is referring to the addition of fill, I concur that much of the natural bluff edge, bluff top, and bluff face has been buried beneath artificial fill.

With regard to (c), I disagree that the bluff, as a whole, is less than ten feet in height. Although some parts of the bluff may dip slightly below the ten-foot metric, most of the bluff exceeds ten feet in height and thus meets the definition of a "bluff" per the LCP. Further, as observed by Coastal Commission analyst Joseph Street upon examining the two sets of geologic/topographic cross sections provided in reference 20:

2014: Bluff appears to exceed 10 feet in relief in all cross sections (N-S 0+30, 0+40, 0+50, 0+60).

1953: In several cases it is difficult to tell based on the cross-section alone where the toe of the bluff is, and without the photos themselves it is impossible to evaluate the accuracy of the cross-sections.

- The 0+60 section was greater than 10 feet from toe to bluff top *if* the "hump" between 10-40 feet on the horizontal axis represents the bluff toe; if this feature is just the winter beach profile, then the bluff was less than 10 feet in relief in this cross-section.

- 0+50 cross section: Same issue (bluff relief depends on whether platform/hump at bottom of profile is bluff or beach)

- 0+40 cross section: Again, whether or not the bluff exceeds 10 feet in relief along this cross-section depends on where the bluff toe actually occurs – in this section, there are two inflection points in the profile that could represent the bluff toe.

- 0+30 cross section: Assuming the lower inflection point (at ~9.5 feet on vertical axis) is the bluff toe, the bluff appears to exceed 10 feet in relief along this cross-section.

The Shoreline Engineering report [reference 20] is incomplete in that it does not examine or attempt to reconstruct cross-sections for the portions of the slope in between the N-S (coastal) and "Fluvial Bluff" cross sections. However, this portion of the bluff was examined by Cleath-Harris (see cross section C-C', figure 1 in the 19 September 2012 Cleath-Harris Report [reference 9]). The estimated bedrock profile (i.e., the profile beneath the fill material) along this cross section would appear to exceed 10 feet in relief (~11 feet to 22 feet).

In summary, the information available in the Shoreline Engineering report [reference 20] and in previous geologic reports (In particular, the 19 September 2012 Cleath-Harris report [reference 9]) does not support the conclusion that the bluff at the Loperena property is less than 10 feet in relief, either in its present state or prior to the fill deposition. While it may be the case that the bluff is less than 10 feet in relief along certain cross sections, there also are cross sections along which the relief exceeds 10 ft.

I concur with Dr. Street's analysis.

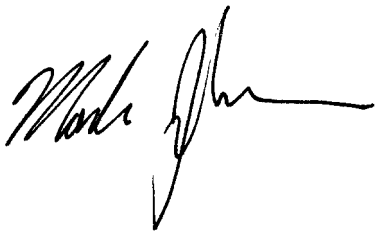
Thus, the entire parcel lies seaward of the bluff edge, whether the bluff is a coastal bluff or an [undefined] "fluvial bluff." In addition, the change in orientation of the bluff that the Applicant uses to delineate a coastal bluff from a fluvial bluff does not, in my opinion, constitute a change in the bluff from a "coastal bluff" as defined in the Coastal Act regulations (13577 (h)), particularly because it is reasonable to assume that the "fluvial bluff" was subject to marine erosion (its toe is at the same elevation as the "coastal bluff") prior to the addition of fill. Thus,

as mentioned before in staff's previous letters and comments, this project must comply with the coastal bluff setback requirements of the LCP at this location. However, the LCP-required minimum 25-foot setback from the bluff edge, which lies landward of the entire parcel, does not allow for a developable building envelope. The intersection of the beach sand with the exposed coastal bluff and with ice plant covering fill at the site has been fairly constant and the level of the beach sand has, in my experience over the past eight years, been fairly stable. Although this line has little geologic significance, I concur that this line approximates the visual toe of the bluff (i.e., where it generally intersects the beach sand), and it generally also conforms to the orientation of the shoreline at this location, making it an appropriate feature from which to address potential development on this site.

In my opinion, development 25 feet landward of this line should be relatively stable in the future although, as indicated in reference (2) and in the EIR, it may be subject to wave runup in extreme events. Development so sited would not be consistent with the coastal bluff setback requirements of the LCP, however. If approval is being considered notwithstanding this LCP inconsistency (e.g., to avoid a potential takings), then development should not be sited any further seaward than a 25-foot setback line as measured from the edge of sandy beach

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

Sincerely,



Mark Johnsson, Ph.D., CEG, CHG
Staff Geologist

Loperena Parcel

Photo by: Hensley
Taken: January 22, 2016

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Loperena Parcel

Photo by: Hensley
Taken: January 22, 2016


Loperena Parcel

Photo by: Sugimoto
Taken: January 2016

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Photo by: Sugimoto
Taken: January 2016

Photo by: Sugimoto
Taken: January 2016

July 25, 2016

TO: Daniel Robinson, Coastal Program Analyst

FROM: Lesley Ewing, Ph.D. PE, Sr. Coastal Engineer

SUBJECT: Coastal Hazards Review of Lot 41, Studio Drive, Cayucos (#A-3-SLO-15-0001)

At your request, I have examined the potential flooding and erosion risks at the above project. I have used the following reports in my analysis of the proposed development.

- GeoSoils, 2011, "Discussion of coastal hazards and wave runup, northwest and immediately adjacent to 2612 Studio Drive (APN 064-253-07), Cayucos, San Luis Obispo County, California", 12 p. report dated 14 March 2011 and signed by D. W. Skelly (RCE 47857).
- GeoSoils, 2013, "Supplemental discussion of coastal hazards and wave runup, APN 064-253-07, Cayucos, San Luis Obispo County, California", 7 p. report dated 10 April 2013 and signed by D. W. Skelly (RCE 47857).
- GeoSoils, 2014, "Sea level rise and coastal hazard discussion, northwest and immediately adjacent to 2612 Studio Drive (APN 064-253-07) Cayucos, San Luis Obispo County, California", 6 p. report dated 12 March 2014 and signed by D. W. Skelly (RCE 47857).
- GeoSoils, 2014, "Response to Haro, Kasunich, and Associates, Inc. Comments on GeoSoils, Inc. March 12, 2014 Report date 31 March 2014" 8p. report dated 4 April 2014 and signed by D. W. Skelly (RCE 47857).
- Cotton, Shires and Associates, Inc. 2014. Review of Modified Project Plans and Supporting Documents, letter report from Michael Phipps (CEG 1832) and Patrick Shires (GE 770) to Ms. Shawna Scott, dated March 19, 2014.
- Shoreline Engineering, 2014, "Evaluation of bluff geometry adjacent to Loperena property, Minor Use Permit/Coastal Development Permit DCR2005-00216", 14 p. report dated 28 September 2014 (revised 6 December 2014) and signed by B. S. Elster (CE 32981).
- Mark A. Massara, 2016, Letter Re: Loperena, APN 064-253-007" from Mark A. Massara to Daniel Robinson, dated April 27, 2016.
- C.P. Parker, Architect, 2016. Jack Loperena Residence, plan set, Sheets A.1.1, A.2.1, A.2.2, A.3.1, drawing date 2-25-2016.
- Mark Johnsson, 2016. Geotechnical Review Memo RE: Loperena Appeal (A-3-SLO-15-0001) from Mark Johnsson to Daniel Robinson (revision in preparation).
- NA, ND. CEQA Required Findings for the Loperena Minor Use Permit/Coastal Development Permit (Revised).

- Cleath and Associates (2006) "Geologic Conditions at the Loperena Property, Studio Drive, Cayucos, California, Assessor's Parcel Number 064-253-007."

A number of technical reports related to this project have been prepared to address delineations of various aspects of the bluff. While I have been provided with some site photos and conceptual site plans, these are all more in the domain of the geologic assessment and I have not included them in this list of technical reports addressing flooding or erosion.

Flooding Impacts to the Proposed Development Site

A number of site plans have been prepared over the years. Rather than determine whether one or more of the proposed designs will avoid or minimize flood risks, my initial review will examine the flood risks associated with the undeveloped site and attempt to use this information to inform potential development siting, noting in advance that the Commission's staff geology, Dr. Mark Johnsson has determined the entire site lies on the bluff face, seaward of the blufftop edge and thus is inappropriate for development under the LCP. This flooding and erosion analysis is intended to be used should development need to be approved despite this fundamental LCP inconsistency as a means to avoid a potential taking (which is not evaluated here, and I understand is evaluated separately by staff). The main focus of this analysis will be on the flooding and erosion risks for Lot 41, Studio Drive. The general consequences to adjacent properties from site development are also discussed.

The proposed development site is on a descending bluff face that terminates at the beach, and the underlying property also includes approximately 1,700 square feet of sandy beach area. Flooding and erosion are both possible risks to development on this site and these coastal hazards have been examined in several coastal hazard reports as noted above. Due to the geologic conditions, the flooding concerns for Lot 41 Studio Drive are complex. The main focus for this analysis for the flood risk stems from Coastal Act Section 30253 that requires that "New development shall do all of the following [as excerpted below]:

(a) Minimize risks to life and property in areas of high geologic, flood and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."

