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Appeal Filed: 4/22/2019
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 Staff: Brian O'Neill - SC
 Staff Report: 5/24/2019
 Hearing Date: 6/13/2019

**APPEAL STAFF REPORT: SUBSTANTIAL ISSUE
 DETERMINATION**

Appeal Number: A-3-SLO-19-0026

Applicant: David Tibbitts

Appellants: Commissioners Howell and Peskin

Local Decision: Approved by the San Luis Obispo County Planning Department Hearing Officer on March 15, 2019 (County Coastal Permit Number DRC2007-00114).

Project Location: On the blufftop inland of a sandy beach at 1210 Pacific Street in the unincorporated community of Cayucos, San Luis Obispo County (APN 064-227-006).

Project Description: Demolition of an existing 1,116-square-foot single-family residence and construction of a new 2,300-square-foot single-family residence, attached garage, decking, and related development on a blufftop lot fronted by riprap and a built-in private stairway to the beach.

Staff Recommendation: **Substantial Issue Exists**

Important Hearing Procedure Note: The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair)

limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

SUMMARY OF STAFF RECOMMENDATION

The County-approved project allows for the demolition of an existing 1,116-square-foot single-family residence and construction of a new two-story 2,300-square-foot single-family residence with new attached garage, decking, and related development in its place. The project is located on an ocean and beach fronting blufftop parcel within the unincorporated community of Cayucos in San Luis Obispo County just north of the City of Morro Bay. The residential site fronts on a stretch of sandy beach located between Cayucos State Beach and Morro Strand State Beach that is part of a very popular and unbroken six-mile stretch of public sandy beach area extending from the northern end of Cayucos all the way south to Morro Rock in Morro Bay. Like much of the Cayucos shoreline, the site is also fronted by an existing riprap revetment at the base of the bluff, with a private staircase leading from the residential backyard down to the sand through the revetment.

The appeal contends that the County's approval of the project raises questions of consistency with the San Luis Obispo County certified Local Coastal Program (LCP) and the Coastal Act's public access policies because: (1) the approved project includes a new residential structure that is protected by shoreline armoring, which is prohibited by the LCP; (2) even if the riprap were not prohibited by the LCP and was legally established, the armoring is not necessary to protect the new residence; and (3) the riprap is inconsistent with LCP and Coastal Act public access provisions.

With regard to the issue of shoreline development, the LCP's Estero Area Plan (EAP) that covers the Cayucos area expressly prohibits shoreline armoring to protect new development. Additionally, the EAP states that any development that alters 50 percent or more of an existing structure is not allowed unless the entire structure is brought into conformance with the LCP, which includes the prohibition on shoreline armoring, including even previously legally-established armoring be addressed in that context. Here, the County approved a complete demolition of the existing residential structure and construction of a new residence. Thus the project must conform to all LCP policies, and shoreline armoring to protect the new residence is therefore prohibited. Moreover, the County did not evaluate the legal status of the existing armoring (which available evidence suggests is unpermitted), as is required by the LCP, nor did the County evaluate opportunities to avoid such armoring's impacts on coastal resources, including through its removal, as is also required by the LCP. And here, as is required by the LCP, the new residence was deemed to be safe without the need for armoring.¹ Rather, the County did not address the LCP requirements that pertain to the riprap at all. Thus the County's

¹ The Applicant's geotechnical evaluation determined that the proposed development would be safe for an estimated 550 years without such armoring.

approval raises a substantial issue with respect to conformity with the shoreline development policies of the LCP.

With respect to public recreational access, the Coastal Act and LCP require public recreational access to and along California's coastline to be protected and enhanced, including requiring that public recreational access opportunities be maximized. The LCP also requires that the impacts of any existing armoring on coastal resources be evaluated, and that armoring associated with projects like this be addressed in a way to avoid ongoing coastal resource degradation. Again, the County did not address the LCP requirements that pertain to the riprap's impact on public recreational access. Rather, the County-approved project allows for armoring (that appears to be unpermitted) to remain and for it to protect the new house, even though such armoring is prohibited under the LCP and not needed to establish a safe setback and building site (as is also required by the LCP) per the Applicant's own analyses. The existing riprap likely has had, and continues to have, a variety of impacts on public recreational access, including: 1) occupying space on the shoreline/beach that would otherwise be available for public recreational access; 2) fixing the position of back of the beach on an eroding shoreline, which will result in the narrowing of the available shoreline/beach space over time, particularly as it is affected by sea level rise; and 3) preventing sand in the bluff material retained behind the armoring from contributing to the local shoreline sand supply. Thus the County's approval raises a substantial issue with respect to conformity with the public recreational access policies of the Coastal Act and the LCP.

