

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th14a

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STAFF REPORT: DE NOVO HEARING

Application Number: A-3-STC-16-0016

Applicants: Shigefumi and Amy Honjo

Project Location: 1307 West Cliff Drive, between West Cliff Drive and the sea (APN 003-284-05).

Project Description: Redevelopment of blufftop house and remodel of blufftop guest cottage, both located on the seaward side of West Cliff Drive in the City of Santa Cruz.

Staff Recommendation: Approval with Conditions.

SUMMARY OF STAFF RECOMMENDATION

The project site is located on an oceanfront, blufftop parcel and is the only residential development on the seaward side of West Cliff Drive in the City of Santa Cruz, a distance of approximately 2.5 miles. In addition to serving as a vehicular roadway, West Cliff Drive is also heavily used as a bike and pedestrian segment of the California Coastal Trail (CCT), with otherwise unobstructed views of the ocean across the Monterey Bay National Marine Sanctuary. The existing residence and cottage sit on a bluff that is reinforced by partially unpermitted gabions baskets and riprap placed in the early 1980s (and that are the subject of CDP Application No. 3-16-0345 also on the Commission's July 12, 2018 agenda). The parcel is currently zoned Ocean Front Recreational in the LCP, a zoning district that does not allow for single-family dwellings (though at the time it was built single-family dwellings were allowed on the site, prior to the Coastal Act and prior to LCP certification), and therefore the existing house and cottage

are legal nonconforming structures and uses. The parcel also is currently zoned with Shoreline Protection and West Cliff Drive overlays in the LCP, the objectives of which are to ensure the protection of coastal resources and views, and to enhance public access.

The proposed project includes the redevelopment of the main house and remodeling of the existing guest cottage, landscaping, and a new driveway retaining wall. The central question raised by this project is whether and what portions of the proposed project constitute “new” development or “redevelopment” versus ordinary repair and maintenance in the context of the LCP’s geologic hazards and nonconforming use policies. The City’s LCP does not include a definition for either redevelopment or repair and maintenance and thus, absent such explicit definition in the LCP, the Commission relies on the definitions ordinarily applied under the Coastal Act and its implementing regulations (i.e., Title 14, Division 5.5 of the California Code of Regulations (CCR)). CCR Section 13252(b) specifically states that replacement of 50% or more of a structure, including a single-family residence, is not repair and maintenance under Coastal Act Section 30610(d) but instead constitutes a redeveloped structure. The Commission has in past instances found that a structure will be considered redeveloped if 50% or more (1) of the major structural components, or (2) increase in gross floor area through alteration, has occurred or will occur if a proposed project were to move forward.

In this case, the proposed changes to the main house include a completely new foundation structure, as well as substantial changes to other major structural components, meaning that the main house constitutes a redeveloped structure. Thus, in order to approve these changes, the main house needs to conform to the 50-year minimum bluff setback requirement of the LCP without reliance on shoreline armoring, including because it will no longer be an existing structure entitled to such shoreline protection. Geotechnical information for the house shows that it is adequately set back to meet the LCP’s 50-year setback requirement without reliance on any armoring (including the existing armoring). However, in order to ensure that the main house complies with the LCP’s requirement that new development does not alter bluffs over the long term, and to prevent the significant adverse impacts to coastal resources that shoreline protective devices are known to cause, the project is conditioned to ensure that the main house will not be allowed shoreline protection in the future, and to ensure that natural processes are allowed to continue. The approval is also conditioned to require the Applicants to assume all of the risk for developing in an area of coastal hazards, to monitor bluff retreat and to remove development that becomes threatened by such hazards. In short, the main house development on the site would be removed over time as determined by specific triggers to allow natural shoreline processes to continue as they would otherwise, as much as possible, and to avoid the loss of beach and other attendant impacts associated with shoreline structures and development at the shoreline interface more broadly.

With respect to the cottage, the Applicants are proposing to limit the scope of the work to a less significant remodel, including less than 50% replacement of the foundation and exterior walls, in such a way as to not be considered redevelopment. Because the cottage was built prior to the Coastal Act, and because there is no evidence that it has been redeveloped since then (or would be in tandem with the improvements proposed now), it can be considered an “existing structure” that is allowed shoreline armoring under the Coastal Act and LCP. In other words, it is not required to be set back to meet LCP geologic hazards and nonconforming use standards because

it has not met the threshold to require it to be brought into such conformance. Thus, it is allowed armoring under certain circumstances (such as exist here, and such armoring is the subject of complementary CDP Application 3-16-0345 also on the Commission's July 12, 2018 agenda). However, to the extent that the cottage is ever "redeveloped" it would no longer be entitled to armoring, and it and the armoring would therefore need to be removed in order to be consistent with the LCP standards outlined above. Thus to the extent that the cottage is ever redeveloped, it is likewise conditioned to comply with the type of coastal hazard response conditions attached to the main house for the same reasons.

The project is further conditioned to require that public access be maintained during and after construction, that visual impacts are minimized through design criteria and landscaping, and that marine resources are protected during construction through the use of typical best management practices for blufftop construction. Therefore, as conditioned, the project can be found consistent with the LCP and the public access and recreation policies of the Coastal Act, and staff recommends **approval** of the CDP. The motion is found on page 5 below.

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EXHIBITS

Exhibit 1 – Regional Location Map

Exhibit 2 – Aerial Photo of Project Site (Coastal Records Project)

Exhibit 3 – Photos of Existing Residence and Cottage

Exhibit 4 – Project Plans and Visual Simulations

Exhibit 5 – Letter from Commission Staff to City Staff dated June 5, 2016

Exhibit 6 – Zinn Geologic Site Map with revised 50-year setback – no armoring.

I. MOTIONS AND RESOLUTIONS

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

***Motion:** I move that the Commission **approve** Coastal Development Permit Number A-3-STC-16-0016 pursuant to the staff recommendation, and I recommend a **yes** vote.*

***Resolution to Approve CDP:** The Commission hereby approves Coastal Development Permit Number A-3-STC-16-0016 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. 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 of 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

All conditions apply to both the main house and the cottage components of the project, except that Special Condition 4 applies solely to the main house and Special Condition 5 applies solely to the cottage.

This permit is granted subject to the following special conditions:

- 1. Revised Final Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittees shall submit two full-size sets of Revised Final Plans to the Executive Director for review and written approval. The Revised 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 Revised Final Plans shall be in substantial conformance with the proposed plans titled “Honjo Residence” dated September 4, 2015 and dated received in the Coastal Commission’s Central Coast District Office on September 17, 2015, except that they shall be modified as required below:
 - (a) Cottage Foundation.** At least 51% of the existing foundation shall be left in its current state. Up to 49% of the foundation may be replaced with a new two-foot-wide by two-foot-deep foundation supported by at most two piers that are a maximum of two feet in diameter and 12 feet deep.
 - (b) Landscaping.** The landscaping plan shall show the removal of all existing non-native plants (including all iceplant) on the site and the replanting of these areas with appropriate California native coastal bluff species, where vegetation in public view from the West Cliff Drive recreational path is limited to low-lying species (i.e., no more than one-foot tall at maturity and/or as maintained at that height). The plans shall include certification from a licensed landscape professional experienced with native species indicating that all plant species to be used are native and non-invasive. Native bluff species capable of trailing vegetation shall be planted along the three-foot-wide blufftop area adjacent to the portion of the bluff edge that is located above the retained gabion baskets and riprap; these bluff edge plants shall be chosen and planted in such a way as to trail over the armoring as much as possible at maturity in order to help provide softening of armoring features. All landscaped areas shall be maintained in a litter-free, weed-free, and healthy growing condition, and plants shall be replaced as necessary to maintain the approved vegetation over the life of the project. Any irrigation system (if needed to ensure landscaping success consistent with CDP terms and conditions) 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.

- (c) **Access Retained.** Existing accessways (e.g., paths, etc.) located on the parcel in the area upcoast of the cottage shall be retained and/or reconfigured as necessary to ensure continued through public access and utility.
- (d) **Fencing.** The proposed blufftop edge fence shall be eliminated. All other existing and proposed fencing shall be relocated to be completely within the surveyed property lines and removed from the public right-of-way. Any such relocated fencing shall be sited and designed to avoid impacting public views as much as possible, including by limiting its height and allowing through views, and made up of materials that match the environment (e.g., low wooden spilt rail fencing).
- (e) **Design.** All development shall be sited and designed to protect public views as much as possible, including through use of colors and natural materials that are sensitive to the bluff edge location. All windows shall be no glare windows and reflective surfaces shall be avoided. Lighting shall be minimized to protect against light and glare that could significantly affect public views.
- (f) **All Development Shown.** All approved development shall be identified on the plans. Any development (e.g., including, but not limited to, structures, fencing, landscaping, etc.) not specifically identified on the plans and not otherwise authorized by this CDP shall be prohibited.
- (g) **Drainage:** All project runoff shall be directed away from the blufftop edge, and no runoff is allowed to extend seaward of the blufftop edge, whether by pipe or surface flow, or by project design.

All requirements above and all requirements of the approved Revised Final Plans shall be enforceable components of this CDP. The Permittees shall undertake development in conformance with this condition and the approved Revised Final Plans unless the Commission amends this CDP or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittees shall submit two copies of a Construction Plan to the Executive Director for review and written 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 in site plan view. All such areas within which construction activities and/or staging are to take place shall minimize impacts on public access, including public parking, and other coastal resources, including by using developed blufftop portions of the Permittees' property for staging and storing construction and materials, and avoiding public properties and public use areas. Special attention shall be given to siting and designing construction areas and activities in order to minimize impacts on the ambiance and aesthetic values of the West Cliff Drive recreational trail, including but not limited to public views across the site.