This section of the Coastal Act as embodied in the San Luis Obispo County LCP was one impetus for examining risks to this property from flooding and wave run up. As such, the starting point should be the flood concerns, with a site design that uses this analysis to establish an acceptable site (again, if a potential takings dictates) that will eliminate or minimize risks from flooding, where flooding encompasses, but is not limited to, exposure to water from wave impacts, inundation and temporary flooding from runup and overtopping.

General Explanation of Runup and Overtopping

Analyses for this site have provided information on both runup and overland flow. Runup occurs when water impacts against a resistant feature, such as a wall or rock outcrop and the

energy from the wave forces cannot continue the landward movement. Since the upper surface of the water (called the free surface) provides the least resistance to the remaining energy, water tends to 'run up' the resistance slope. Overtopping and overland flow occur when runup overtops the resistant feature and flows inland.

Calculations for runup make the assumption that runup will occur on an infinite slope, so that the wave energy can fully dissipate on the upward face of the inland slope. This calculated runup is often referred to as "potential runup elevation" since it represents the height that the water can reach on an infinitely high slope. In reality, slopes are often lower than the height of this potential runup. When the water has no additional resistant surface against which to rise, the lack of lateral resistance will provide the water with another "free surface". When there is no resistance to landward movement, the water will cease to follow the upward trajectory of the potential runup and will assume a more horizontal path, called overtopping or overland flow. Thus, when the resisting slope is lower than the potential runup, overland flow will occur and the actual water levels will be less than the potential runup. Figure 1 is a schematic of the potential runup and overland flow phenomenon (referred to as a 'bore' in this Figure). Also, in the following discussions about the results from the GeoSoils Reports, all calculations for runup are based on the potential infinite slope and the results for overland flow conditions (level, depth and rate of flow) are calculated for the proposed site.

One of the assumptions made in all the analyses provided by GeoSoils is that the rock outcrop extends across the entire bluff face that is exposed to ocean waves; however, the rock outcrop has not been fully demarcated by the site cross-sections. If the rock outcrop does not extend across the entire ocean-exposed bluff face, then the analyses that are based on the presence of this outcrop are not appropriate and the bluff face should be modeled as a much higher slope, as indicated by an infinite slope, for purposes of runup and overtopping.

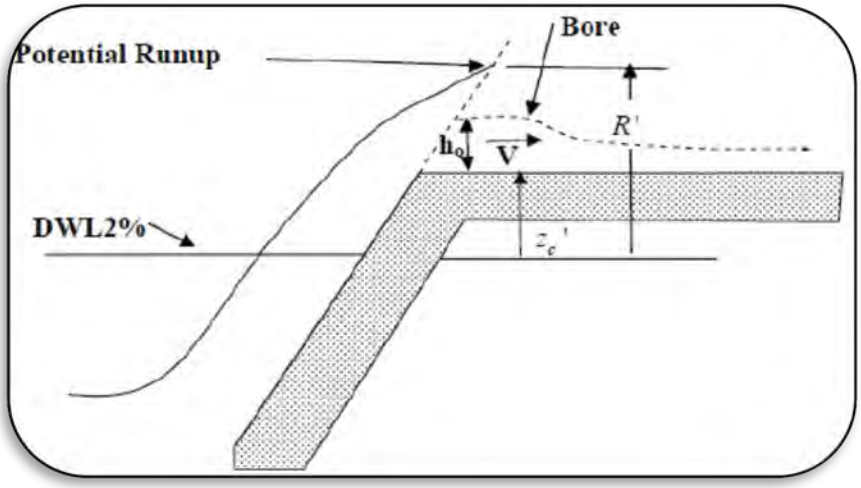


Figure 1. Bore Propagation Driven by Wave Runup above the Shore Elevation
Source: MacArthur, R.C., R.G. Dean and R. Battalio, 2007. Wave Processes In Nearshore Environment For Hazard Identification Proceedings of the 30th International Conference of Coastal Engineering 2006, ASCE, Vol. 2, pp 1775-1787.

From 2011 to 2014 GeoSoils, Inc. prepared four reports on coastal hazards, potential runup (called runup in the GeoSoils reports) and overland flow. All reports assumed a 75 to 100 year planning horizon and started from the +7.57 NAVD88 highest water elevation, from the tide station at Port San Luis. The analyses assume also that an outcrop on the bluff face at elevation +17' NAVD88 extends across the entire west-facing portion of the bluff face. The main differences between the reports are in the amount of sea level rise that is assumed for the future runup and overland flow, and the assumed scour depth. The reports also make different assumptions about the bluff face slope, deep water wave height, and, in response to comments from Haro, Kasunich and Associates, one report examined the effects of different roughness coefficients and wind velocities on runup.

The initial 2011 GeoSoils report assumed a 2.0 foot rise in sea level and that the beach seaward of the bluff face could scour down to about +0.6 feet NAVD88. This amount of scour would allow a water depth of about 9 feet to form at the bluff face, allowing large waves to wash the site. The runup would reach the inland portions of the property as a bore with an elevation of about +17.8 feet NAVD88. This 2011 report concluded that, "during the coincidence of high tides and high waves, the residence (at the time sited with a basement at +15 feet NAVD88) may be subject to wave runup. However, based upon our analysis herein, the residence is reasonably safe from coastal hazards." The 2011 GeoSoils conclusion assumes that the small amount of overland flow that will reach the basement level at +15 feet NGVD88 (water would be less than 3 feet deep and flowing at less than 5.5 feet/second) would not be sufficient to do damage the structure. Looking only at the proposed project site with no consideration for a specific building design, the conclusions from the 2011 GeoSoils report suggest that development on the bluff face that is set inland of the rock outcrop and above the +18 foot elevation contour would avoid direct wave impacts as well as impacts from wave runup or overland flow.

The 2013 GeoSoils report modified the 2011 report with changes to the assumed sea level rise and the scour depth. The report examined a sea level rise of 2.5 feet, but it also raised the potential scour depth for the offshore beach area from 0.6 feet NAVD88 to about +3 feet NAVD88. The modifications to the scour depth, while not explained in the GeoSoils Report appear to be consistent with the site cross-sections provided by Cotton Shires and Associates. This decrease in scour depth will decrease the possible water depth seaward of the bluff and the possible design wave height conditions. As a result of the smaller design wave, the potential runup is less than for the 2011 assumed conditions. The calculated overland water elevation is similar to what was calculated in the 2011 report for the 2.0 foot rise in sea level.

In 2014, GeoSoils provided analyses of runup for two additional sea level rise conditions (4.5 feet and 5.5 feet) and a scour depth of about +3.0 NAVD88. The 2014 report calculations show a higher potential runup than the 2011 and 2013 reports, but the results for overland flow along the bluff face inland of the rock outrcrop are comparable to the 2011 and 2013 reports. The March 12, 2014 report recognizes that the proposed development will be above the sustained water levels and that the residence can be designed to withstand any surge and overland flow forces. The report also questions whether the 75 to 100 year design conditions for sea level rise are really appropriate, given that "many shoreline residential structures are

replaced about every 50 years" (page 5). According to GeoSoils, the upper range of sea level rise impacts would need to be considered in the building design, but would not exceed current engineering practice.

The final GeoSoils Report (April 4, 2014) was a supplement that examined different conditions of slope roughness and onshore wind, prepared in response to comments from Haro, Kasunich and Associates (GeoSoils 4-4-2014). Again, GeoSoils estimates that the overland flow along the bluff face inland of the rock outcrop is about +18 feet NAVD88.

Table 1 shows the key input assumptions, runup and overland flow results for each study, with the 2014 Report covered twice for two different sea level rise conditions. All of these reports consistently find that during storm conditions waves will hit the bluff face and both runup and overland flow will flood the site up to about +18 feet NAVD88. The reports also find that the rock outcrop feature on the bluff face will function as a sort of barrier to the main wave runup, and that inland of this feature water will travel overland as a shallow bore (overland flow).

Table 1. Summary of Various GeoSoils Reports, 2011 - 2014

	GeoSoils 3-14-2011	GeoSoils 4-10-2013	GeoSoils 3-12-2014	GeoSoils 3-12-2014	GeoSoils 4-4-2014 (1)
SLR	2.0 feet	2.5 feet	4.5 feet	5.5 feet	5.5 feet
Max design water level	9.6' NAVD	10.1' NAVD	12.1' NAVD	13.1' NAVD	13.1' NAVD
Scour depth (2)	0.6' NAVD	3.1' NAVD	2.9' NAVD	2.8' NAVD	2.8' NAVD
Water depth at toe	9.0'	7.0'	9'	9.9'	9.9'
Design wave at toe	7' 18 sec	5.5' 18 sec	7.0' 18 sec	7.7' 18 sec	7.7' 18 sec
Bluff face outcrop slope	1:2	1:2.2	1:2.2	1:2.2	1:2.2
Structure height above toe	17'	14'	14.1'	14.2'	14.2'
Potential Runup (3)	12.68'	10.02'	12.23'	12.95'	12.95'
Potential Runup elevation (4)	22.2' NAVD	20.1' NAVD	24.3' NAVD	26' NAVD	26' NAVD
Overland flow height (5)	0.82' (3)	0.8'	0.87'	1.06'	1.06'
Overland flow elevation (6)	17.8' NAVD	17.8' NAVD	17.9' NAVD	18.1' NAVD	18.1' NAVD
Overtopping rate	0.975 cfs-ft	0.27 cfs-ft.	1.89 cfs-ft.	3.473 cfs-ft.	0.954 cfs-ft.
Overtopping rate (wind)					0.993 cfs-ft.