In short, the County's approval authorizes a new residence to rely on an existing riprap revetment, which the LCP does not allow. In addition, the revetment likely results in significant negative impacts to public access and beach recreation that have not been identified, avoided/reduced, or mitigated through the County's approval, which the LCP also does not allow. The Applicant's project materials indicate that the revetment is not necessary to protect the new residence, and that the new residence would be safe for over five-and-a-half centuries without any armoring. For these reasons, staff believes that the County's approval raises substantial LCP conformance issues related to core Coastal Act and LCP coastal resource protection requirements, and staff recommends that the Commission find substantial issue and take jurisdiction over the CDP application for this project. If the Commission does so, then the *de novo* hearing on the merits of the CDP application would be scheduled for a future Commission meeting. The motion and resolution to effect this recommendation are found on page 5 below.

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APPENDICES

Appendix A – Substantive File Documents

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EXHIBITS

Exhibit 1 – Regional Location Map

Exhibit 2 – Aerial Photo of the Project Site

Exhibit 3 – County’s CDP Final Local Action Notice

Exhibit 4 – Appeal of County’s CDP Action

Exhibit 5 – Applicable Coastal Act and LCP Provisions

Exhibit 6 – Applicant’s Geological Coastal Bluff Evaluation Report

I. MOTION AND RESOLUTION

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

***Motion:** I move that the Commission determine that Appeal Number A-3-SLO-19-0026 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-SLO-19-0026 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION

The County-approved project is located on an ocean-and-beach-fronting blufftop parcel at 1210 Pacific Avenue within the unincorporated community of Cayucos in San Luis Obispo County, just north of the City of Morro Bay. The residential site fronts a stretch of sandy beach located between Cayucos State Beach and Morro Strand State Beach that is part of a very popular and unbroken six-mile stretch of public sandy beach area extending from the northern end of Cayucos all the way south to Morro Rock in Morro Bay. Several public vertical accessways, situated between residential structures, provide access from Pacific Avenue to the beach, including a staircase on one parcel north, approximately 50 feet from the subject site. Like much of the Cayucos shoreline, the site is fronted by an existing riprap revetment. The riprap at the site also has a built-in private staircase leading from the backyard down to the sand. The residence to the north is also protected by riprap, but the residence to the south is protected by a natural rocky outcrop and does not appear to have any shoreline armoring.

See **Exhibit 1** for a location map and **Exhibit 2** for an aerial photo of the site.

B. PROJECT BACKGROUND AND HISTORY

The existing 1,116-square-foot dwelling currently located on the parcel was originally constructed in 1932. Air photos show that the house appears relatively unchanged in terms of its general configuration and orientation since that time, although available photographic evidence

suggests that a rear deck and patio area were constructed sometime in the 1990s. Neither the Commission nor the County have identified any CDPs associated with any house improvements since the time coastal permits have been required for development at this location starting in the early 1970s,² whether for the aforementioned deck and patio or any other development in that nearly 50-year time frame when CDPs were required. Thus, any such development at the site since February 1973, including the deck and patio, appears to be unpermitted.

Although the County did not analyze or investigate the legality of the existing riprap at the time of its approval, the Commission has researched its files for information regarding the permitting status of the rip rap in the time since the current appeal was filed. From that preliminary investigation, it appears that the Commission issued an emergency coastal development permit (ECDP) in 1983 for the temporary installation of riprap at this location (ECDP 4-83-155-G), and that the Commission also approved a follow-up CDP application later in 1983 to recognize the riprap that was installed under the ECDP (CDP Application 4-83-155).³ However, it also appears that the then property owners did not complete the prior to issuance CDP conditions and a violation case was opened (Violation Number V-4-86-069) because the armoring had already been constructed. The property owners at that time failed to comply with the prior to issuance conditions (including Special Condition 2, which required recordation of an “Offer to Dedicate” a lateral public access easement) within the two-year period when the Commission’s approval was still valid. Thus, the CDP likely expired in 1985. The existing riprap therefore appears to be unpermitted. In addition, available photographic evidence suggests that the riprap revetment may have been repaired and/or added to since 1983 without benefit of any CDPs. Thus, it appears from available evidence that the armoring and related developed at the base of the bluff and on the bluff face at the site is likely unpermitted and Commission enforcement staff is further investigating the permit history of the existing riprap.