- (b) **Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep construction areas separated from public properties and public use areas (including through use of unobtrusive fencing and/or other similar measures to delineate construction areas), including verification that equipment operation and equipment and material storage will not significantly degrade public views during construction.
- (c) **Construction Timing.** No work shall occur during weekends unless, due to extenuating circumstances, the Executive Director authorizes such work. Work may take place during the summer months (i.e., from the Saturday of Memorial Day weekend through Labor Day, inclusive) only if the work does not impact public use of the West Cliff Drive recreational trail. In addition, all work shall take place during daylight hours (i.e., from one hour before sunrise to one hour after sunset), except for interior work. Nighttime work (other than interior work) and lighting of the exterior work area are prohibited.
- (d) **Construction BMPs.** The Construction Plan shall identify the type and location of all erosion control/water quality/tree protection best management practices that will be implemented during construction to protect coastal water quality and related coastal resources as well as the existing trees on the site, including at a minimum all of the following:
- (1) **Runoff Protection.** Silt fences, straw wattles, and equivalent apparatus shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from discharging from the construction area, and/or entering into storm drains or otherwise offsite. Special attention shall be given to appropriate filtering and treating of all runoff, and all drainage points, including storm drains, shall be equipped with appropriate construction-related containment equipment and treatment materials.
 - (2) **Equipment BMPs.** Equipment washing, refueling, and/or servicing shall take place at an appropriate off-site location to prevent leaks and spills of hazardous materials at the project site.
 - (3) **Good Housekeeping.** The construction site shall maintain good construction 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 project site; etc.).
 - (4) **Erosion and Sediment Controls.** All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day.
 - (5) **Tree Protection.** Tree protection fencing shall be placed around the perimeter of each of the three existing mature trees on the site (and any of their exposed roots) prior to the commencement of construction activities, including construction staging.

Such fencing shall be fixed chain-link securely anchored and placed at the drip line of the tree's canopy and shall remain intact until construction is completed.

- (e) **Restoration.** All public recreational use areas and all beach access points (including informal trails to the beach located just downcoast and upcoast of the work area) 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.
- (f) **Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are 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.
- (g) **Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still minimizing impacts to public views, along with 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 (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. All complaints and all actions taken in response shall be summarized and provided to the Executive Director on at least a weekly basis.
- (h) **Construction Specifications.** All construction specifications and materials shall include appropriate penalty provisions that require remediation for any work done inconsistent with the terms and conditions of the CDP.
- (i) **Notification.** The Permittees shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.

Minor adjustments to the above Construction Plan 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 requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittees shall undertake development in conformance with this condition and the approved Construction Plan, unless the Commission amends this CDP or the Executive Director

provides a written determination that no amendment is legally required for any proposed minor deviations.

3. Coastal Hazards Risk. By acceptance of this CDP, the Permittees acknowledge and agree, on behalf of themselves 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, ocean waves, tsunami, tidal scour, coastal flooding, landslides, bluff and geologic instability, bluff retreat, liquefaction and the interaction of same, many of which will worsen with future sea level rise.
- (b) **Assume Risks.** To assume the risks to the Permittees 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 Owners Responsible.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owners.

4. Coastal Hazards Response – Main House. By acceptance of this CDP, the Permittees acknowledge and agree, on behalf of themselves and all successors and assigns, to all of the following:

- (a) **CDP Intent.** The intent of this CDP is to allow for the main house and related development to be redeveloped and used consistent with the terms and conditions of this CDP for only as long it remains safe for occupancy and use without additional measures (beyond ordinary repair and/or maintenance, as articulated in this condition below) to protect the structure from coastal hazards (as these hazards are defined by Special Condition 3(a) above). The intent is also to ensure that the main house or portions of it are removed and the affected area restored under certain circumstances (as further described in this condition) consistent with the Removal and Restoration Plan required in subsection (d) of this special condition.
- (b) **Shoreline Armoring Prohibited.** Other than the armoring approved by CDP 3-16-0345 to protect the cottage only (including any future amendments to that CDP for that same limited purpose), additional future shoreline armoring (including but not limited to additional or augmented seawalls, revetments, retaining walls, gabion baskets, tie backs,

piers, groins, caissons/grade beam systems, etc.) that is intended to protect or would have the effect of protecting the main house and related development shall be prohibited.

(c) **Section 30235 Waiver.** Other than the armoring approved by CDP 3-16-0345 to protect the cottage only (including any future amendments to that CDP for that same limited purpose), any rights that the Permittees may have to construct and/or maintain shoreline armoring to protect the main house and related development, including rights that may exist under Coastal Act Section 30235, the City of Santa Cruz Local Coastal Program, or any other applicable laws, are waived.

(d) **Removal and Restoration Plan.** The Permittees shall submit two copies of a Removal and Restoration Plan (RRP) to the Executive Director for review and written approval that accounts for the following when any of the following criteria are met:

(1) **Unsafe Conditions.** If any portion of the approved main house and related development (including but not limited to the house itself, the driveway, utility infrastructure, subsurface elements, etc., but not the cottage) is threatened and/or damaged by coastal hazards (as defined by Special Condition 3(a)), and if a government agency has ordered that the threatened and/or 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 and/or use of the remainder of the development after implementation of the approved RRP, including full removal if occupancy and use is not possible for a reduced-scale development. 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 main house’s major structural components, including exterior walls, floor and roof structures, and foundation.

(2) **Major Structural Components.** If any portion of the approved main house’s major structural components (including exterior walls, floor and roof structures, and foundation) are subject to threat and/or damage due to coastal hazards (as defined by Special Condition 3(a)) requiring significant alteration (including renovation and/or replacement) to abate those coastal hazards, beyond ordinary repair and maintenance (as further described in subsection (d)(1) above), 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.

(3) **Setback Triggers.** In the event that the edge of the blufftop recedes to within five feet of the main house, but no government agency has ordered that the main house not be occupied, then the RRP shall address whether any portions of the main house are threatened by coastal hazards (as defined by Special Condition 3(a)). The RRP shall

identify all those immediate or potential future measures that could stabilize the main house considering those coastal hazards threats without going beyond ordinary repair and maintenance (as further described in subsection (d)(1) above) and without reliance upon shoreline armoring, including, but not limited to, removal or relocation of portions or all of the main house.

- (4) Daylighting.** If any portion of the approved foundation and/or subsurface elements (including but not limited to foundation elements) for the main house become exposed due to bluff erosion or other coastal hazards, then the RRP shall provide that all development supported by these foundation elements, as well as the foundation elements themselves, be immediately removed.

The RRP shall be submitted as soon as possible, but in no case later than 30 days after any of the above criteria are met. 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 redeveloped main house (including but not limited to access and utilities) is relocated as part of the removal episode; (b) all removal areas are restored as natural areas of a quality consistent with adjacent natural areas; 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 Permittees shall submit and complete the required application within 30 days of such determination. The RRP shall be implemented immediately upon Executive Director or Commission approval of the RRP, as the case may be. The Permittee shall undertake development in accordance with the approved RRP.

5. Coastal Hazards Response – Cottage.

- (a) CDP Intent.** The intent of this CDP is to allow for the cottage and related development to be remodeled and used consistent with the terms and conditions of this CDP for only as long it remains safe for occupancy and use without additional measures beyond normal repair and maintenance work on the cottage up to, but not exceeding, a point of redevelopment (as defined in this special condition below). The intent is also to ensure that the cottage and related development are removed and the affected area restored under certain circumstances (as further described in this special condition), including that all cottage development is required to be removed when it becomes unsafe to occupy or when it reaches the redevelopment threshold identified in subsection (b) below, consistent with the Removal and Restoration Plan required in subsection (d) of this special condition.
- (b) Cottage Redevelopment.** Any future proposed improvements to the cottage that constitute redevelopment shall result in the requirement that the cottage be sited and designed to ensure geologic and engineering stability without reliance on any shoreline armoring, including any then-existing armoring. As used in this condition,

“redevelopment” is defined to include: (1) additions to the existing cottage, (2) exterior and/or interior renovations, and/or (3) demolition of the existing cottage, or portions thereof, which result in:

- (1) Alteration of any component of the foundation beyond the work approved by this CDP; or
 - (2) Alteration of 12% or more of the exterior walls beyond the work approved by this CDP; or
 - (3) Alteration of 50% or more of non-foundation or non-exterior-wall major structural components including floor and roof structures, or a 50% or more increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from the date of approval of this CDP, including the major structural components authorized under this permit; or
 - (4) Demolition, renovation or replacement of less than 50% of non-foundation or non-exterior-wall major structural components where the proposed alteration would result in cumulative alterations exceeding 50% or more of the major structural components, taking into consideration alterations approved pursuant to this CDP and any other subsequent approvals; or an alteration that constitutes less than a 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area, taking into consideration previous additions approved pursuant to this CDP and any other subsequent approvals.
- (c) **Section 30235 Waiver.** Other than the armoring approved by CDP 3-16-0345 to protect the remodeled cottage (including any future amendments to that CDP for that same limited purpose), any rights that the Permittees may have to construct shoreline armoring to protect a redeveloped cottage and related development, including rights that may exist under Coastal Act Section 30235, the City of Santa Cruz Local Coastal Program, or any other applicable laws, are waived.
- (d) **Removal and Restoration Plan.** The Permittees shall submit two copies of a Removal and Restoration Plan (RRP) to the Executive Director for review and written approval that accounts for the following when any of the following criteria are met:
- (1) **Unsafe Conditions.** If any portion of the cottage and related development (including but not limited to the cottage itself and its associated utility infrastructure, subsurface elements, etc.) is threatened and/or damaged by coastal hazards (as defined by Special Condition 3(a)), and if a government agency has ordered that the threatened and/or damaged portion of the cottage 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 and/or use of the remainder of the development after implementation of the approved RRP, including full removal if occupancy and use is not possible for a

reduced-scale development. 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 cottage’s major structural components, including exterior walls, floor and roof structures, and foundation.