(1) The April 4, 2014 GeoSoils report changed the roughness factor of the outcrop from 0.398 to 0.8 and wind speed to 25 fps. The increased roughness would reduce the overtopping rate to 0.954 cfs-ft and the roughness plus increased wind would increase overtopping to 0.993 cfs-ft.

(2) Scour depth was not provided for 2014 reports; it was assumed based on a fixed structure elevation and a variable structure height above toe.

(3) Potential Runup is the theoretical, calculated height above the design water level that wave runup could reach when waves hit an infinitely high slope.

(4) Potential Runup Elevation is the elevation, relate to NAVD88 that wave runup could reach when waves hit an infinitely high slope.

(5) The Overland Flow Height is the height of the water flow above the top of the structure. For the project site, this is the depth of the water that will flow along the bluff face, inland of the rock outcrop.

(6) The Overland flow elevation is the calculated height of the overland flow, above NAVD88. The flow height is based upon Potential Runup Elevation and Structure height above the toe (i.e. the rock outcrop on the bluff face). The overland flow height was not calculated in the March 14, 2011 report, but using the provided conversion between overtopping rate and height, the bore height would be 0.82' with an overland elevation of about 17.8' NAVD88.

All the GeoSoils reports show that waves and coastal flooding can impact the rock outcrop that is on the western portion of the bluff face, as well as much of the bluff face inland of the rock outcrop. The reports also all note some amount of overtopping of the rock outcrop, with the inland formation of overland flow (a bore) that would cross inland of the outcrop. From examination of the results summarized in Table 1, it can be noted that the potential runup elevations increase as sea level rise increases. However, overland flow elevations inland of the rock outcrop do not increase significantly with sea level rise; once overtopping occurs, the overland flow elevations are consistently about +18 feet NAVD88. Changes in sea level do not result in large changes to the overland flow elevation. However, sea level rise will greatly influence the frequency and duration of site flooding. Runup was only calculated for the depth-limited wave, assumed to be most damaging flood wave. Overtopping could occur from smaller waves and with rising sea level, when more frequent and possibly less significant waves will overtop the outcrop on the bluff face. Overtopping of the rock outcrop on the western portion of the bluff face will likely occur only infrequently during the first years of development, but will become more frequent with time. No analysis of flood frequency was provided, but the increase in the potential runup with rising sea level provides an indication that the frequency and duration of overtopping will increase significantly in the future.

The 2011 and 2013 GeoSoils reports note that this water level will drop by about one foot for every 25 feet inland it travels. This drop in water level with inland distance is based upon a general rule of thumb that was developed and printed in the 1984 Shore Protection Manual. An article in *Physics Today* by Resio and Westerlink[1] questions that validity of rules of thumb for water level dissipation, noting, "Empirical rules of thumb based on observations alone may be of dubious value. Along the US Gulf Coast, observations have suggested that each 14.5 km [7.4 miles] of wetlands leads to a 1-m [3.3 foot] decrease in the maximum surge level. If true, that is an extremely useful piece of information. The estimate could be dangerous, however, if it is false and used to estimate risk reductions in coastal areas behind wetlands."

The rule of thumb used by GeoSoils does not provide a good basis for assuming inland water level reductions for this site. In addition, if water flows inland of the outcrop, it is possible that the outcrop could block the return flow of the overtopping water and drainage from the inland site may be slowed so that water could pool on the bluff face. In this case, no reduction in water level across the bluff face would occur.

<u>Flooding and Runup Summary</u>

The GeoSoil reports collectively examined a range of site conditions and water level conditions. One of the constants from these various analyses is that the rock outcrop on the western portion of the bluff face will be overtopped by high waves in combination with high still water. The bore of water will be about a foot higher than the outcrop, and the overtopping rate will increase as the overall water level seaward of the outcrop increases. Based on these various studies, the 18' NAVD contour represents an approximate inland limit of flooding for this range of scenarios. This overland flow limit is just one of the many development constraints that exist

[1] Donald T. Resio. and Joannes J. Westerlink, 'Modeling the physics of storm surges', *Physics Today*, September 2008, pp 33 – 38.

on the site and it should be considered in light of other resource concerns. However, for flood purposes, a finished floor elevation at or above the 18' NAVD88 contour would provide a limit for development to insure flood safety, as well as the safety of the development without the need for a shore protection structure. FEMA often has a requirement for 1 foot of freeboard for some flooding situations which would result in an elevation requirement of +19 feet NAVD88 if applied in this situation.

As noted earlier, all the analyses provided by GeoSoils assume that the rock outcrop extends across the entire bluff face that exposed to ocean waves. However, if the rock outcrop does not extend across the entire ocean-exposed bluff face, then the analyses that are based on the presence of this outcrop are not appropriate and the bluff face should be modeled as a much higher slope, as indicated by an infinite slope, for purposes of runup and overtopping.

Finally, the analysis did not examine the flood risks for the possible future when the rock outcrop has been removed by erosion. If the outcrop no longer provides a barrier to flooding as described in the GeoSoils reports, the runup and overtopping analysis might more closely resemble the potential runup that has been calculated for the infinite slope condition (i.e., up to 26' NAVD88 per the 2014 GeoSoils report). Without the rock outcrop on the bluff face, the site would be even more vulnerable than it is now to flooding. As discussed in the following section on erosion, significant shoreline change could occur in the future with rising sea level. Since future shoreline armoring cannot be allowed, development adaptation and possible incremental removal may be needed as the site erodes and coastal hazards threaten the development and eventually the entire site.

Flooding Consequences to Adjacent Properties

Each of the GeoSoils reports from 2011 to 2014 concludes that there will be runup on the bluff face and overtopping of the rock outcrop. As a result of the overtopping, some portion of the proposed development might be subject to pulses of overland water, depending upon where the development is sited on the property. Also, it is possible that the adjacent property could be exposed to increased flood risk from water reflecting off the adjacent development. The adjacent property is upslope from this site, so water diverted from this site is likely to flow west or north, rather than upslope and south. However, due to the orientation of the property boundaries and site conditions, it might be possible for some alignments of development on the Lot 41 Studio Drive parcel to cause some water diversion onto the adjacent site. If the building envelop is inland of the anticipated reach of wave runup, no diversion of water would be expected. The building envelop proposed by staff would position the proposed development inland of the overland flow and it should eliminate or alleviate the potential for adjacent flooding impacts, although this could change over time as sea levels rise and the site erodes, including the rock outcrop as described above.

Erosion Risks to the Proposed Development Site

The proposed development site is underlain by a layer of fairly erosion resistant greywacke that forms the lower face of the coastal bluff. There have not been many studies of bluff retreat

rates for this portion of shoreline. A site-specific study in 1981[2] estimated an erosion rate of 0.6 inches per year for the rock outcrop on the bluff face. Later geologic studies of the site have not updated this information. The 2011 GeoSoils Report concluded on page 11, based on a review of aerial photographs, that "due to the hard rock nature of the shoreline material there has been little erosion or retreat of the shoreline over the last 4 decades."

The USGS National Assessments of Shoreline Change for California found that the beach area in the vicinity of the proposed project had exhibited long-term stability (for the time period from the late 1800s to 1998/2002) and a maximum erosion trend of about 2 to 3 feet per year for the shorter time period of 1947/1976 to 1998/2002.[3] Cliff retreat rates for Cayucos Beach over the 7 decades from 1034 to 1998/2002 were less than 6 inches per year and no retreat rates were reported for the Studio Drive section of the coast. A 2014 study of bluff retreat at 3266 Studio Drive[4], about half a mile south of the proposed development site, reported a maximum bluff retreat during the last 100 years of 12.5 feet, or a long-term annualized rate of 1.5 inches (per year) over that time frame.

Based on the above information, it appears that historically this site has not experienced high rates of erosion. Despite these relatively low historic rates of erosion, the Pacific Institute maps for shoreline change[5] indicate that the erosion could potentially extend inland to Highway 1 by 2100 with 4.5 feet (1.4 meters) of sea level rise. The Pacific Institute depiction of potential erosion with sea level rise is not intended to provide site-specific details; however, the general characterization of the site suggests that the above-identified relatively low historic erosion trends might not be a good depiction of future risks. Thus, while the above-described historic erosion trends suggest that development might be able to be located at a sufficient inland distance on the bluff face to minimize the risks from erosion, the future trends indicated by the Pacific Institute Report suggest that development at this location might not be safe from erosion in the nearer term, and certainly for the coming 100 years evaluated by the Pacific Institute.