C. SAN LUIS OBISPO COUNTY APPROVAL

On March 15, 2019 the San Luis Obispo County Planning Department Hearing Officer approved a CDP for the project. The County’s Final Local Action Notice was received in the Coastal Commission’s Central Coast District Office on April 9, 2019 (see **Exhibit 3**). The Coastal Commission’s ten-working-day appeal period for this action began on April 10, 2019 and concluded at 5pm on April 23, 2019. One valid appeal was received during the appeal period (see **Exhibit 4**).

D. PROJECT DESCRIPTION

The County-approved project allows for the demolition of the existing 1,116-square-foot single-family residence and related development, and construction of a new two-story 2,300-square-

² Proposition 20 was approved by California voters in November 1972, and introduced coastal permitting requirements in February 1973 that applied at this location. These were ultimately superseded by the Coastal Act in 1977. In short, development at this location has required CDPs since February 1, 1973.

³ The Commission has not yet been able to retrieve these files from State archives in Sacramento, and thus additional information on these permits that may be relevant is, as of the date of this staff report, unaccounted for. The characterization herein is from copies of materials found in Commission violation files associated with the site.

foot single-family residence with new attached garage, decking, and related development. The County's approval does not discuss or analyze the existing riprap or the range of any potential unpermitted development at the site. See pages 22-28 of **Exhibit 3** for the County-approved project plans.

E. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP (see Coastal Act Sections 30603(a)(1)-(4)). In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission (per Coastal Act Section 30603(a)(5)). This project is appealable because it involves development that is located between the sea and the first public road paralleling the sea, is within 300 feet of the inland extent of a beach, and is within 300 feet of the seaward face of a coastal bluff.

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

The only persons qualified to testify before the Commission on the substantial issue question (should the Commission decide to hear public testimony on the substantial issue question) are the Applicants (or their representatives), persons who opposed the project and made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing (see California Code of Regulations, Title 14, (CCR) Sections 13115 and 13117). Any person may testify during the *de novo* CDP determination stage of an appeal.

F. SUMMARY OF APPEAL CONTENTIONS

The appeal contends that the County's approval of the project raises questions of consistency with the San Luis Obispo County certified Local Coastal Program (LCP) and the public access policies of the Coastal Act because: (1) the approved project includes a new residential structure that is protected by shoreline armoring, which is prohibited by the LCP; (2) the existing riprap revetment appears to not be legally established; (3) even if the riprap was not prohibited by the LCP and was legally established, the armoring is not necessary to protect the new residence; and (4) the riprap is inconsistent with LCP and Coastal Act public access provisions. See **Exhibit 4** for the full text of the appeal.

G. SUBSTANTIAL ISSUE DETERMINATION

Substantial Issue Background

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

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the County presents a substantial issue of LCP conformance.

1. Shoreline Development

The appeal raises concerns with regard to the project's consistency with the shoreline development provisions of the LCP, including with respect to the existing shoreline armoring that will remain as part of the project. See **Exhibit 5** for the LCP provisions cited in this section.

Chapter 7 of the LCP's Estero Area Plan (EAP) provides standards for all development within Cayucos and provides specific standards for shoreline development located on or adjacent to a beach or coastal bluff. EAP Policy 7.III.I.5 expressly prohibits shoreline armoring to protect any new development at any time, and requires property owners to record a deed restriction waiving any rights to any such armoring that may otherwise exist. The EAP also recognizes that there may be cases where such new development is proposed when armoring already exists fronting potential development sites, and provides direction where such armoring is legally established. In cases where armoring is not legally established and rather is unpermitted, such armoring represents a violation of the Coastal Act/LCP that must be resolved either through removal of the unpermitted development or through an after-the-fact permit approval. In either case, the

armoring is not allowed to be countenanced for purposes of establishing setbacks and safe building sites. If such existing armoring was legally established, the LCP requires an evaluation of modifications to the armoring in order to minimize or eliminate its ongoing coastal resource impacts, which necessarily must include the potential removal of the armoring. If not legally established, the LCP gives no status to the armoring and thus it must be removed or approved after-the-fact because it is not permitted and is a violation of the Coastal Act and the LCP. In short, the EAP recognizes that armoring results in coastal resource impacts, particularly to the beach here, and provides direction to eliminate such armoring over time as sites are developed and redeveloped.