- (2) Major Structural Components.** If any portion of the approved cottage’s major structural components (including exterior walls, floor and roof structures, and foundation) are subject to threat and/or damage due to coastal hazards (as defined by Special Condition 3(a)) requiring significant alteration (including renovation and/or replacement) to abate those coastal hazards, beyond ordinary repair and maintenance (as further described in subsection (d)(1) above), 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.
- (3) Setback Triggers.** In the event that the edge of the blufftop recedes to within five feet of the cottage, but no government agency has ordered that the cottage not be occupied, then the RRP shall address whether any portions of the cottage is threatened by coastal hazards (as defined by Special Condition 3(a)). The RRP shall identify all those immediate or potential future measures that could stabilize the cottage considering those coastal hazards threats without going beyond ordinary repair and maintenance (as further described in subsection (d)(1) above) and without reliance upon bluff or shoreline protective device(s), including but not limited to removal or relocation of portions or all of the cottage.
- (4) Daylighting.** If any portion of the approved foundation and/or subsurface elements (including but not limited to foundation elements) for the cottage become exposed due to bluff erosion or other coastal hazards, then the RRP shall provide that all development supported by these foundation elements, as well as the foundation elements themselves, be immediately removed.
- (5) Armoring Removal.** If the cottage is no longer useable and/or is removed (whether as required by the RRP or otherwise), then the RRP shall also provide that the armoring approved by CDP 3-16-0345 (including any future amendments to that CDP) is removed and the area affected by its removal restored to natural bluff and beach conditions.

The RRP shall be submitted as soon as possible, but in no case later than 30 days after any of the above criteria are met. 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 cottage (including but not limited to access and utilities) is relocated as part of the removal episode; (b) all removal areas are restored as natural areas of a quality consistent with

adjacent natural areas; 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 Permittees shall submit and complete the required application within 30 days of such determination. The RRP shall be implemented immediately upon Executive Director or Commission approval of the RRP, as the case may be. The Permittees shall undertake development in accordance with the approved RRP.

- 6. Public Rights.** The Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights that may exist on the property. The Permittees shall not use this CDP as evidence of a waiver of any public rights that may exist on the property now or in the future.
- 7. Future Permitting.** This permit is only for the development described in CDP A-3-STC-16-0016. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by this CDP. Accordingly, any future improvements to the main house, the guest cottage, and the associated development authorized by this permit shall require an amendment to this CDP from the Commission or shall require an additional CDP from the Commission. In addition, an amendment to this CDP from the Commission or an additional CDP from the Commission shall be required for any repair or maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).
- 8. City of Santa Cruz Conditions.** This CDP has no effect on conditions imposed by the City of Santa Cruz pursuant to an authority other than the Coastal Act, except as provided in this condition. The Permittees are responsible for compliance with all terms and conditions of this CDP in addition to any other requirements imposed by the City pursuant to the City's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the City and those of this CDP, the terms and conditions of this CDP shall prevail.
- 9. Real Estate Disclosure.** Disclosure documents related to any future marketing and sale of the subject property, including, but not limited to, specific marketing materials, sales contracts and similar documents, shall notify potential buyers of the terms and conditions of this CDP including, but not limited to, explicitly identifying all requirements associated with Special Conditions 3, 4, and 5. A copy of this CDP shall be provided in all real estate disclosures.
- 10. Deed Restriction.** PRIOR TO ISSUANCE OF THE CDP, the Permittees shall submit to the Executive Director for review and approval documentation demonstrating that the Permittees have executed and recorded against the parcel 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 and site plan of the entire parcel or parcels 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 subject 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 subject property.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

Project Location

The project is located on an oceanfront, blufftop parcel at 1307 West Cliff Drive, and is the only residence located seaward of West Cliff Drive in the City of Santa Cruz. In addition to serving as a vehicular roadway, West Cliff Drive is also heavily used as a bike and pedestrian segment of the California Coastal Trail (CCT), with otherwise unobstructed views of the ocean across the Monterey Bay National Marine Sanctuary. The existing main residence and guest cottage sit on a bluff that is partially reinforced by gabion baskets and riprap. This armoring, most of which is unpermitted, was placed in the early 1980's and is subject of Commission enforcement case V-3-15-0124 (and the subject of complementary CDP Application No. 3-16-0345 also being considered by the Commission at its July 12, 2018 meeting).

The parcel is zoned in the LCP as Ocean Front Recreational (OF-R), which does not allow for single-family dwellings and related residential development (though at the time the house and cottage were built (prior to LCP certification) it was allowed, and therefore the existing house and cottage are legal nonconforming structures and uses. The parcel is also zoned in the LCP with Shoreline Protection (SP-O) and West Cliff Drive (WCD-O) overlays. The LCP's objectives for these overlay districts are to ensure the protection of coastal resources and views, and to enhance public access along this stretch of coast. **See Exhibit 1** for a location map, **Exhibit 2** for an aerial photo of the site, and **Exhibit 3** for other photos of the site.

Project Background and History

The property is currently developed with a single-family dwelling and a guest cottage that were both built around 1940 when the parcel was zoned R-1. Based on research of the site, the City rezoned the subject property from R-1 to OF-R sometime between 1954 and 1970.¹ On July 8, 1977, the prior property owner, Dr. Larimore Cummins,² applied to the City to rezone the property from (OF-R) to Single-Family Residential (R-1-5).³ The purpose of the rezoning request was essentially to eliminate the then-existing legal nonconforming restrictions on the property, including then Municipal Code Section 24.52.010, which stated that "Any non-conforming use within the City of Santa Cruz is detrimental to the orderly development of the City and detrimental to the general welfare of persons and property. It is the intent of this chapter that non-conforming uses shall be eliminated as rapidly as may be done."

On August 3, 1977, the City Planning Commission denied the rezoning application by unanimous vote. The resolution of denial found that the proposed rezoning would "not serve the

¹ City records include a denial of a 1954 Use Permit application to run an antique shop in the home, and that application indicated the zoning for the parcel was R-1.

² Dr. Cummins owned the property until it was sold to the current Applicants in July 2014.

³ Based on current research, it is unclear when Dr. Cummins purchased the property; however, minutes from the August 3, 1977 City Planning Commission meeting indicate that he was aware of the OF-R zoning designation (and its restrictions on development) when he purchased the property.

public necessity and promote the public convenience and general community welfare, and is not in general conformance with the principles and policies set forth in the General Plan.” The meeting minutes also included comments from the Planning Commissioners, including that “the intent of the OF-R was that eventually all non-conformities would disappear.” Also included in the record before the Planning Commission was a letter from the West Cliff Advisory Committee (then commonly known as the Bike Path Committee) opposing the application on the basis that the proposed rezoning: 1) could open the door to additions or alterations, which would further block the view and detract from the oceanfront appeal of the bicycle path; 2) would constitute a “dangerous precedent;” and 3) may not be in conformity with the Coastal Act.⁴

Dr. Cummins appealed the Planning Commission’s denial to the City Council. The City staff report to the Council noted that the OF-R zoning was established prior to 1970 and that its purpose is “[t]o ensure the safe occupancy and the reasonable use of lands subject to continuous erosion, such as the cliffs and beaches adjacent to the Santa Cruz shoreline. Changes of zoning from OF-R to any other zoning district shall be made only in general accordance with the General Plan.” The staff report also noted that a request was made in 1973 to modify the OF-R regulations to permit limited enlargement or reconstruction of existing structures in this zone, which was denied by the City Council. City staff’s preliminary recommendation to the City Council in 1977 with respect to Dr. Cummins’ rezoning request was the following:

To break in the OF-R Zone to permit further development along the south side of West Cliff Drive would be, in the Staff’s opinion, a major policy decision with which we cannot agree. The applicant presently enjoys the use of the property and reasonable maintenance of this dwelling is also assured. Staff recommends denial of the rezoning request. The applicant is not being denied use of his property. This restriction was on the property when he purchased it.

At its August 23, 1977 meeting, the City Council referred the matter back to the Planning Commission with direction to work out an acceptable alternative. On December 7, 1977, the Planning Commission again took up the matter. As a compromise solution, City staff recommended that the Planning Commission approve a proposed text amendment to the OF-R zone to allow for reconstruction of the existing single-family structure in the case of a natural disaster, but to otherwise deny the rezoning request. The Commission approved the text amendment (by a vote of 3-2) and denied the rezoning (by a vote of 5-0).

The text amendment (Ordinance 78-02) to the OF-R zone district was subsequently approved by the City Council on January 24, 1978. This amendment allowed for reconstruction of any existing nonconforming single-family dwelling in the OF-R district if more than 60 percent of such dwelling’s market value was damaged by fire, flood, or other “act of God.” The ordinance also required that the rebuilt “structure’s location, size, height, external design, area, and other external specifications will be substantially similar in all significant respects to such specifications before the structure was damaged...” Mr. Cummins then withdrew his application for rezoning and made no further efforts to rezone the property. Although the City approved this

⁴ The Coastal Act had just come into effect on January 1, 1977, and the City at the time did not have a certified LCP (ultimately certified in 1985).

ordinance text in 1978, the City did not include this text in its submittal of the City's Local Coastal Program (LCP), which the Coastal Commission certified in 1985.⁵

In 1982, in the wake of severe El Niño storms, Dr. Cummins installed substantial shoreline armoring on the beach and bluff at the subject location, including gabion baskets⁶ and approximately 900 cubic yards (cy) of riprap,⁷ in order to protect the house and cottage. The current owners/Applicants assert that the shoreline protection work was done under a verbal emergency authorization from Coastal Commission staff, though no written documentation has been identified to substantiate this claim, and Commission staff have not been able to corroborate that staff was involved at all. Although Dr. Cummins did submit a CDP application (CDP Application No. 3-83-152) seeking after-the-fact authorization for the placement of the gabion baskets and the 900 cy of riprap in the subject location, that process was never completed and thus no CDP was ever issued to authorize the placement of the gabion baskets and 900 cy of riprap on the beach and bluff fronting the residence.⁸ Thus, the gabion baskets and 900 cy of riprap have been retained without benefit of a CDP for over three decades, and are currently considered a violation of the Coastal Act.⁹

In 1992, Dr. Cummins applied for a different CDP to place some 300 cubic yards of riprap at the site (CDP Application No. 3-92-78). That CDP was ultimately approved, and 300 cy of riprap was placed per the permit. At that time, the record indicates that the Commission was unaware that the early 1980s unpermitted armoring work had not been permitted, and thus the Commission's CDP did not evaluate or approve that prior work at that time. Thus, 300 cy of riprap has been legally permitted at the site, but the remainder of the armoring (i.e., about 900 cy of riprap and the gabion baskets) remains unpermitted, and is the subject of Commission enforcement case V-3-15-0124.

