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# F11a

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Staff: Rainey Graeven - SC  
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Hearing Date: 9/11/2020

## APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION

**Appeal Number:** A-3-SCO-20-0027

**Applicants:** Bret and Carol Sisney

**Appellants:** Commissioners Escalante and Howell; Surfrider Foundation

**Local Decision:** Approved by the Santa Cruz County Zoning Administrator on June 5, 2020 (County Coastal Permit Number 191246).

**Project Location:** 4660 Opal Cliff Drive, in the unincorporated Opal Cliffs area of Santa Cruz County (APNs 033-132-05, -06, -13, and -14).

**Project Description:** Demolition of an existing approximately 6,000 square-foot single-story residence and garage; construction of a new two-story approximately 6,700 square-foot residence with an additional 1,500 square feet in two garages (i.e., an approximately 8,200 square-foot residential development), a 25-yard lap pool, and related development, all reliant on a shoreline armoring structure for site and structural stability; merger of two lots (APNs 033-132-05 and 033-132-13) into one lot; and creation of two new vacant lots (APNs 033-132-06 and 033-132-14) also fronted by armoring.

**Staff Recommendation:** Substantial Issue Exists

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## **IMPORTANT HEARING PROCEDURE NOTE**

The Commission will not take testimony on this “substantial issue” recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, any aggrieved person, the Attorney General, or the Executive Director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally (and at the discretion of the Chair) limited to three minutes total per side. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which the Commission will take public testimony.

## **SUMMARY OF STAFF RECOMMENDATION**

The County-approved project would provide for demolition of an existing single-story house that spans four separate lots, merger of the two center lots, creation of two new vacant lots, and the construction of a new blufftop house and related residential development, including a 25-yard lap pool, at 4660 Opal Cliff Drive in Santa Cruz County, all reliant on a shoreline armoring structure fronting the site for site and structural stability. The property is located in the Live Oak beach area of Santa Cruz County, which is arguably the most popular coastal visitor destination in the County, and heavily used for coastal recreational access pursuits. The Appellants contend that the County’s approval of the project raises questions of consistency with the Santa Cruz County certified Local Coastal Program (LCP) and the public access policies of the Coastal Act because: (1) the approved new residence relies on shoreline armoring to establish project and site stability, which is not allowed by the LCP; (2) the existing development that the armoring was authorized to protect is being demolished, and thus the armoring would protect new development as well as vacant lots, which is not allowed by the LCP; (3) the existing armoring blocks lateral access and public beach use except at the lowest tides and retention of this armoring would exacerbate impacts to public beach access, inconsistent with LCP and Coastal Act public access provisions; and (4) the approved residence would be an approximately 8,200 square-foot structure, which would be the largest on Opal Cliff Drive, raising LCP consistency questions related to compatibility, community character, and public views.

In terms of coastal hazards, the LCP requires that new development proposed within areas subject to such hazards be sited and designed for stability and structural integrity without reliance on shoreline armoring as measured against at least a 100-year period. Here, the County-approved project’s 100-year setback line would actually be located seaward of the existing to-be-demolished residence, and it was derived based on the continued existence and maintenance of the armoring fronting the site. In other words, the new development proposed requires shoreline armoring to meet its LCP setback

requirements, which is not allowed by the LCP. The project also creates two vacant lots that would also be protected by shoreline armoring, which is also not allowed by the LCP. As such, the County's approval raises substantial issues regarding whether such outcomes are appropriate under the LCP. Further, the project also raises significant statewide issues related to the extent to which new development such as this is allowed to rely on shoreline armoring in areas subject to coastal hazards.

With respect to public access, the Coastal Act and LCP require public access to be protected, including requiring public recreational access opportunities to be maximized. The County-approved project allows armoring fronting the site to be used to protect the proposed new residential development and two new vacant lots, which as indicated, is not allowed by the LCP. As the Commission is well aware, armoring on the shoreline generally has considerable and significant adverse impacts to coastal resources, including contributing to the loss of beach area, which appears to be the case here. Further, this particular armoring system juts out and extends approximately 100 feet further seaward than the general bluff orientation relative to the shoreline in the vicinity, and thus the armoring system not only occupies potential beach space, but also blocks all lateral access except during the lowest of tides. In other words, in addition to the LCP's disallowance of armoring to protect new development, this particular armoring structure appears to have significant public recreational access impacts. As a result, the County's approval thus also raises substantial issues related to requirements to protect and maximize public beach and related access under the Coastal Act and the LCP.

With respect to public views and community character, the LCP requires that such resources be protected and enhanced, and that new development be visually compatible with the surrounding area. The size and scale of the County-approved residence, which would be substantially larger than other residences in the area, as well as related development (e.g., fences, etc., but also including retention of the aforementioned armoring), raise questions as to whether the County's approval adequately protects public views and character, and also raises a substantial issue for this reason as well.

In short, the County's approval allows a new residence and new vacant lots to rely on shoreline armoring when that is not allowed by the LCP. In addition, the armoring in question significantly negatively impacts public recreational access, particularly in terms of sandy beach access, and the approval raises additional concerns related to public views and character. For these reasons, staff believes that the County's approval raises substantial Coastal Act and LCP conformance issues related to coastal resource protection requirements, and 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 are found on page 5.