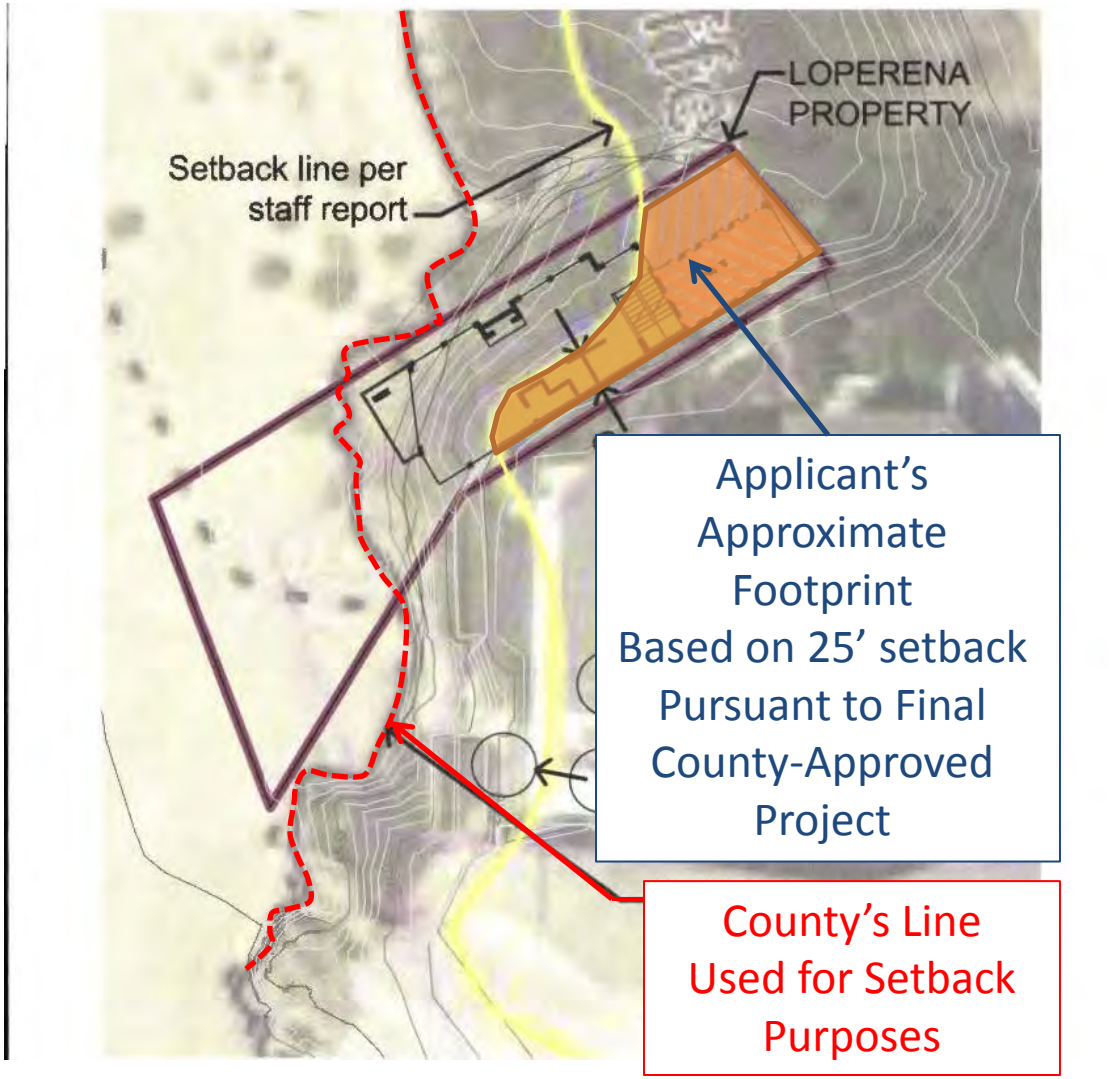
[2] Cited by Cleath and Associates (2006).

[3] Open File Report 2006-1219 for coastal land loss along sandy shorelines and Open File Report 2007-1133 for coastal cliff retreat.

[4] GeoSolutions, Inc., "Geologic Coastal Bluff Evaluation", September 12, 2014, with an addendum January 29, 2016. Rate was confirmed by the County geologist (Landset Engineering, Inc.).

[5] Heberger, et al. 2009, Impacts of Sea Level Rise on the California Coast (CEC-500-2009-024-F). http://www2.pacinst.org/reports/sea_level_rise/gmap.html.

Attachment 4 of the County's Final Local CDP Action Notice, with 25-foot coastal bluff setback line, from beach edge, shown in yellow.



Attachment 4 of the County's Final Local CDP Action Notice, with 25-foot bluff setback line, from beach edge, shown in yellow, and approximate approved footprint on the Loperena parcel.