On the latter point, the LCP's EAP was one of the first LCPs statewide to refine policies to address the question of when a project is no longer "repair and maintenance" but rather is "redevelopment" that requires the redeveloped project to be brought into LCP conformance, including with respect to eliminating armoring because the Coastal Act and the LCP do not allow such shoreline-altering development to protect such redevelopment. Specifically, EAP Policy 7.III.I.3.4 states that any development that alters 50 percent or more of an existing structure on a cumulative basis shall not be authorized unless the entire structure is brought into conformance with all policies and standards of the LCP, which includes the prohibition on shoreline armoring and the restriction-of-future-armoring requirement. When the Commission approved the Estero Area Plan Update in 2008, the Commission recognized that most of blufftop Cayucos was already developed with residential structures fronted by some type of armoring along the beach, a good portion of which appear to lack required permits and in many cases are actually on State Parks property, and that "the primary issue for Cayucos [with respect to EAP consistency with Coastal Act coastal hazards policies] is the redevelopment of blufftop properties" (see LCP Amendment SLO-MAJ-2-04 Part 2).⁴

Here, the County-approved project includes a complete demolition of the existing residential structure and related development and construction of an entirely new residence and related development. Thus the project is above the 50 percent redevelopment threshold (i.e., it is 100% alteration) and the new structure must be brought into conformance with all LCP provisions, including in relation to the existing armoring. Despite this LCP conformance requirement, the County's approval did not analyze whether allowing the existing shoreline armoring to remain on the project site is consistent with the LCP. As stated above, shoreline armoring is prohibited to protect new development, property owners are required to record a deed restriction to ensure that such armoring is not proposed or constructed, and owners are required to waive any right to such armoring that may exist. Thus, because the County's approval allows for new development to be protected by shoreline armoring, the County's approval raises a substantial LCP conformance issue with respect to shoreline development.

Moreover, as described above, the LCP requires an inquiry and evaluation of the permitting and property ownership status of any existing armoring as part of a CDP review for blufftop development such as this. Specifically, EAP Policy 7.III.I.3 includes detailed requirements for

⁴ In order to ensure EAP consistency with the Coastal Act's Chapter 3 hazards and coastal resource protection policies, the Commission identified a series of policy modifications related to the redevelopment question and armoring that were necessary for approval; the County accepted the Commission's suggested modifications to the EAP, and the Commission subsequently certified the LCP's EAP.

development on coastal bluffs, and further requirements for projects with existing legally established shoreline armoring. First, Section (a) of EAP Policy 7.III.I.3 requires that *any* application for such development – whether meeting redevelopment thresholds or not – must include a detailed coastal hazards analysis that includes “an alternatives analysis to avoid or minimize impacts to public access.” Second, Section (b) of this policy states that if it is determined that such armoring was legally established, two things are required: one, that such development be appropriately sited and designed to allow for 100 years of safety without reliance on the armoring (or any armoring); and two, that the required analysis identify what measures can be taken to address the LCP’s prohibition on armoring to protect new development (including redevelopment subject to the above-described 50% threshold), which necessarily includes opportunities for full armoring removal. Finally, Section (d) requires a survey “of all property lines and the mean high tide line by a licensed surveyor along with written evidence of full consent of any underlying land owner, including, but not limited to the County, State Parks, and State Lands.” This latter provision was established given that when the EAP Update was approved in 2008, there were many cases of armoring in Cayucos that were located on State Parks’ property.