The Applicants purchased the property from Dr. Cummins in July 2014 and submitted an application to the City in September 2015 to redevelop the existing residential structures. Commission staff met with City staff to discuss the project, including with respect to concerns regarding the unpermitted shoreline protection work. Commission staff also submitted comments

⁵ A "Preliminary Plan Review" from the City to the current Applicants states that this section was in the Zoning Ordinance until January of 1985 when an entirely new Zoning Ordinance was adopted for the City's Coastal Commission-adopted LCP Implementation Plan (IP), and that the City was unable to locate any documentation as to the reason for the deletion of this section; however, the former City Senior Planner during that time stated that it likely was deleted because it did not meet Coastal Act requirements.

⁶ A gabion (from Italian gabbione meaning "big cage"; from Italian gabbia and Latin cavea meaning "cage") is a cage, cylinder, or box filled with rocks, concrete, or sometimes sand and soil for use in civil engineering, road building, military applications and landscaping.

⁷ Application No. 3-83-152 identified the amount as 850 tons of rip rap; however current estimates from CDP Application 3-16-0345 indicate the amount is closer to 900 cy.

⁸ Thus, even assuming that Dr. Cummins did obtain verbal emergency permit authorization from Coastal Commission staff to place the shoreline protection work on a temporary basis (and there is no evidence to suggest same), the armoring never received an actual emergency CDP nor a regular CDP as required.

⁹ See, Commission Enforcement Case No. V-3-15-0124. The Applicants are proposing to remedy the violation as part of the related shoreline armoring CDP Application No. 3-16-0345.

to the City prior to the City taking action outlining concerns with respect to the project's consistency with the OF-R zoning designation, with the Shoreline Protection Overlay, and with the West Cliff Drive Overlay, and the unpermitted shoreline protection work (see **Exhibit 5**). Notwithstanding the significant issues raised by Commission staff at that time, the City Zoning Administrator proceeded to approve the project on January 6, 2016.

The project was appealed to the Commission on February 2, 2016, and on November 2, 2016 the Commission determined that the appeal raised a substantial issue regarding conformance with the City's LCP and the public access policies of the Coastal Act, and took jurisdiction over the CDP.

Proposed Project Description

The proposed project includes the redevelopment of the existing main house and remodeling (less than redevelopment) of the guest cottage, landscaping, and a new driveway retaining wall. The proposed redevelopment of the main house includes a new foundation, which will raise the structure by six inches; a new seismic system with new lateral elements and a new diaphragm transfer system (i.e., new structural supports) in the floors and roof; removal of the fireplace and chimney; new electrical, mechanical, and plumbing systems; new windows, doors, trim, wood siding, copper gutters, and roof; new air and water barriers on exterior walls; extension of the front porch area; removal of dormers; and a new deck located one foot above grade with stairs to the back yard area. The proposed remodeling of the guest cottage includes repairs/upgrades to 49% of the foundation, including two new 12-foot-deep piers; conversion of a closet to a full bathroom; replacement of 38% of the exterior walls; removal of the existing bathroom pop-out; new French doors, windows, trim, wood siding, copper gutters, and roof; and new air and water barriers on exterior walls. On both the main house and the guest cottage, a Japanese torching method called *shou sugi ban*¹⁰ would be used to finish the wood. The process acts as an additional weather retardant and would slightly darken the wood siding. Also, the new windows would have decorative wood shutters, and the new roofs would have cedar shingles with copper flashing.

The proposed landscaping plans include: removing the existing non-native plants and replanting with native coastal bluff plants; repairing an existing stake fence; restoring the gravel and crushed granite pathways; removing the lawn and planting no-mow grass; planting three new canopy fruit trees; relocating the existing fire-pit and seating; installing a new safety fence along the bluff edge; planting new native flowering perennials, and trimming the existing cypress and eucalyptus trees. The project also proposes a new retaining wall around the outer edge of the existing driveway to protect against erosion from runoff from West Cliff Drive.

See **Exhibit 4** for the proposed project plans and visual simulations, and **Exhibits 2 and 3** for site area photos.

¹⁰ *Shou sugi ban* is an ancient Japanese exterior siding technique that preserves wood by charring it with fire. The process involves charring the wood, cooling it, cleaning it, and finishing it with oil. It is generally considered an environmentally friendly way to preserve timber because it makes it fire-resistant and avoids the need for chemical preservatives, paints and retardants.

B. STANDARD OF REVIEW

The standard of review for this CDP determination is the City of Santa Cruz certified LCP and, because it is located between the first public road and the sea, the access and recreation policies of the Coastal Act.

C. COASTAL HAZARDS

Applicable Provisions

The project site is located on the bluff, seaward of West Cliff Drive, in an area subject to significant coastal hazards, including from storm, waves, and coastal flooding, as well as episodic and longer term coastal erosion. Applicable LCP provisions include:

Land Use Plan (LUP) Safety Element Policy 1.2. Mitigate hazards posed by cliff retreat.

- 1.2.1 For development adjacent to cliffs, require setbacks for buildings equal to 50 years of anticipated cliff retreat.*
- 1.2.2. Require site specific geologic investigations for all development within 100 feet of existing coastal bluffs.*
- 1.2.3 Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or protect existing structures in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.*

Implementation Plan (IP) Section 24.10.2430. Before approving a coastal permit in the Shoreline Protection Overlay District, the hearing body must find that the proposed development will:

- 1. Protect trees and vegetation and sensitive wildlife habitat;*
- 2. Be consistent with the following criteria for bluff or cliff development:*
 - a. The development is sited and designed to assure stability and structural integrity of its expected economic life span and minimize alterations to natural land forms.*
 - b. The development will not create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas.*
 - c. The development minimizes alteration of cliffs, bluff tops, faces or bases, and will not interfere with sand movement.*
 - d. The development which proposes use of retaining walls shall be allowed only to stabilize slopes. Sea walls at the toe of sea cliffs to check marine erosion shall be allowed only where there is no less environmentally damaging alternative.*
 - e. The development within one hundred feet of any cliff or bluff line shall follow the recommendations of an approved geologic report by a registered geologist. The*

- area where such a report is required may be increased where the issue of slope stability requires a greater distance from any cliff or bluff line.*
3. *Provide maximum erosion protection, using accepted engineering practices and other methods and specifications set forth in this title;*
 4. *Maintain public view corridors between the sea and the first public roadway parallel to the sea and maintain natural views of the coastline;*
 5. *Protect paleontological resources as prescribed in the Land Use Plan;*
 6. *Protect and enhance free public access to or along the beach, and sign such access when necessary;*
 7. *Include mitigation measures prescribed in any applicable environmental document;*
 8. *Be compatible with the established physical scale of the area;*
 9. *Be consistent with the design review guidelines of this title and the policies of any applicable area plan;*
 10. *Be consistent with the policies of the Local Coastal Program, the General Plan, and the California Coastal Act.*

LCP Safety Element Policy 1.2 *et seq.* requires that new development adjacent to bluffs include site specific geotechnical analysis, and that it be adequately set back to ensure safety for at least 50 years. To implement this policy, the standards of the LCP's SP-O district (IP Section 24.10.2430) require, among other things, that all new development proposed within areas subject to natural hazards be sited and designed to minimize risks to human life and property. In addition, other specific coastal hazards findings required for projects in the SP-O district include that the development maintains natural landforms, public views, public access, and sand processes, avoids shoreline armoring, and is otherwise consistent with the Coastal Act and the LCP.

The threshold question that often arises in the context of the provisions cited above is whether the proposed project constitutes "new" development or "redevelopment" (in which case the provisions above clearly apply) versus ordinary repair and maintenance to an existing structure (in which case such provisions may not be implicated). The City's LCP does not include a definition for either redevelopment or repair and maintenance and thus, absent such explicit definition in the LCP, the Commission relies on the definitions ordinarily applied under the Coastal Act and its implementing regulations.¹¹ CCR Section 13252(b) specifically states that replacement of 50% or more of a structure, including a single-family residence, is not repair and maintenance under Coastal Act Section 30610(d) but instead constitutes a redeveloped structure. In applying Section 13252(b), the Commission has in the past found that a structure will be considered redeveloped if at least one of the following takes place: 1) 50% or more of the major structural components are replaced;¹² 2) there is a 50% increase in gross floor area; 3)

¹¹ Specifically, Coastal Act Section 30610(d), and Title 14 of California Code of Regulations (CCR) Section 13252(b).

¹² Major structural components include exterior walls, floor, roof structure, or foundation. Alterations are not additive between individual structural components.

replacement of less than 50% of a major structural component results in cumulative alterations exceeding 50% or more of that major structural component (taking into account previous replacement work undertaken); 4) a less than a 50% increase in floor area where the alteration would result in a cumulative addition of 50% or more of the floor area, taking into account previous additions to the structure.

In this case, the proposed changes to the main house include a new foundation as well as substantial changes to other major structural components, meaning that the main house will be a redeveloped structure. Thus, the main house would need to conform to the 50-year minimum bluff setback requirement of the LCP without reliance on shoreline armoring, including that it will no longer be an existing structure entitled to such shoreline protection. However, the Applicants are proposing to limit the scope of the work to the cottage to a less significant remodel, including less than 50% replacement of the foundation and exterior walls, in such a way as to not be considered redevelopment. Specifically, 49% of the cottage's foundation and 38% of its exterior walls will be modified, meaning that the cottage improvements do not constitute redevelopment. Because the cottage was built prior to the Coastal Act, and because there is no evidence that it has been redeveloped since then, it can therefore be considered an "existing structure" that is allowed shoreline armoring under the Coastal Act and LCP. In other words, it is not required to be set back to meet LCP geologic hazards and nonconforming use standards (see also findings below) because it has not met the threshold to require it to be brought into such conformance.