CAYUCOS URBAN RESERVE LINE COMBINING DESIGNATIONS MAP

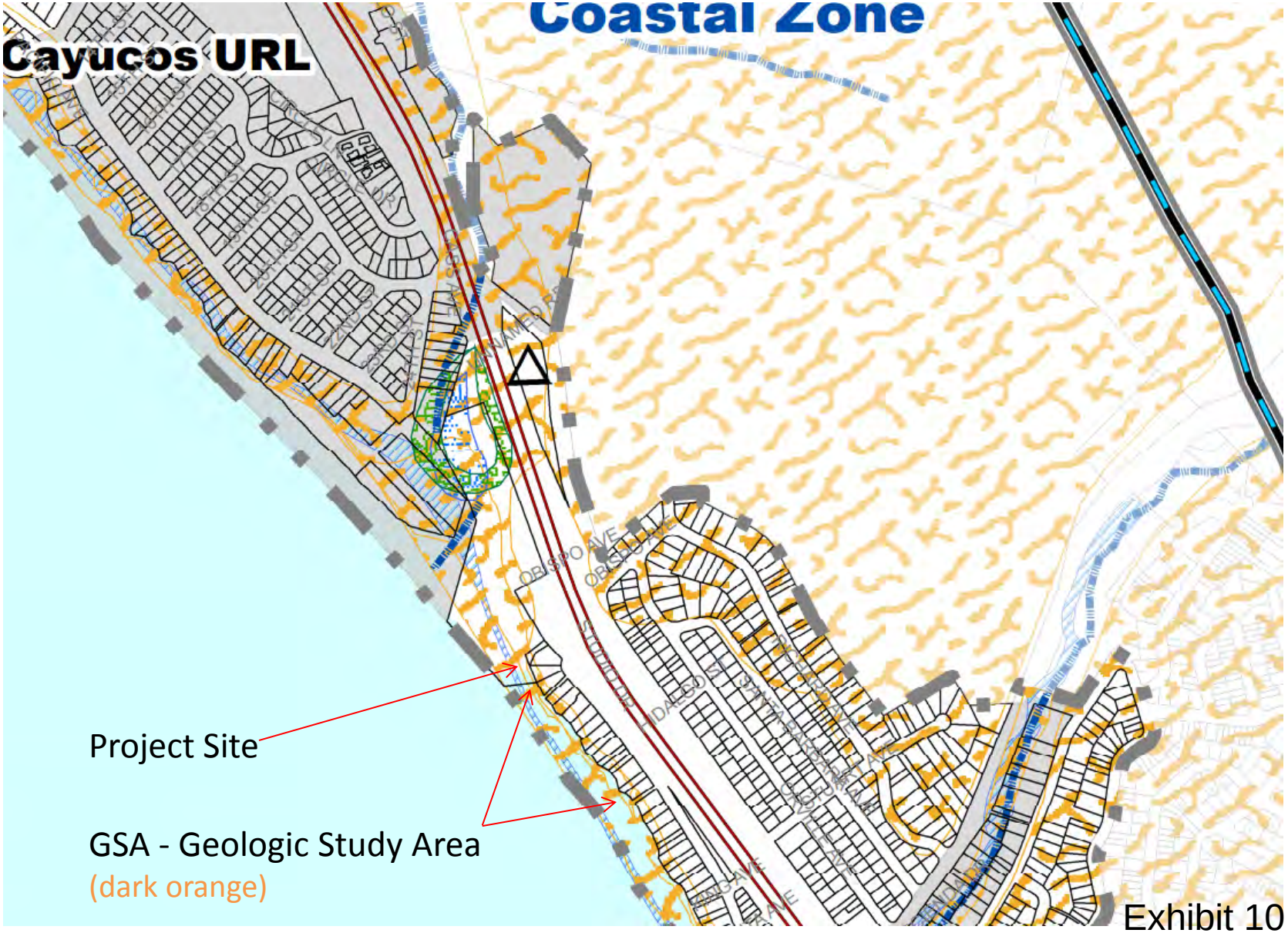


Exhibit 10
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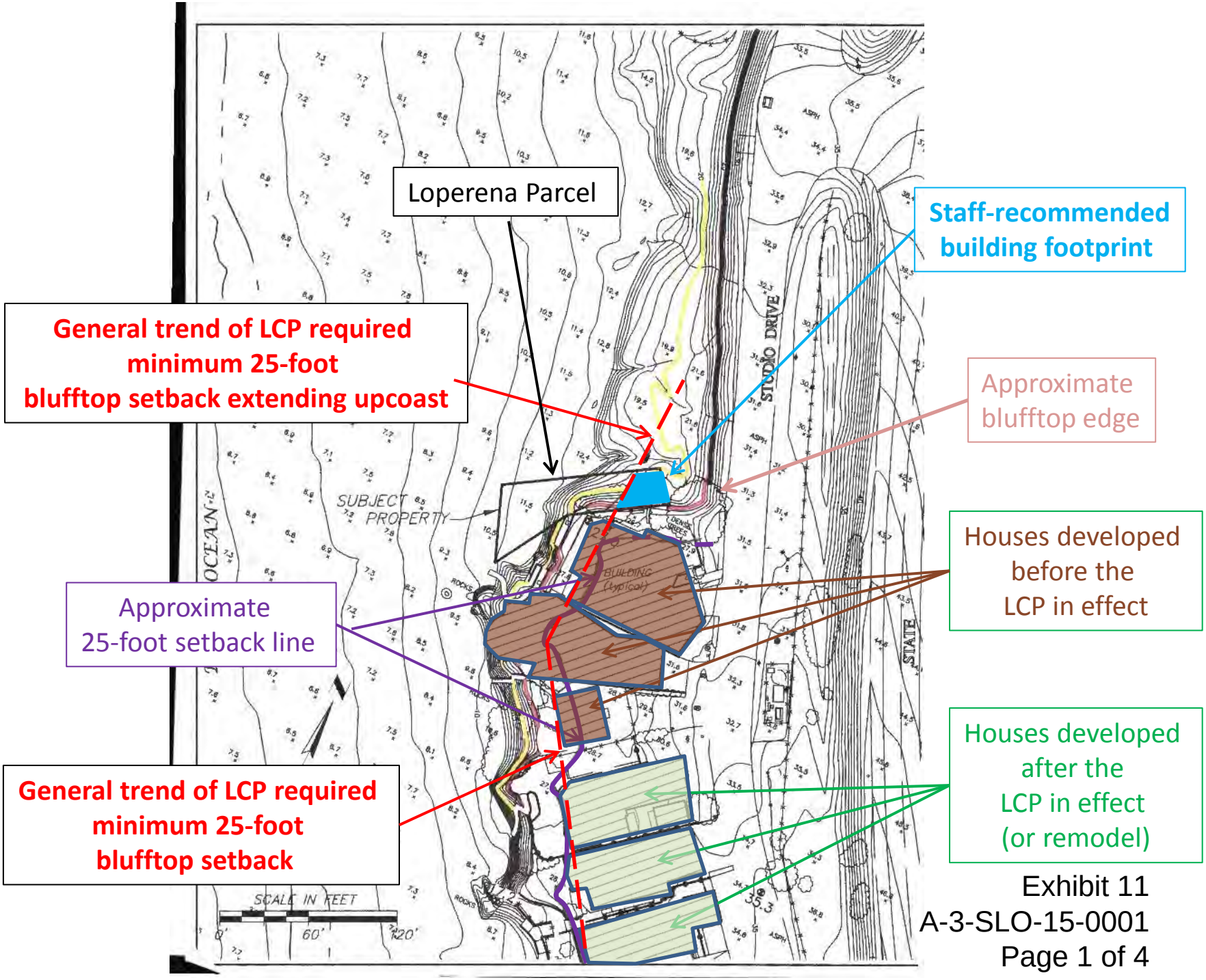

Exhibit 11
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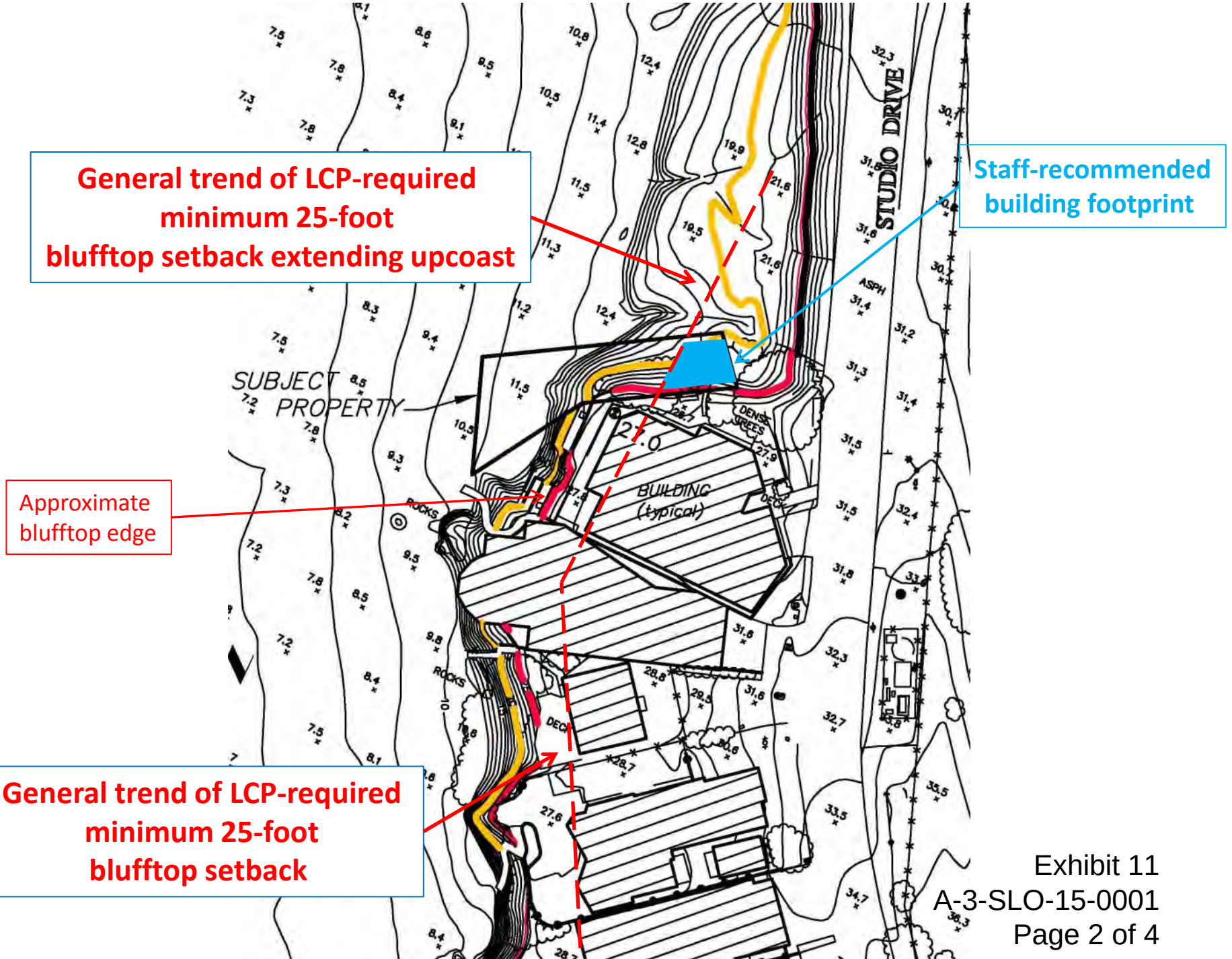