In this case, the project did not include the EAP Policy 7.III.I.3-required evaluations, and the County did not otherwise address the existing armoring on the site in the manner required by the LCP. In the time since the appeal was filed, Commission staff has been able to determine that the armoring at this location is likely unpermitted and Commission enforcement staff is investigating this issue further.⁵ The County’s record includes no information on these important points. Similarly, the Applicant’s geotechnical evaluation (**Exhibit 6**) estimated “a conservative” average annual bluff retreat rate at this location of 0.54 inches per year without taking into account the existing riprap (i.e., just over half an inch per year without any armoring, meaning that the LCP required minimum setback of 25 feet would not be lost to erosion for over 550 years without the existing riprap being present), but the County’s approval does not address retention of the existing riprap, even though it is not even needed at this location, and the Applicant’s own analysis estimates over five-and-a-half centuries of safety without armoring. In addition, it remains unclear, absent a survey, whether the armoring is on State Parks’ or other public property or not. Thus, because the County approved the project without determining the legal status of the armoring, without evaluating armoring modification/removal options, and without identifying the property ownership underlying the armoring, all as required by the LCP, the County’s approval raises a substantial LCP conformance issue with respect to shoreline development.

On this point it is important to note that EAP Policy 7.III.I.3 requires an evaluation of armoring modifications to avoid ongoing coastal resource impacts. The Commission has consistently found that shoreline armoring devices, such as this riprap, generally result in adverse impacts to coastal resources, particularly to public recreational beach and shoreline access, including by: 1) occupying space on the shoreline/beach; 2) fixing the back beach, which will result in the narrowing of shoreline/beach space over time; and 3) preventing sand in the bluff material retained behind the armoring from contributing to the local shoreline sand supply. Thus, these

⁵ As indicated above, the riprap was apparently temporarily installed and conditionally permitted in 1983, but that CDP expired without conditions being fulfilled in a timely manner, and there are no other CDPs for the armoring (including any changes or other related development in the bluff face area) before or since 1983.

types of impacts and others cannot be fully eliminated, as required by the LCP, if armoring is allowed to persist as the County did in its action, particularly if unpermitted armoring that enjoys no CDP status (as is likely in this case) is allowed to persist. Further, the County-approved project did not analyze whether the existing armoring should or could be modified or removed in order to address LCP and CDP requirements, and to avoid the riprap's impacts (which were also not identified) as required. Finally, the Applicant's own analysis shows that the armoring is not necessary for site stability, and thus that the armoring could be completely removed without affecting project stability over time. Because the County's approval did not analyze armoring modifications/removal to avoid ongoing coastal resource impacts, as required by the LCP, the County's approval raises a substantial LCP conformance issue with respect to shoreline development.

In short, the County's approval authorizes a new residence to rely on an existing riprap revetment, which the LCP does not allow. In addition, the revetment likely results in significant negative impacts to public access and beach recreation that have not been identified, avoided/reduced, or mitigated, which the LCP also does not allow. The Applicant's project materials indicate that the revetment is not necessary to protect the new residence, and that the new residence would be safe for over five-and-a-half centuries without any armoring. For these reasons, the County's approval raises a substantial LCP conformance issue with respect to shoreline development.

2. Public Recreational Access

With regard to public recreational access, the appeal contends that the existing shoreline armoring interferes with lateral access across the beach and with public beach use. Relatedly, the appeal also states that the approval did not identify, evaluate, or mitigate for any potential impacts to public access.

With respect to public recreational access, the California Constitution and the Coastal Act mandate the protection and enhancement of public recreational access to and along California's coastline, including requirements that such public recreational access opportunities be maximized (Coastal Act Section 30210). Coastal Act Section 30210's direction to maximize public recreational access represents a different threshold than to simply provide or protect such access, and Section 30210 is therefore fundamentally different from other like provisions in this respect. It is not enough to simply provide public recreational access to and along the coast, and it is not enough to simply protect public recreational access; rather such public recreational access must also be *maximized*. This terminology distinguishes the Coastal Act and provides fundamental direction to projects along the California coast that raise public recreational access issues, such as this one. The County's LCP in EAP Policy 8.VI.b also reflects this fundamental principle, requiring maximum public recreational access and prohibiting interference with the public's right of such access, including to the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation (see **Exhibit 5** for applicable Coastal Act and LCP provisions).