Consistency Analysis

Single-Family Residence

In the time since the Commission took jurisdiction over the CDP, the Applicants have provided geologic evidence indicating that the single-family residence, which will be redeveloped in its existing location on the site, will be set back for 50 years of anticipated bluff retreat without reliance on shoreline protection.¹³ Specifically, based on the Applicants' geotechnical assessment,¹⁴ while the bluff top edge is retreating at a variable rate, a conservative analysis of bluff erosion assuming an unarmored bluff shows that the main house is set back behind the anticipated 50-year erosion line (see **Exhibit 6**). Thus, the proposed redevelopment of the single-family residence is set back to be inland of 50 years of anticipated erosion, as required by LCP Safety Element Policy 1.2.1.

However, as described above, the site is not without coastal hazards risk. The proposed project is located in an area that is subject to coastal hazards due to the inherent nature of its blufftop and shoreline location. Moreover, the predicted 50-year erosion line comes to within approximately three feet of the residence in some locations (see **Exhibit 6**) which raises issues with respect to whether the location of the main house meets the intent of the LCP policies that new development be sited and designed to assure stability and structural integrity over its expected

¹³ The site is protected by a mixture of permitted and unpermitted shoreline armoring, which is the subject of an open violation case and a pending CDP application (CDP application No. 3-16-0345) to resolve that violation by removing some existing shoreline armoring (riprap and gabion baskets) and retaining a modified armoring structure to protect the cottage only.

¹⁴ See June 13 2018 "Revised 50-year Bluff Retreat Analysis" prepared by Zinn Geology.

economic life span. In other words, given how close the predicted 50-year erosion line is to the house, a larger setback could arguably be necessary to conclude the main house would be safe for 50 years. Thus, in order to ensure that the main house complies with this LCP requirement, the approval is also conditioned to require the Applicants to assume all of the risk for developing in an area of coastal hazards, to monitor bluff retreat and to remove development that becomes threatened by such hazards, based on actual circumstances and triggers over time. In this way, the project meets the intent of the LCP, and won't be allowed armoring in the future. See **Special Condition 4**.

In addition, and more broadly in terms of hazards risk at the site, and 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 tens and hundreds of 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 Applicants to assume all risks for developing at this location (see **Special Condition 3**).

The next hazards policy consistency evaluation is whether the proposed project meets LCP requirements prohibiting new development from relying upon shoreline protective devices, both now and in the future. Although the main house meets the LCP's minimum 50-year setback, the project is not sited in such a manner that the Commission can find with confidence that it would never need shoreline armoring to protect it in place at some point in the future, especially considering the uncertainties associated with sea level rise and associated wave run-up and overtopping of the bluff. The Commission must still find, however, that the project is consistent with two requirements: it must not rely upon shoreline armoring in its approved design and configuration, and it must include appropriate restrictions that prohibit armoring in the future, taking into consideration the significant adverse impacts to coastal resources caused by shoreline protection, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, which ultimately result in the loss of beach.¹⁵ With respect to the former, the proposed foundation system for the main house is

¹⁵ See, for example, Griggs, Gary. *The Impacts of Coastal Armoring*, Shore & Beach Vol. 73, No. 1, Winter 2005, pp. 13-22. Print. See, also, Herzog, Megan & Hecht, Sean. *Combating Sea-level Rise in Southern California: How Local Governments Can Seize Adaptation Opportunities While Minimizing Legal Risk*, 19 Hastings West Northwest J. Env'tl. L. & Pol'y 463 (2013). Print. "Although hard armoring can be effective at preventing flooding from damaging critical infrastructure and densely developed areas, hard structures have high economic, environmental, and social costs. By preventing the natural landward migration of beaches and deflecting wave energy, hard armoring contributes to beach and wetland erosion. Erosion negatively impacts both ecosystem functions and the public's ability to access the coast. Over time, the inundation and erosion related to sea-level rise could cause dune, beach, and wetland ecosystems backed by hard armoring to disappear. Hard armoring also interferes with the ability of coastal ecosystems to filter water, buffer coastal communities from storms, support fisheries, and provide other valuable ecosystem services that would be costly for coastal communities to replace. In addition to the

a fairly standard perimeter foundation system that does not include any extraordinary foundational superstructures that might categorize it as armoring. With respect to whether the approved project includes appropriate restrictions against future armoring, the project must be conditioned to define specific trigger points for deeming the residential development to be hazardous, and to identify allowable repair and maintenance actions short of armoring to address any potential damage from coastal hazards. 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 the single-family residence.

In order to ensure that the proposed development maintains its prohibition on shoreline armoring in the future, **Special Condition 4(b)** prohibits shoreline protective structures (except the armoring authorized by CDP 3-16-0345, which is allowed only to protect the cottage – see also findings below), including but not limited to seawalls, revetments, groins, and caisson/grade beam systems in the event the development is threatened in the future, and **Special Condition 4(c)** waives any potential rights that may exist to construct such shoreline protective devices for the approved development. **Special Condition 4(a)** articulates that the intent of the CDP is to ensure that the approved development does not use 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 4(d)** ensures that the main house 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 main house (or a portion of the main house) is impermissibly situated within a hazardous location and/or subject to a hazardous situation necessitating shoreline armoring. When this situation arises, the project will then be inconsistent with the Coastal Act and the LCP because it is not allowed armoring, and thus special conditions are required that do not allow armoring to abate these coastal hazards. Specifically, the condition requires the Applicants to submit a plan for removal of the main house development if any of four 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; (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; (3) if the bluff edge recedes to within five feet of any portion of the development; or (4) if any portion of the approved foundation becomes exposed due to bluff erosion.

Furthermore, **Special Conditions 4(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 partial or complete relocation due to the fact that the special

environmental impacts, the visual impacts of a concrete coast are stark and may be offensive to local residents and beachgoers. As successive property owners armor the coast, hard armoring may lower property values in the larger community. Consequently, many governments are moving away from hard armoring as a primary sea-level rise adaptation strategy. Shoreline armoring is banned or severely restricted in Maine, Massachusetts, North Carolina, Oregon, Rhode Island, South Carolina, and Texas. Instead, innovative governments are increasingly turning to soft armoring to protect development.”

conditions prohibit shoreline protection to protect the approved development from coastal hazards. These conditions define the points at which this determination would be made by the extent of damage, and the resultant type of necessary repair work, caused by coastal hazards. These conditions specify that ordinary repair work,¹⁶ 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 structure, but that damage was very minimal and could be 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 without requiring shoreline armoring (which is not allowed). 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 which cannot be remediated by work other than that beyond ordinary repair and maintenance.

Essentially, the amount/level of 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 sufficient, such work is allowed under the permit. 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 impermissible hazardous site and/or subject to an impermissible hazardous situation has been reached, and therefore removal of the affected portion of the development must take place (since the approved house may not subsequently be protected under these circumstances by shoreline armoring, per the special conditions). Allowing for repair work from coastal hazard events that are strong/frequent enough that the residence's major structural elements, including its foundation and/or walls, 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.

Special Condition 4(d)(3) specifies another trigger point for preparation of a Removal and Restoration Plan (RRP) that is in the event that the edge of the blufftop recedes to within five feet of the approved development. In that case, the RRP must address the threat and identify measures that could stabilize the development without shoreline armoring, including potential removal of the entire structure. Finally, **Special Condition 4(d)(4)** specifies the final trigger point for preparation of an RRP, being exposure of any of the foundation and/or subsurface elements of the main house.

Special Condition 7 requires that any changes to the approved development will require a new permit or permit amendment from the Commission. The Commission's action on this CDP has no effect on conditions imposed by the City of Santa Cruz pursuant to an authority other than the Coastal Act. Thus, **Special Condition 8** specifies that in the event of conflict between the terms

¹⁶ With respect to what defines and differentiates ordinary repair and/or maintenance versus major structural alteration, **Special Condition 4** is modelled after language approved in other recent LCP updates (including for Solana Beach), which indicates the direction that the Commission is heading on this issue. This language differentiates between these two types of repair work, including by specifying the types of building components that would be considered structural. Therefore, **Special Condition 4** is informed by recent Commission actions on both relevant LCPs and CDPs to define when the site is hazardous and would need structural protection, and thus, when the structure must be removed and the site restored.

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 this CDP shall prevail. The terms and conditions of this approval are meant to be perpetual. **Special Condition 9** therefore requires the Permittees to notify any prospective purchasers of the property about these permit requirements, thus ensuring that future owners are made aware of these conditions. 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.

With these conditions, the redevelopment of the main house will not utilize shoreline armoring 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 house redevelopment, as conditioned, is consistent with applicable LCP hazards provisions.

Guest Cottage

In the time since the Commission took jurisdiction over the CDP application, the Applicants have provided geotechnical evidence indicating that the cottage, which will be remodeled in its existing location on the site, will not be set back for more than 50 years of anticipated bluff retreat without reliance on shoreline protection.¹⁷ Specifically, based on the September 8, 2017 Wave Run up/Erosion and Bluff Instability report prepared by Haro Kasunich and Associates, absent any armoring, the guest cottage would be considered “in danger” for the purposes of LUP Policy 1.2.3. Specifically, that report found:

Removing the riprap rock would expose the wave cut notch and jeopardize the foundation support of the gabion basket retaining wall. Wave run up would also impact the base of the gabion walls footing area. More disconcerting is the instability associated with an exposed wave cut notch and the loss of bedrock support. Within one or two winter coastal storm seasons the bedrock will collapse, the gabion basket retaining structure will lose its support and collapse, exposing near vertical terrace deposit scarp.... The top of the coastal bluff will recede under the guest cottage’s shallow foundation.

In our opinion, removal of the riprap coastal protection at the base of the bluff will result in significant bluff instability resulting in loss of the gabion retaining wall and erosion and recession of the terrace deposit under the corner of the guest cottage. This could occur within 1 or 2 coastal storm winter seasons. The guest cottage stability will be jeopardized at that time.