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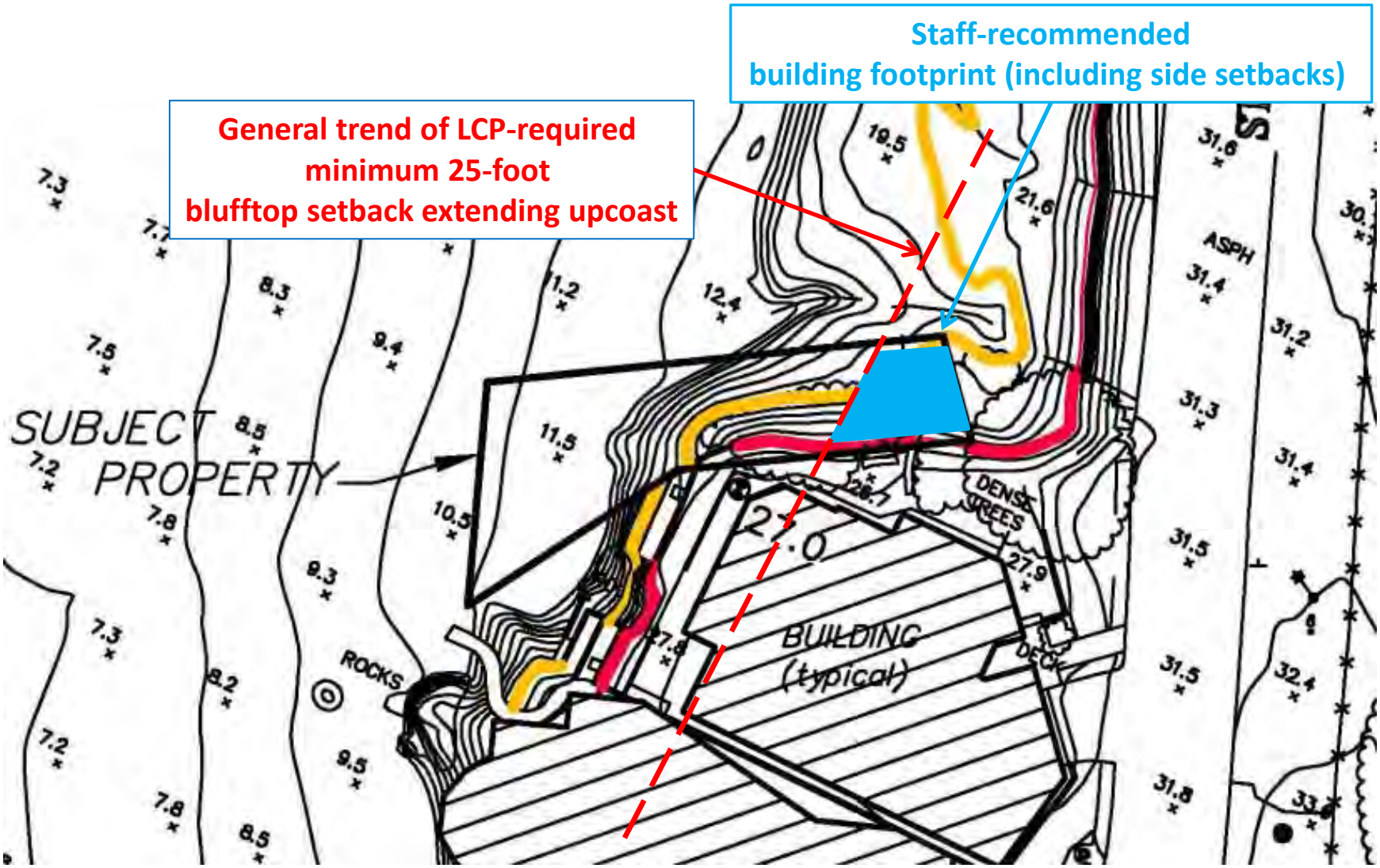
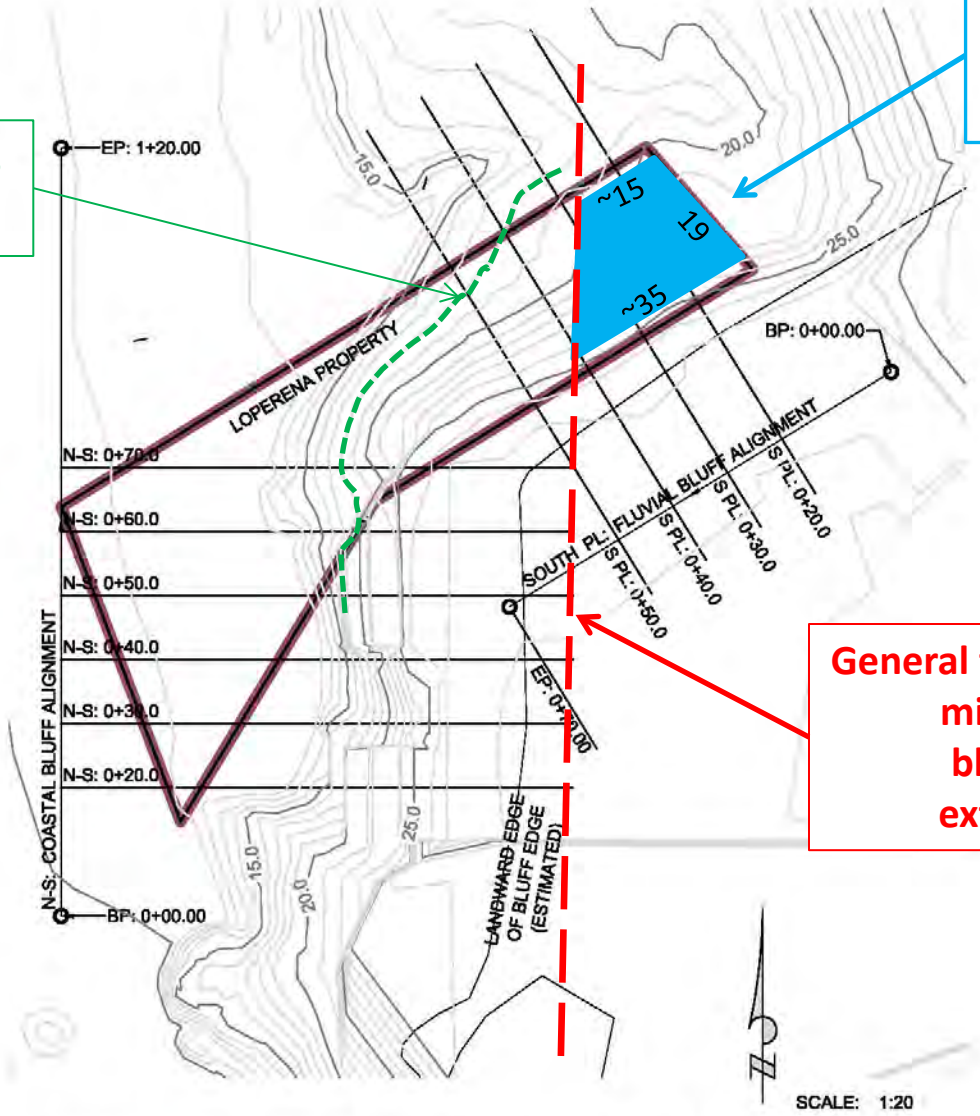

Staff-recommended
building footprint (including side setbacks)
General trend of LCP-required
minimum 25-foot
blufftop setback extending upcoast
SUBJECT PROPERTY
BUILDING
(typical)
ROCKS
DENSE TREES
ASPH
DECK

18 Foot NAVD88 Contour Line

Staff-recommended building footprint (including side setbacks)



General trend of LCP-required minimum 25-foot blufftop setback extending upcoast

Shoreline Engineering, Inc
Structural/Civil/Forensic/Engineer-Divers

Loperena: Studio Drive, Cayucos
2014 Topographic Survey

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Small Scale Design Neighborhood Standards – Studio Drive

Front Setbacks. *The ground level floor shall have setbacks as provided in Cayucos Communitywide Standard G. and at no point shall a lower story wall exceed 12 feet in height including its above ground foundation. The second floor of proposed two-story construction shall have an additional front setback of at least three feet from the front of the lower wall, except open rail, uncovered decks are excluded from this additional setback and may extend to the lower front wall.*

Side Setbacks. *Single story dwellings shall have setbacks as provided in Cayucos Communitywide Standard G. Proposed two-story construction (including decks) shall have a lower floor setback on each side of not less than four feet, nor less than the required corner side setback if applicable. An upper story wall setback on each side yard of a minimum of two-and-one-half (2 1/2) feet greater than the lower story wall shall also be required. At no point shall a lower story wall exceed 12 feet in height including its above ground foundation. Thirty percent of the upper story side wall may align with the lower floor wall provided it is within the rear two-thirds of the structure.*

Building Height Limitations. *Heights shall be measured from the center line of the fronting street (narrowest side for corner lots) at a point midway between the two side property lines projected to the street center line, to the highest point of the roof. In the community small scale design neighborhood area defined in Standard 1, upslope lots shall use average natural grade. All proposed development including remodeling and building replacement is subject to the following limitations:*

(1) Ocean Front Lots. 15 feet maximum.

Gross Structural Area (GSA). *(1) One-story development, and all development on bluff top sites, is limited to a maximum gross structural area, including the area of all garages, of 3,500 square feet. (2) Other new development or additions, exceeding one story or 15 feet in height, shall not exceed GSA's as provided in Table 7-3. In addition, the second story square footage shall be no greater than 60 percent of the first floor square footage.*

Table 7-3: Maximum Gross Structural Area, Non-Bluff-Top Sites Greater Than One Story or 15 feet:

Lot Size	*Maximum Gross Structural Area Shall Be:*
Up to 2899 square feet	*60% of usable lot, not to exceed 1595 square feet*
2900 – 4999 square feet	*55% of usable lot, not to exceed 2500 square feet*
5000 + square feet	*50% of usable lot, not to exceed 3500 square feet*

Deck Rail Height. *Rail heights for decks above the ground floor shall not exceed 36 inches. A maximum additional height of 36 inches of untinted, transparent material with minimal support members is allowable except as restricted in 3a above.*

Parking. *New development parking spaces shall comply with the CZLUO for required parking spaces except as follows (see Figure 7-36):*

(1) At least one off-street parking space shall be enclosed with an interior space a minimum size of 10 feet by 20 feet.

(2) A maximum of one required off-street parking space may be located in the driveway within the required front yard setback area. However, the minimum front yard setback from the property line to the garage is 20 feet if this design is used.