In this case, the County-approved project would allow for the existing riprap (which was installed to protect the existing SFD and which is likely unpermitted) to persist indefinitely (see the above "Shoreline Development" findings, which are also incorporated into this Public Recreational Access finding verbatim). The County-approved project would replace that existing residential structure with a *new* structure, which, as discussed above, is not entitled to such

armoring under the LCP. Given its location, this riprap likely eliminates and interferes with public recreational beach access by covering beach access areas, retaining sand-generating materials that would otherwise make their way into the beach environment, and by fixing the back beach on an eroding shoreline subject to sea level rise that will result in loss of beach over time (i.e., the “coastal squeeze”), all of which is prohibited by the Coastal Act and the LCP at this location and for this fact set. The County’s approval thus raises a substantial LCP and Coastal Act conformance issue with respect to public recreational access.

3. The “Five Substantial Issue” Factors

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

In this case, these five factors, considered together, support a conclusion that the County’s approval of this project *does* raise a substantial issue of LCP conformance. In terms of factual and legal support, the County did not require or analyze the legal status of, nor the impact of, the existing riprap structure as required by the shoreline development provisions of the LCP, especially in light of the LCP’s *prohibition* on shoreline armoring to protect new development. This represents a significant lack of legal and factual support for its decision on this fundamental issue.

In terms of the extent and scope of development, while relatively speaking the scope of the proposed new development (replacement of an existing 1,116-square-foot single-family dwelling with a 2,300-square-foot single-family dwelling) may not be that significant in terms of residential development in general, the extent and scope of the development *are* significant when considering that the primary LCP issue here relates to retention of shoreline armoring that is not allowed by the LCP, and that adversely affects an irreplaceable public resource, namely the sandy beach at this location. Any approval of armoring development with such an outcome is significant in extent and scope.

Regarding the significance of coastal resources affected by the County’s approval, the coastal beach area resources implicated by the County’s approval are among the most important coastal resources protected under the LCP (and its EAP) and the Coastal Act. As stated above, sandy beach resources are irreplaceable public goods, and they are being lost due to the presence of armoring structures such as this, particularly in light of sea level rise.

In terms of precedence, the County’s approval of the project in this form could have a significant precedential impact on future County interpretations of its LCP with respect to shoreline

armoring and redevelopment, particularly considering that the County did not appropriately consider or apply these relevant policies, as is LCP-required.

Finally, allowing shoreline armoring to remain in order to protect new development when the LCP prohibits same (as does the Coastal Act), particularly when the LCP explicitly requires an evaluation of removal/modification options as it does here, raises issues of statewide significance as impacts to coastal resources resulting from shoreline armoring are among the most critical issues addressed by the Commission statewide in its protection of coastal resources. Taken together, the County-approved project does not adequately address Coastal Act and LCP coastal resource protection issues, and the five factors on the whole support a finding of substantial issue as to conformity with the certified LCP.

For the reasons stated herein, the Commission finds that Appeal Number A-3-SLO-19-0026 raises substantial LCP and Coastal Act conformance issues in terms of shoreline development and public recreational access. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the provisions of the certified San Luis Obispo County LCP and with the public access and recreation policies of the Coastal Act, and takes jurisdiction over the CDP application for the proposed project.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS⁶

- *Geological Coastal Bluff Evaluation 1210 Pacific Avenue, APN: 064-227-006 Cayucos Area, San Luis Obispo County, California, GeoSolutions, Inc. June 13, 2008.*
- *Review of Geologic Coastal Bluff Evaluation, Tibbitts Residence, Lot 13, Block19, Paso Robles Beach #1, 1210 Pacific Avenue (APN 064-227-006), Cayucos Area of San Luis Obispo County, California, Document No. 0812-124.REV, Landset Engineers, Inc. December 30, 2008.*
- *Response to Review Comments: Geologic Bluff Evaluation, 1210 Pacific Avenue, APN: 064-227-006, Cayucos Area, San Luis Obispo County, California, Project No. SL06635-3, Geosolutions, Inc. April 8, 2011.*
- *Soils Engineering Report 1210 Pacific Avenue, APN: 064-227-006, Cayucos Area, San Luis Obispo County, California, Project No. SL06635-4, Geosolutions, Inc. December 15, 2016.*

APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS

- San Luis Obispo County Department of Planning and Building

⁶ These documents are available for review in the Commission's Central Coast District office in Santa Cruz.