Thus, the cottage is not set back sufficiently to meet the LCP’s minimum 50-year hazards setback required by LCP Safety Element Policy 1.2.1. However, the Applicants are proposing to limit the scope of the work to a less significant remodel, including less than 50% replacement of the foundation and exterior walls, in such a way as to not be considered redevelopment. Because

¹⁷ The site is protected by a mixture of permitted and unpermitted shoreline armoring, which is the subject of an open violation case and a pending CDP application (CDP application No. 3-16-0345) to resolve that violation by removing some existing shoreline armoring (i.e., riprap and gabion baskets) and retaining a modified armoring structure to protect the cottage only.

the cottage was built prior to the Coastal Act, and because there is no evidence that it has been redeveloped since then, it can be considered an “existing structure” that is allowed shoreline armoring under the Coastal Act and LCP. In other words, it is not required to be set back to meet LCP geologic hazards and nonconforming use standards because it has not met the threshold to require it to be brought into such conformance. Specifically with regards to the cottage, the Applicants are proposing to limit the scope of the work to remodel, including less than 50% replacement of the foundation and exterior walls. It can therefore be considered an “existing structure” and, as such, is entitled to shoreline armoring under LCP Policy 1.2.3.¹⁸ Thus, it is allowed armoring under certain circumstances (such as exist here, and such armoring is the subject of complementary CDP Application 3-16-0345 also on the Commission’s July 12, 2018 agenda). And thus LCP Safety Element Policy 1.2.1 does not preclude the proposed cottage *remodel work*. Given this and the fact that the cottage is located in an area that is subject to coastal hazards due to the inherent nature of its blufftop and shoreline location (and as discussed in more detail above in the “Single-Family Residence” section), this approval of the cottage remodel (which will not constitute redevelopment – see below) is conditioned for the Applicants to assume all risks for developing at this location (see **Special Condition 3**).

However, although considered an existing structure now for purposes of shoreline armoring considerations, to the extent that the cottage is ever “redeveloped” it would no longer be entitled to armoring and the cottage would need to be sited and designed to ensure geologic and engineering stability without reliance on shoreline armoring, including the armoring associated with CDP 3-16-0345, which protects the remodeled cottage only. If such re-siting to a location consistent with the LCP’s 50-year setback is not possible, the redeveloped cottage would then need to be removed in order to be consistent with the LCP standards outlined above. Thus to the extent that the cottage is ever redeveloped, or if it becomes infeasible to continue to protect the remodeled cottage with armoring due to sea level rise and associated wave run-up and overtopping, the cottage must also be conditioned to comply with the coastal hazard response conditions attached to the main house for the same reasons discussed above. **Special Condition 5** therefore outlines the parameters of what would constitute “redevelopment” of the cottage, prohibits shoreline armoring in the event redevelopment occurs (and waives any potential rights to it), and similarly requires a Removal and Restoration Plan once the cottage becomes unsafe for occupancy (whether remodeled or redeveloped), with setback triggers consistent with those for the single-family residence, as discussed above, and further requires removal of any armoring and restoration of the natural bluff and beach conditions.

Special Condition 7 requires that any changes to the approved cottage remodel will require a new permit or permit amendment from the Commission. The Commission’s action on this CDP has no effect on conditions imposed by the City of Santa Cruz 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-STC-16-0016 shall prevail. The terms and conditions of this approval are meant to be perpetual. **Special Condition 9** therefore requires the Permittees to notify any prospective

¹⁸ Accordingly, and pursuant to CDP Application No. 3-16-0345, the Applicants are proposing to reconfigure the existing unpermitted armoring to the minimum necessary to protect the cottage only.

purchasers of the property about these permit requirements, thus ensuring that future owners are made aware of these conditions. 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.

With these conditions, the remodeled cottage may rely on shoreline protection now or in the future as long as such armoring is able to adequately protect the cottage. If redeveloped, the cottage will need to be relocated to comply with the bluff setback requirements of the LCP. The Applicants will also need to abate potential future hazards through removal and site restoration when defined trigger points are reached, including for the remodeled cottage. Therefore, with respect to shoreline erosion and related coastal hazards, the cottage remodel, as conditioned, is consistent with applicable LCP hazards provisions.

Geologic Conditions and Hazards Conclusion

The proposed project includes complete replacement of the foundation elements for the main house and thus the main house is considered new/redeveloped for purposes of the LCP.

Geotechnical information for the house has demonstrated that it is adequately set back to meet the LCP's 50-year setback requirement without reliance on armoring. In order to ensure that the main house complies with the LCP's requirement that new development does not alter bluffs or cliffs over the long term, and to ensure that natural coastal processes are allowed to continue, the project is conditioned to ensure that the main house will not be allowed shoreline protection. These conditions also require the Applicants to assume all of the risk for developing in an area of coastal hazards, to monitor bluff retreat and to remove development that becomes threatened by such hazards (such conditions also apply to the cottage). In short, development on the site would be removed over time at defined trigger points to allow natural shoreline processes to continue as they would otherwise, as much as possible, to avoid the loss of beach and other attendant impacts associated with shoreline structures and development to protect the approved house at the shoreline interface more broadly.

With respect to the cottage, the Applicants are proposing to limit the scope of the work to a remodel, including less than 50% replacement of the foundation and exterior walls, in such a way as to not be considered redevelopment. Because the cottage was built prior to the Coastal Act, and because there is no evidence that it has been redeveloped since then, it can also therefore be considered an "existing structure" that is allowed shoreline armoring under the Coastal Act and LCP. In other words, it is not required to be set back to meet LCP geologic hazards and nonconforming use standards because it has not met the threshold to require it to be brought into such conformance. Thus, it is allowed armoring under certain circumstances (such as exist here, and such armoring is the subject of complementary CDP Application 3-16-0345 also on the Commission's July 6, 2018 agenda). However, to the extent that the cottage is ever "redeveloped" it would no longer be entitled to armoring and it and the armoring would therefore need to be removed in order to be consistent with the LCP standards outlined above. Thus to the extent that the cottage is ever redeveloped it is conditioned to comply with the coastal hazard response conditions attached to the main house for the same reasons.

Thus, as modified and conditioned, the project can be considered consistent with the LCP with respect to coastal hazards.

D. NON-CONFORMING STRUCTURES AND USES

Applicable Provisions

The project site is located within the OF-R zoning district, which does not allow residential structures or uses. Thus, the main house and the cottage are nonconforming under the LCP. The following LCP standards apply to nonconforming structures and uses, including with respect to improvements to such structures:

***IP Section 24.18.010 Purpose.** The purpose of this chapter is to provide for the control, improvement and termination of uses or structures which do not conform to the regulations of this title for the district in which they are located. This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan.*

IP Section 24.18.020 General Application (in relevant part).

- 1. Any lawfully established building or structure, use of a building or structure, existing at the effective date of this title, or of any amendments thereto, that does not conform to the regulations for the district in which it is located, shall be deemed to be legally nonconforming and may be continued, except as otherwise provided in this chapter.*
- 2. Any legal nonconforming use may be continued, provided there is no increase in the intensity of such use.*
- 3. Any legal nonconforming building or structure shall not be made more nonconforming. ...*
- 6. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official.*

***24.18.030 Nonconforming Structures - Enlargement and Alterations.** A nonconforming structure may be enlarged or structurally altered, provided that it is not made more nonconforming. 1. Exception. When a single-family residence has nonconforming side or rear yards, additions to such structures shall be permitted on the first floor, while maintaining side and rear yards no less than existing yards, and provided a design permit is obtained.*

***24.18.040 Nonconforming Structures and Uses - Reconstruction.** A nonconforming structure which is damaged or destroyed by fire, flood, wind, earthquake, or other disaster may be repaired or reconstructed. A nonconforming structure damaged to more than fifty percent of its value as determined by the chief building official shall require approval of a reconstruction permit (Chapter 24.08, Part 20). Buildings or structures damaged more than fifty percent as described above that are nonconforming only because of noncompliance with setbacks from a watercourse or wetland as required in Section Part 21 be reconstructed subject to a building permit only provided that the General Requirements in Section 24.08.2030 are met.*

***24.18.080 Nonconforming Use - Maintenance, Repairs and Nonstructural Alterations to buildings (in relevant part).** 1. Normal and routine maintenance or nonstructural*

alterations of any structure for the purpose of preserving its existing condition, retarding or eliminating wear and tear or physical depreciation, rendering the space more usable, or complying with the requirements of law shall be permitted. ...3. Buildings containing nonconforming residential uses may be altered to improve liveability, provided no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.

Per IP Section 24.18.010, the overarching purpose of the ordinance “is to provide for the control, improvement and termination of uses or structures which do not conform to the regulations of this title for the district in which they are located.” In order to achieve this objective, the ordinance generally limits the scope and extent of allowable alterations to nonconforming structures to normal and routine maintenance for the purpose of preserving its “existing condition” (IP Section 24.18.080(1)), but allows for limited alterations to “improve livability” for nonconforming residential uses (IP Section 24.18.080(3)).

The parcel is zoned Ocean Front Recreation (OF-R). The purpose of the OF-R zoning district is (IP Section 24.10.1900):

To ensure the protection of coastal resources and views; to provide public access and maintenance of public use; to assure that coastal development is consistent with the Coastal Land Use Plan and General Plan; and to promote the safe occupancy and the reasonable use of lands subject to continuous erosion, such as coastal cliffs and beaches.

This zoning district is applied to the entirety of the West Cliff Drive promenade, and serves to foster the recreational trail that fronts the City’s western bluffs and beaches. Importantly, residential use is not a permitted use in this zoning district, and single-family dwellings are not allowed (IP Sections 24.10.1910-20).¹⁹ Thus, the existing residential development on the site (both the main house and the cottage) are nonconforming.