Driveway Widths. *Driveway widths for proposed development may not exceed 18 feet.*

…

Guidelines. The following are guidelines that should be considered when designing any proposed project within the subject areas. A project subject to a Minor Use Permit approval will consider how the design complies with the following objectives:

a. Site Layout. Locate the structure so that it minimizes its impact on adjacent residential structures (such as significantly reducing access to light and air).

b. Building Design. The design should incorporate architectural details and varied materials to reduce the apparent mass of structures. Such scale reducing design devices include porches, covered entries, dormer windows, oriel and bay windows, multi-pane windows, varying roof profiles, moldings, masonry, stone, brickwork, and wood siding materials. Expansive building facades should be broken up by varied rooflines, offsets, and building elements in order to avoid a box-like appearance. Variations in wall planes, roof lines, detailing, materials and siding should be utilized to create interest and promote a small scale appearance. Roof styles and roof lines for first and second stories should match (see Figure 7-37).

c. Landscaping and Fencing. The site design should incorporate landscaping materials that help reduce the scale of the proposed structure. This can be done by proper selection and placement of trees, shrubs and other vegetation capable of screening portions of the structure from public viewpoints. The design should consider the use of decorative paving materials, such as aggregate concrete, stamped and/or colored concrete. The site design should consider effective use of small scale fencing materials in the front yard area to help soften the massing of the building. Fences which present a solid barrier should be avoided except where privacy is desired.

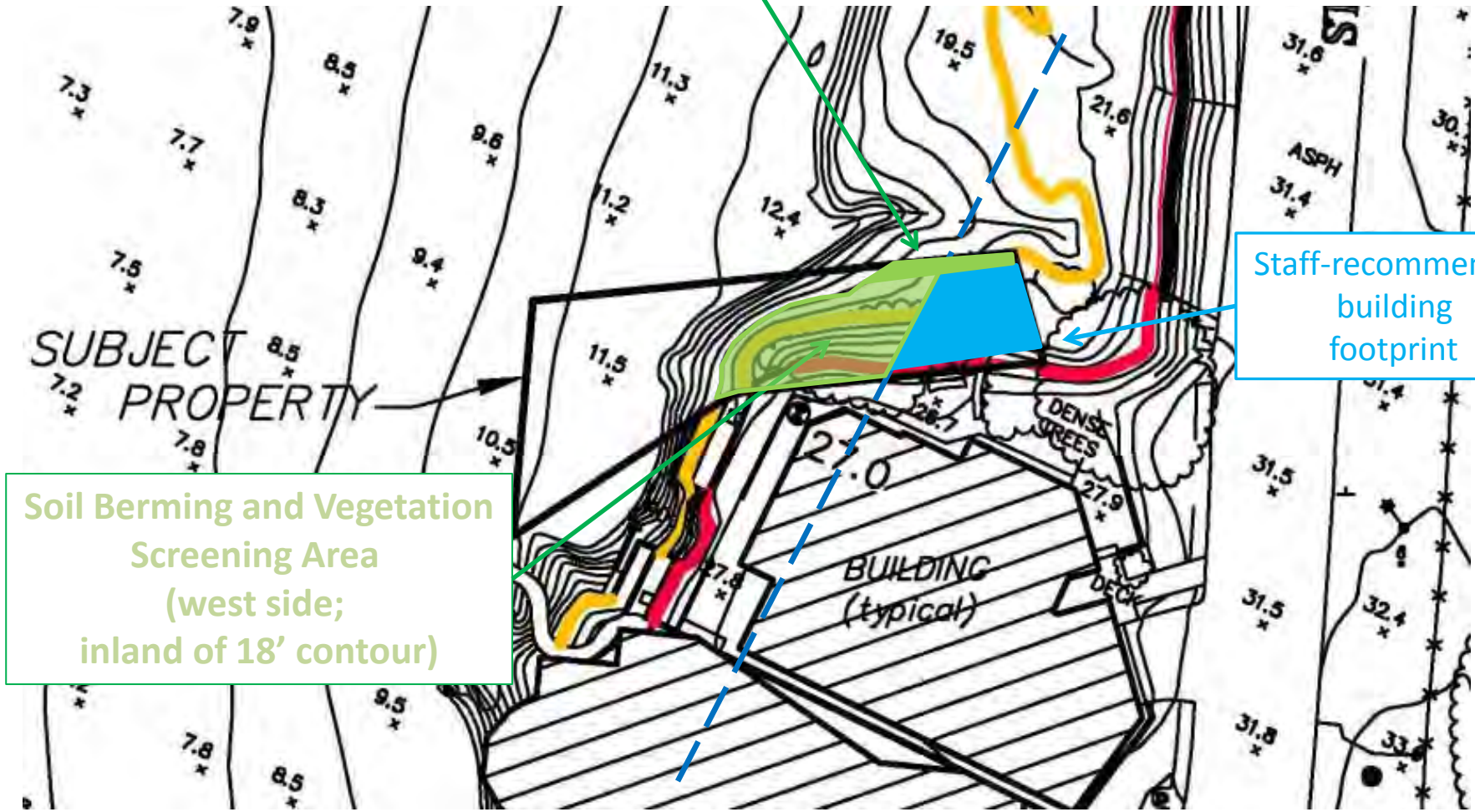

Exhibit 13
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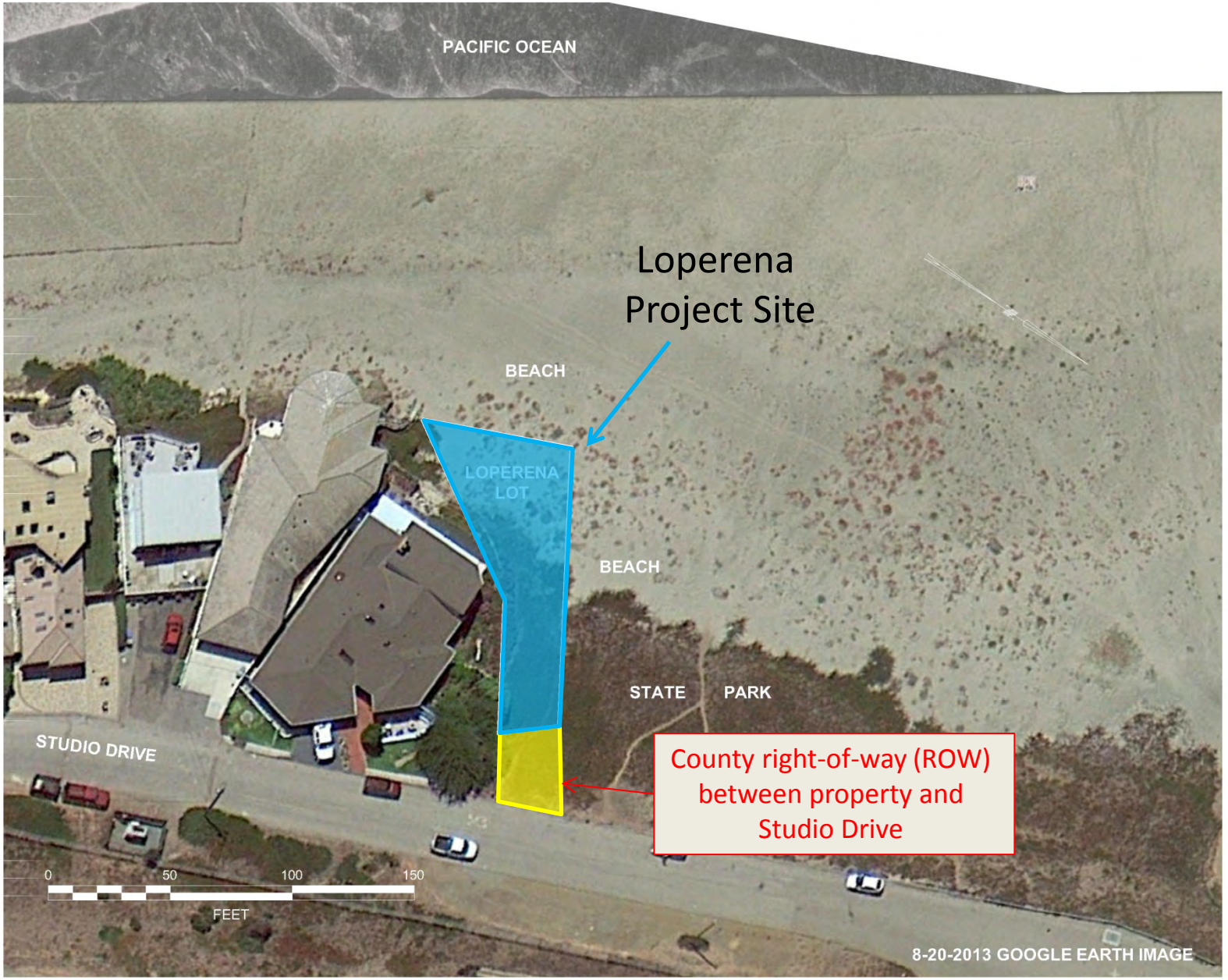