¹⁹ The parcel is also located in the SP-O and WCD-O. The purpose of the SP-O zone (IP Section 24.10.2400) is “to preserve and protect the coastal and environmental resources in the city of Santa Cruz. It is furthermore intended that the Shoreline Protection Overlay District accomplish the following: minimize cut, fill, earthmoving, riprap placement, grading operations, and other such man-made intrusions in coastal areas; to control erosion; to protect development from geological or other coastal related hazards; to protect public views; to protect and enhance shoreline access for the public; to protect paleontological resources; to generally implement the policies of the Local Coastal Land Use Plan. This district lies generally between the sea and the first public road paralleling the sea, or within three hundred (300) feet of the mean high tide line of the sea, whichever is the greater distance.” And the purpose of the WCD-O zone (IP Section 24.10.4200) is “to promote quality residential development on and adjacent to West Cliff Drive that positively enhances the public space or realm along West Cliff Drive. The West Cliff Drive Overlay District will preserve, protect and enhance West Cliff Drive as an important social and environmental city and community space; reinforce the residential neighborhood character of the north side of West Cliff Drive; preserve the public view toward the ocean from streets which intersect with West Cliff Drive; and enhance the streetscape by requiring landscaping and modulation of building forms on buildings facing West Cliff Drive.” Thus, the existing residence is nonconforming with respect to the standards of the OF-R zoning district, and raises issues as well with the requirements of the SP-O and WCD-O zones.

Consistency Analysis

IP Section 24.18.030 allows for nonconforming structures to be enlarged or structurally altered, provided the structures are not made more nonconforming. IP Section 24.18.020(2) allows for legal nonconforming uses to continue, provided there is no increase in the intensity of use. IP Section 24.18.020(3) requires that legal nonconforming structures not be made more nonconforming. In this case, the proposed project would not result in any expansion in the intensity of use or the footprint of either the main house or the guest cottage. Thus, the proposed project is consistent with IP Sections 24.18.030 and 24.18.020(2). As stated above, the structures and use are nonconforming because they are located in the OF-R zoning district, which does not allow for residential structures or uses. The proposed project would not affect any change in the level of nonconformity with respect to the OF-R zoning district, and thus the proposed project is consistent with IP Section 24.18.020(3).

As stated above, IP Section 24.18.080(1) allows normal and routine maintenance to nonconforming structures to preserve their condition. IP Section 24.18.080(3) further allows that nonconforming residential uses may be altered to improve livability, provided no structural alterations are made that would increase the number of dwelling units or the bulk of the building. In this case, many of the proposed changes to the main house and the cottage (which were both built in the 1940s) involve activities to improve livability, including painting, window and door repair, siding and trim replacement, re-roofing, plumbing and electrical repairs, as provided for by IP Section 24.18.080(1). The more significant structural alterations being made to the main house and cottage will not increase the number of dwelling units or substantially increase the bulk of the structures,²⁰ consistent with IP Section 24.18.080(3). However, these activities, especially with respect to foundational work, rise to the level of more than normal and routine maintenance. That said, IP Section 24.18.080(3) allows for alterations to nonconforming residential structures to improve livability and IP Section 24.18.020(6) allows for improvements to nonconforming structures beyond normal and routine maintenance if determined necessary to correct an “unsafe” condition, and specifically states that “nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building official.” With respect to the foundations, the Applicants relied on an email from the Deputy Building Official Eric Simonson, stating as follows:

I have reviewed the Geotechnical recommendations from Haro, Kasunich as well as the letter from the structural engineer Paul Endres. It would appear based on both letters and site visits from staff that, the foundation supporting these structures are failing due to poor soils conditions the original 1940's buildings are sitting on as well as lack of proper reinforcement in the concrete. I agree with the information provided and believe the foundation system of these structures needs attention as soon as possible to improve the structural integrity and safety of the occupants.

Moreover, in the time since the Commission took jurisdiction of the CDP, the Applicants have submitted supplemental materials and evidence indicating the need for foundation work for both structures. Accordingly, the Commission finds that the required findings under 24.18.020(6) to

²⁰ The height of the main house will be increased by six inches to provide for the new foundation, which is necessary for safety reasons. The height of the cottage will remain the same as existing.

allow the proposed foundation work (as modified and described in **Special Condition 1(a)** for the cottage to not constitute redevelopment) can be made in this instance.

Finally, IP Section 24.18.040 allows for nonconforming structures that are damaged by fire or natural disasters to be repaired or reconstructed under certain circumstances and criteria. This IP section must be read in the context of other LCP provisions, however. As discussed in the “Coastal Hazards” section above, the main house can be redeveloped in its existing location, consistent with the LCP’s minimum 50-year setback requirement. Thus, if the main house was damaged or destroyed by fire or a natural disaster, it could potentially be rebuilt in its same location if it could still meet this required setback. However, if the cottage were significantly damaged or destroyed by fire or natural disaster, any major repair or reconstruction of the cottage would make it a new development, which would need to conform to the LCP’s minimum 50-year setback requirement. If this could not be accomplished, then the cottage would need to be relocated to meet the requisite setback and the shoreline armoring that protected the prior cottage would need to be removed from the site and the area restored (see **Special Condition 5**) because the shoreline armoring would no longer be protecting an “existing structure.” In other words, IP Section 24.18.040 would allow for major repair or reconstruction of the cottage, but since the cottage would constitute new development at that point it would otherwise need to meet LCP requirements, including the 50-year minimum setback standard without armoring.

In conclusion, for all the above-stated reasons, and in particular because of the special conditions applied to address coastal hazard concerns (and that must be understood together with the LCP’s non-conforming provisions), the project as conditioned can be found consistent with the LCP’s nonconforming regulations.

E. PUBLIC ACCESS AND RECREATION

Applicable Provisions

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

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

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

***30212.** 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....

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

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

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

Coastal Act Section 30240(b) protects sensitive habitat, as well as parks and recreation areas, such as the adjacent beach, and the West Cliff Drive recreational trail and corridor:

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

These overlapping policies clearly protect access to and along the shoreline and to offshore waters for public access and recreation purposes, particularly free and low-cost access. Projects along the immediate shoreline (such as this project on the bluff between the West Cliff Drive recreational trail and the ocean and adjacent to the beach) that affect significant coastal public recreational access areas have the potential to adversely impact public access and recreation. Section 30210 of the Coastal Act requires the Commission to provide the general public maximum access and recreational opportunities, while respecting the rights of private property owners. Section 30211 prohibits development from interfering with the public's right of access to the sea. In approving new development, Section 30212 requires new development to provide access from the nearest public roadway to the shoreline and along the coast, save for certain limited exceptions, such as if there is existing adequate access nearby. Finally, the Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect access; rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.

LCP Public Access and Recreation Policies

Similar to the Coastal Act, the LCP requires that public recreational access be protected, enhanced, and maximized consistent with the Coastal Act, and explicitly identifies coastal bluffs and beaches as an area where non-recreational structures and uses aren't appropriate. Applicable policies include:

Land Use Element Policy 3.5. Protect coastal recreational areas, maintain all existing

coastal access points open to the public, and enhance public access, open space quality and recreational enjoyment in a manner that is consistent with the California Coastal Act.

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

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

Consistency Analysis

The City of Santa Cruz is one of the most popular visitor destinations in the State. The City is located in a region defined by a nearly one billion dollar tourist industry,²¹ and where there are significant and unique visitor offerings like the ever-popular Santa Cruz Beach Boardwalk (the only major amusement park left along the coast of California, and the oldest amusement park in the State). The Boardwalk and other visitor attractions bring some four million tourists to the City annually.²² Given the City’s relative proximity to the inland population centers of the greater Bay Area and the Central Valley, annual visitation to the City shows no signs of letting up, and Santa Cruz is poised to remain one of the most significant visitor draws in the entire state for years to come.

West Cliff Drive and the adjacent multiuse bicycle-pedestrian path are perhaps two of the most iconic attributes of the City of Santa Cruz, providing residents and visitors alike with numerous coastal related recreational opportunities. Located just upcoast of the Boardwalk area, and connected to it via a separated bike and pedestrian pathway area, West Cliff is a primary visitor destination within the City. The road and adjacent recreational path provide public access to the pocket beaches along West Cliff Drive as well as multi-modal transportation and coastal enjoyment opportunities via walking, jogging, biking and skating along the coastal bluffs, or just simply taking in the view or sitting on one of the many blufftop benches. West Cliff Drive also provides access for surfers and beachgoers as well as access to Natural Bridges and Lighthouse Field State Parks, which are both keystones to the region’s tourism economy. The City’s iconic Mark Abbott Memorial Lighthouse at Lighthouse Point fronting West Cliff Drive is home to the Santa Cruz Surfing Museum, and is the jumping off point for the world renowned waves at Steamer Lane just offshore. In short, West Cliff Drive is not only important to local residents, but it is a significant visitor draw in and of itself.

The public access and recreation policies of the Coastal Act protect access to and along this important piece of the shoreline, and to offshore waters for public access and recreation purposes. Similarly, LCP policies recognize the importance of West Cliff Drive in providing

²¹ Visit California, “Economic Impact by State, Region, & County” (2016). Travel-related spending in Santa Cruz County was \$849.1 million, while travel-generated tax revenue was \$69.9 million, and travel-generated employment was 9,500 persons in fiscal year 2016 (the most recent year for which data are available), much of which is due to visitors specifically to the City of Santa Cruz.

²² City of Santa Cruz Economic Development Department 2018.

such coastal access by ensuring that the quality of public access, safety and recreational enjoyment remains high. For example, LCP Land Use Element Policy 3.5 requires that all existing coastal access points be maintained. Land Use Element Policy 3.5.2 requires that development not interfere with the public's right to access the ocean where acquired through use or other legislative authorization. In addition, LCP Land Use Element Policy 3.5.1 explicitly identifies coastal bluffs and beaches as an area where non-recreational structures and uses are not appropriate. With respect to the latter, and when understood in relation to the LCP's non-conforming provisions, the LCP appears to allow for the project on this blufftop area even though it is non-recreational in nature, but these policies (and the Coastal Act policies that also apply) clearly stand for the premise that such development must be understood in this policy context, and must be made to have the least impact on public access as possible, particularly given the public access importance of the West Cliff Drive corridor.