FIGURE 4 - 2013 GOOGLE EARTH IMAGE (APPROXIMATE SCALE: 1 INCH = 50 FEET)

(PROPERTY BOUNDARIES ARE APPROXIMATE)

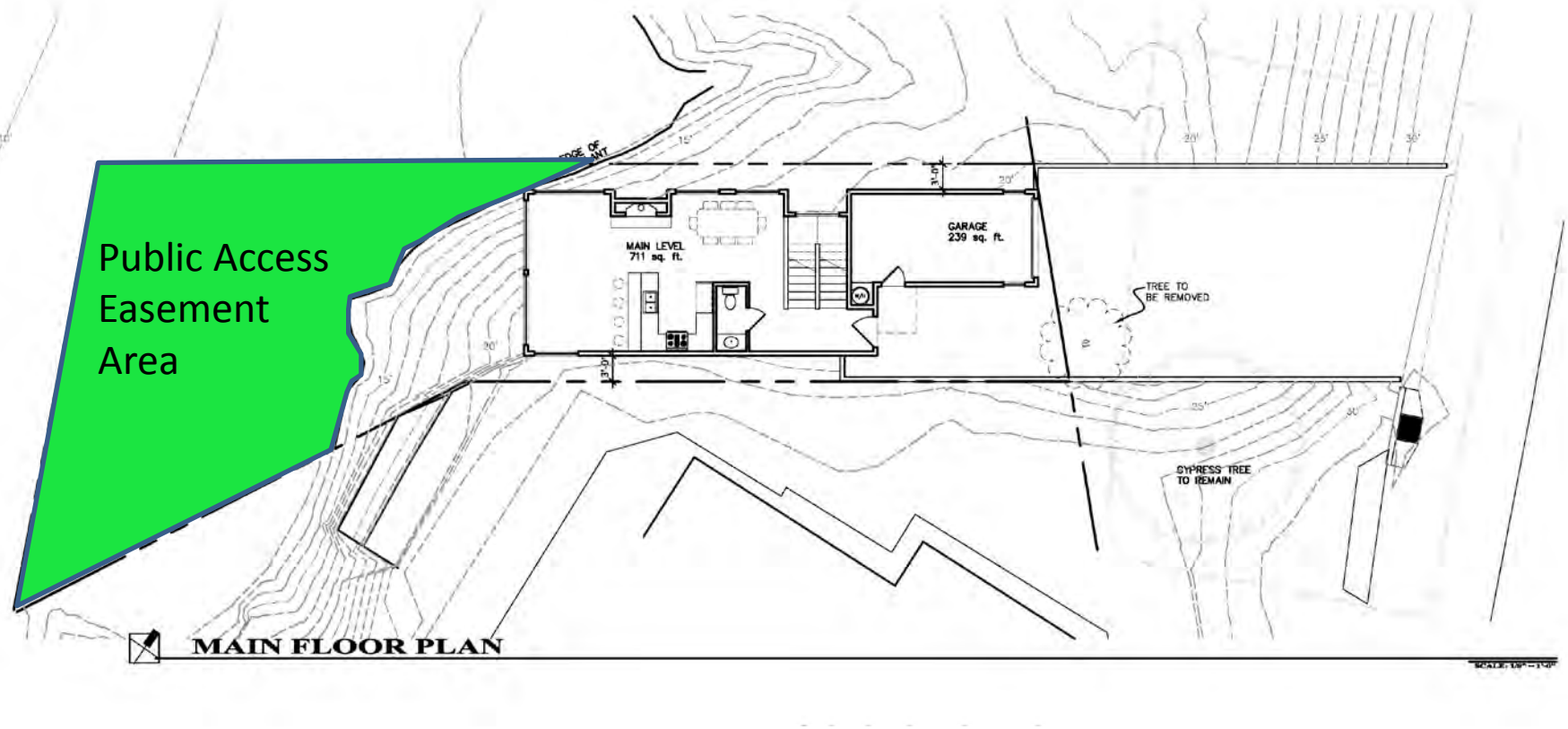

Exhibit 14
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Confidential – Via Internet

Daniel Robinson
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725 Front St., Ste. 300
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July 14, 2016

Re: Loperena APN 064-253-007
3-SLO-15-0001
Studio Drive, Cayucos
San Luis Obispo County

Dear Dan,

On behalf of Ethel Pludow & Cynthia Sugimoto, appellants to the Coastal Commission of the above referenced development proposal, we would like to provide the comments below regarding the recent submission of additional materials by Applicant Loperena and his team (collectively "Loperena"). To the extent the materials are repetitious, duplicative, redundant, non-responsive and fail to provide useful information, please also consider our earlier comments and concerns to be equally applicable here.

Of primary concern is the failure by Loperena to respond to your staff questions and comments dated May 17, 2016. Loperena did not provide a survey line of the inland extent of the sandy beach based on the average sand level throughout the year as requested. Instead, they provided a "Sand Level Comparison" Exhibit dated May 27 that unfortunately does not assist (i.e. is virtually useless) in establishing a reliable survey line.

Nor did Loperena provide a reliable "upcoast" extension survey line as requested. Instead, Loperena provided an "inferred" extension based upon a single 2014 aerial photograph. That, coupled with the failure to overlay the current data with the previous Volbrecht topographic survey makes the entire exercise pointless.

Taken at face value, we continue to strenuously disagree with several points regarding Loperena's "CC Staff Requested Building Footprint" dated June 8, 2016, such as the "Terminus of Coastal Bluff Public Resources Code" and "Terminus of Coastal Bluff Certified FEIR." As previously conveyed we believe the coastal bluff does not terminate in either of the locations suggested by Loperena. There can be no doubt that the toe of the bluff on the seaward portion of the Loperena property, is now and was historically (within the last 200 years) subject to marine erosion. Bluffs with their toe located so they are subject to marine erosion extend further upcoast than indicated by Loperena and those bluffs are thereby defined as coastal bluffs by California Code of Regulations, Title 14, Section 13577(h)(1). We strongly recommend these figures and exhibits be revised to delete the misleading titles, or clarify that they are based on assertions that do not comply with the California Code of Regulations, Title 14, Section 13577(h)(1).

Other comments and concerns pertinent to Loperena's June 7 submittal include:

1. Loperena's objections regarding a 25-ft setback are specious. We believe and have shown that your staff's willingness to consider a reduced setback (approximately 15-20-ft) since it is measured from the toe of the bluff, is significantly less setback than required of everyone else on the California coast, and is overly generous from a variety of permitting and hazard perspectives. Loperena's objection that the CC Staff proposed setback is somehow "unfair" to them turns the concept inside out with respect to the burden it places on all other Cayucos residents and the public.

2. Based upon Loperena's estimates on the second floor size of 90 sq. ft., and given they assume 100 sq. ft. for the stairs, we recommend they consider a single level house. We disagree with their self serving conclusions about the reasonableness of the recommended site size, and consider the estimated 324 sq. ft. home reasonable for a small house on a very small and severely constrained lot.

3. As we have stated previously, the Loperena proposed house would be ***significantly seaward of any reasonable setback, and would not meet the spirit or the law or even the measure of the proposed 25-ft setback, and also fails to comply with any coherent interpretation of a reasonable stringline determination. As proposed, the Loperena house will absolutely be directly in front of the existing Pludow/Sugimoto home***. Given the patent unfairness and legal disregard associated with Loperena's self-preoccupied proposal, we continue to urge that your staff proceed with great caution.

4. Applicant proposes to construct their home partly in an area where existing fill overlies beach sand deposits. Those earth materials are subject to erosion. They propose to excavate the fill and beach sand, which their geologist and the County EIR geologist indicate is up to 9 feet thick below the house foundation, and replace it with engineered fill that is not erodible (e.g. cemented fill or concrete), which will be unsightly when it is exposed by future erosion. We recommend instead at least compliance with a 25 foot setback from the general trend of the bluff edge, which will locate the home away from the beach sand deposits so that it is not built in the erosion hazard area.

5. We continue to insist, at a minimum that staff insist on at least a properly applied 25-ft setback distance to the entire toe of the bluff/sand interface line and that such interface line be based on the more reliable Volbrecht topographic surveyed line and not Loperena's recently proposed line (June 14, 2016), which is inherently unreliable and developed by an unscientific cobble theory.

6. At a minimum, your staff should not deviate seaward further from the site depicted on the "CC Staff Requested Building Footprint" prepared by Loperena dated June 8, 2016.

7. If the Commission is concerned about claims of a taking, we strongly urge the Commission to encourage Loperena to genuinely pursue an agreement with the County of San Luis Obispo to utilize the existing adjacent County Right of Way (ROW) for their development. As you know, Loperena has been repeatedly invited by County officials to pursue a land exchange over the course of many years but has instead refused to consider it due to time and other illusory constraints. Meanwhile, years have now passed and the exchange could already have been achieved had Loperena long ago begun the process.

We again thank you for your consideration and continued assistance with this application. Please feel free to give me a call to discuss further.

Sincerely,

Mark Massara, Esq.

cc: Jack Ainsworth
Dan Carl
Cynthia Sugimoto
John Kasunich
Mark Foxx