Toward this end, the project proposes new and replacement fencing along the upcoast property line as well as along the blufftop. The proposed blufftop fencing has the potential to impact current and historic access on adjacent City property that connects to trails on the project site that lead to the pocket beach and offshore surfing areas located below and seaward of the project site. Some of the existing fencing appears to extend onto adjacent City-owned property as shown on the property survey. As shown on the landscaping plans, the existing fencing does not cross these trails. However, the proposed new blufftop fencing would be 3½ feet tall and its location and placement could impact access to the trails that lead to the pocket beach. Thus, in order to bring the project into conformance with the above-cited policies, **Special Condition 1(c)** requires that existing access trail continuity be maintained, and **Special Condition 1(d)** requires that the proposed blufftop fencing be eliminated, and that all other fencing be relocated to within the site's property lines. Any such relocated fencing shall be sited and designed to avoid impacting public views as much as possible, including by limiting its height and allowing through views, and shall be made up of materials that match the environment (e.g., low wooden spilt rail fencing). The intent in this regard is to allow purpose-driven fencing (and not simply property-line fencing because it lies on a property line), but to disallow extraneous fencing that could have public access and public view (see next finding) impacts.

During construction the project will: require the movement of large equipment, workers, materials, and supplies in and around the shoreline area and public access points; include large equipment operations in these areas; result in the temporary public access impacts from construction activities; and generally intrude and negatively impact the aesthetics, ambiance, serenity, and safety of the recreational experience at this locations. These public recreational use impacts have been (through the Applicants' proposed best management practices) and can be minimized through construction parameters that limit the area of construction, limit the times when work can take place (to avoid both weekends and peak summer use months when recreational use is highest), clearly fence off the minimum construction area necessary, clearly delineate and avoid to the maximum extent feasible public use areas, and restore all affected public access areas at the conclusion of construction. A construction plan is required to implement these measures (see **Special Condition 2**).

Finally, consistent with the policies outlined above, **Special Condition 6** provides that the approval of this CDP shall not constitute a waiver of any public rights that may exist on the property and that the Permittees shall not use this CDP as evidence of a waiver of any public

rights that may exist on the property now or in the future.

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

F. VISUAL RESOURCES

Applicable Provisions

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

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

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

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

Consistency Analysis

As described in the preceding Public Access and Recreation section (incorporated herein by reference), West Cliff Drive and the multiuse path help define the character of Santa Cruz and provide a quintessential “Santa Cruz” experience for residents and visitors where they can enjoy accessing the shoreline area and its related coastal resources. Such coastal resources include the incredible vistas provided along West Cliff Drive that comprise uninterrupted views from the road and the recreational trail to the ocean, where the Applicants’ residential development is the only intervening residential development along the entire two-and-a-half-mile-long recreational trail. For example, the LCP’s Community Design Element states:

Beaches and coastal bike, pedestrian and automobile routes such as West Cliff Drive provide highly scenic and popular places for residents and visitors. The visual quality of the shoreline, as well as clearly delineated public access to and along it, is essential to maintaining a strong community character.

The existing residential development is an impediment to through public views across the site, and it adversely affects the overall public viewshed given its location on the seaward side of the recreational trail. However, it has been in this location since the 1940s, and thus the public inherited this impact when the Coastal Act, and subsequently the LCP, were adopted with provisions to protect against such public view impacts. In that context, the general analytic approach under the LCP is to understand the changes to the public view associated with the proposed project. The project has been designed to be completely located within the footprint of

the existing development, with no additions or increase in massing (except for the six inches of added height to the main house due to foundation upgrades), and thus is not likely to result in significant new public view blockage.

However, the project includes a new blufftop fence, and other related fencing proposed to be 3½ feet tall that will both block and otherwise adversely impact public views. To protect against additional and/or modified fencing incursions into the public view, **Special Condition 1(d)** requires that the proposed blufftop fencing be eliminated, and that all other fencing be relocated to within the site's property lines. Any such relocated fencing shall be sited and designed to avoid impacting public views as much as possible, including by limiting its height and allowing through views, and shall be made up of materials that match the environment (e.g., low wooden spilt rail fencing). The intent in this regard is to allow purpose-driven fencing (and not simply property-line fencing because it lies on a property line), but to disallow extraneous fencing that could have public view impacts.

As to other effects on the public view, the proposed new wood siding for both the main house and the cottage will have a torched finish, which will look different than the existing structure, but will not significantly change the existing impact on public views. To ensure that all development meets this standard, **Special Condition 1(e)** requires that the redeveloped main house and remodeled cottage be designed to protect public views as much as possible, including through the use of colors and natural materials, non-glare windows, and minimization of lighting.

Construction is expected to last about 18 months and will cause aesthetic impacts to users of the West Cliff Drive multiuse path from the presence of large equipment, workers, materials, and supplies at the site. To offset these visual impacts, **Special Condition 1(b)** requires the removal of all existing non-native plants (including all iceplant) on the site and the replanting of these areas with appropriate California native coastal bluff species, where vegetation in public view from the West Cliff Drive recreational path is limited to low-lying species (i.e., no more than one-foot tall at maturity and/or as maintained at that height).

The site includes three mature trees that contribute to the visual ambience of this section of coast. **Special Condition 2(d)(5)** requires protection of these three mature trees during construction via the use of appropriate fencing or other barricades.

Overall, the project as conditioned can be found consistent with the above-cited LCP public viewshed policies.

G. MARINE RESOURCES

Applicable Provisions

The LCP protects the marine resources and habitat offshore of this site. Applicable LCP policies include:

Environmental Quality Policy 2.1: Meet or exceed State Water Resources Control Board standards for discharge of sewage and storm waters to Monterey Bay.

Environmental Quality Policy 2.3: *Ensure that new development or land uses near surface water and groundwater recharge areas do not degrade water quality.*

Environmental Quality Policy 2.3.1: *Design and site development to minimize lot coverage and impervious surfaces, to limit post-development runoff to predevelopment volumes, and to incorporate storm drainage facilities that reduce urban runoff pollutants to the maximum extent possible.*

As discussed above, the project is located on an oceanfront, blufftop parcel and is the only residence located seaward of West Cliff Drive overlooking the Monterey Bay National Marine Sanctuary, which is recognized for its unique and abundant marine life. The Sanctuary is home to some 26 Federal and State Endangered and Threatened species and a vast diversity of other marine organisms. And the area offshore here is a popular surfing and beach activity destination. As such, the Commission recognizes the marine and recreational resources involved with the proposed project as sensitive coastal resources that are of high state and federal importance. The proposed project has the potential to negatively impact marine resources, both during construction and after, due to runoff from inclement weather as well as from normal residential activities, such as landscape watering or driveway washing, that could direct typical residential pollutants into the ocean.

Runoff (even filtered but untreated runoff) that flows directly to the Pacific Ocean could negatively impact marine and recreational resources and water quality by contributing additional urban contaminants to ocean waters. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics such as pesticides. Urban runoff can also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms.²³ Such impacts would be at the expense of one of the state's and nation's great treasures, the Monterey Bay National Marine Sanctuary, the largest of the thirteen such federally protected marine sanctuaries in the nation. Such impacts raise questions of consistency with the above-referenced LCP policies protecting these resources.

Thus, to protect marine resources and offshore habitat, the project is conditioned to require that all post-project runoff be directed to inland storm drains, and no runoff is allowed to extend seaward of the blufftop edge, whether by pipe or surface flow, or by project design. (**Special Condition 1(g).**) Construction of the project may also negatively impact water quality due to potential for foreign materials to enter marine waters during construction. To address these concerns, **Special Condition 2** further requires that these impacts be contained through construction parameters that limit the area of construction, clearly fence off the minimum construction area necessary, require good water quality construction practices, and require treatment and control BMPs, including for all drain inlets and all areas drainage may go. As conditioned, the project is consistent with the above referenced policies regarding protection of

²³ Pollutants of concern found in urban runoff include, but are not limited to: sediments; nutrients (nitrogen, phosphorous, etc.); pathogens (bacteria, viruses, etc.); oxygen demanding substances (plant debris, animal wastes, etc.); petroleum hydrocarbons (oil, grease, solvents, etc.); heavy metals (lead, zinc, cadmium, copper, etc.); toxic pollutants; floatables (litter, yard wastes, etc.); synthetic organics (pesticides, herbicides, PCBs, etc.); and physical changed parameters (freshwater, salinity, temperature, dissolved oxygen).

marine resources and offshore habitat.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with CDP applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The City of Santa Cruz, acting as the CEQA lead agency, found the project to be exempt from CEQA on January 6, 2016 on the basis that the project qualifies for the “Existing Facilities” exemption pursuant to Section 15301 Class 1(d) of CEQA (the City concluded that the project involves “restoration or rehabilitation of deteriorated or damages structures, facilities, or mechanical equipment to meet current standards of public health and safety”). The Coastal Commission’s review and analysis of land use proposals has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of environmental review under CEQA (CCR Section 15251(c)). The preceding CDP 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.

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

- CDP Application Number 3-16-0345
- Architectural Response to Coastal Commission Appeal, dated 3/18/2015
- Bowman and Williams, Topographic Map and Boundary Survey Map, dated revised 8/21/17
- Stewart Title, Preliminary Title Report, dated 7/14/17
- Haro, Kasunich and Associates (HKA), Geotechnical Response to Coastal Commission Appeal, dated 3/15/16
- HKA, Supplemental Geotechnical Recommendations Driveway Retaining Wall, dated 9/4/2015
- HKA, Supplemental Geotechnical Recommendations for Seismic Upgrades, dated 5/12/2015
- HKA, Geotechnical Investigation for the proposed remodel of Main Residence and Guest House, dated 1/8/2015
- HKA, Wave Runup/Erosion and Bluff Instability Report by Haro, Kasunich and Associates, dated 9/8/2017
- Landscape Architect Response to Coastal Commission Appeal, dated 3/17/2016
- Paul Endres, letter regarding structural repairs, dated 5/1/2015
- Erik Zinn and Associates (Zinn), Response to CCC Request for Supplemental Information, dated 9/5/2017
- Zinn, Revised 25 August 2016 Geological findings regarding prospective removal of armoring.
- Zinn, Revised 50-year bluff retreat analysis, dated June 13, 2018.
- Email correspondence regarding CEQA Exemption for project from Ryan Bane, Senior Planner with City of Santa Cruz Planning and Community Development Department, dated 7/25/2017

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- City of Santa Cruz Planning, Public Works, and Parks Departments