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### EXHIBITS

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Exhibit 4 – Appeals of County’s CDP Action

Exhibit 5 – Applicable Coastal Act and LCP Provisions

### CORRESPONDENCE

### EX PARTE COMMUNICATION

## I. MOTION AND RESOLUTION

### Substantial Issue Determination

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a 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-SCO-20-0027 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-SCO-20-0027 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 DESCRIPTION

The County-approved project provides for: 1) demolition of an existing approximately 6,000 square-foot single-story residence and garage that spans four separate, commonly-owned (by the Applicants) and contiguous lots (under four separate APNs, APNs 033-132-05, -06, -13, and -14); 2) merger of the two center lots (APNs 033-132-05 and 033-132-13) into one lot; 3) creation of two new vacant lots (APNs 033-132-06 and 033-132-14);<sup>1</sup> 4) construction of a new two-story approximately 6,700 square-foot residence with an additional approximately 1,500 square feet of garages (in an attached 654 square-foot garage and a separate 800 square-foot detached garage), for a total of

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<sup>1</sup> After demolition of the existing residential development that spans the four lots, construction of the new residential development would be limited to the two proposed-to-be-merged inner lots, and the two outer lots would be left vacant and available for future development.

about 8,200 square feet of residential development,<sup>2</sup> located closer to the blufftop edge than the existing to-be-demolished residence; and 5) related residential development, including a 25-yard lap pool, all reliant on an armoring structure (located along the lower bluffs and on the beach fronting the site) for site and structural stability. The County's CDP approval also included a large dwelling review (and a Large Dwelling Permit) because the house is over 5,000 square feet in size.

See pages 23-54 of **Exhibit 3** for the County-approved project plans.

## **B. PROJECT LOCATION AND BACKGROUND**

The County-approved project is located on an oceanfront blufftop property at 4660 Opal Cliff Drive in Santa Cruz County. This area is generally referred to as Opal Cliffs, but it is technically part of the larger unincorporated Live Oak beach area of Santa Cruz County that is located between the cities of Santa Cruz and Capitola. The Live Oak beach area is arguably the most popular coastal visitor destination in the County, and heavily used for coastal recreational access pursuits. Opal Cliff Drive is about two-thirds of a mile long with the project site located in close proximity to Capitola. Opal Cliff Drive is also lined with an almost unbroken string of private residential developments between the road and the blufftop edge, which limits the public's ability to even see the ocean or shoreline, let alone access it. In fact, the only place where the public can access the shoreline from Opal Cliff Drive is at Opal Cliffs Park just upcoast of the subject site, where free beach access and a beach stairway is provided.<sup>3</sup> The next closest vertical accessways are located about a half-mile up and downcoast from the Park (at 41st Avenue upcoast<sup>4</sup> and Hooper Beach downcoast in Capitola<sup>5</sup>). There are a series of well-used surf breaks all along Opal Cliffs, including the surf break known as "Trees" that is just seaward of the subject property, and which is named for the trees that historically lined the bluff along the subject site, some of which still stand today.

The beaches seaward of Opal Cliffs Park (known locally as "Privates Beach" or "Key Beach") are just upcoast from the project site, and these beaches provide the only true

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<sup>2</sup> In addition, the project includes almost 500 square feet of sub-floor space to accommodate mechanical equipment. This space is generally only 2.5 feet tall, but there is also a utility area that is up to 6.5 feet tall on a slab. If it were counted towards total square footage, the proposed new residential development would be closer to 9,000 square feet in size.

<sup>3</sup> Opal Cliffs Park has only recently begun providing free public access for the general public (previously, a fee was required to enter the park and access the beach). County planning staff (in coordination with the Opal Cliffs Recreation District and the Santa Cruz County Parks Department) is currently working on a CDP application that will authorize the free public access program, new signage, and a replacement fence at Opal Cliffs Park.

<sup>4</sup> Via a stairway at the overlook and surf spot known as "The Hook".

<sup>5</sup> The Hooper Beach stairway is owned and maintained by the City of Capitola. The stairway has been periodically closed in the last few years due to varying sand elevations that leave a large gap between the bottom of the stairs and the beach, and/or the bottom-most section of the stairs being washed out during winter storms.

sandy beach experience along Opal Cliffs during most tides. There is also a sandy pocket beach, sometimes referred to as Trees Beach, that is also located seaward of the subject property (on its downcoast side), but it is mostly inaccessible to the public due to the armoring promontory associated with this site and a bedrock promontory at the base of Cliff Drive near Hooper Beach. Other beaches along Opal Cliffs are either mostly inaccessible, like Trees Beach, or submerged between the ocean and inland armoring otherwise during other than fairly low tides. The beach context in this area (e.g., the limited access points and limited windows of availability to access the beach area seaward of Opal Cliff Drive) emphasizes the importance of the beaches associated with this site, and the importance of weighted consideration to any proposed or existing residential development and shoreline armoring. In any event, and notwithstanding the limited area, the beaches and shoreline below the homes seaward of Opal Cliff Drive are heavily used by the public for tide-pooling, beach walks, fishing, and access to the ocean for surfing, paddle-boarding, etc., and Privates/Key Beach fronting this site provides for general sandy beach use in a larger sandy beach area.

The bluffs along Opal Cliffs are steep and approximately 60 feet tall, with roughly the lower third consisting of a rocky marine sedimentary base, and the upper two-thirds consisting of softer soil-like terrace deposits. Portions of the Opal Cliffs bluffs are armored, portions are unarmored, and there are other portions where only remnants of former armoring remain. Past Commission cases along this stretch of coast have also shown that the armoring is both permitted and unpermitted.

The bluff and beach fronting the subject site is armored with an approximately 290-foot-long vertical seawall,<sup>6</sup> three seacave plugs, and an upper bluff shotcrete retaining wall.<sup>7</sup> The seawall spans all of the Applicants' upcoast three parcels, and a portion of the downcoast-most parcel, with the remainder of that parcel unarmored. Historically, there was a natural bedrock promontory located just downcoast of the vertical seawall which formed a natural point, but the point has largely eroded and the seawall itself now forms the point here (see photos of the areas on page 6-7, 7, and 12 of **Exhibit 2**). The seawall juts out approximately 100 feet further seaward relative to general orientation of the bluffs along Opal Cliffs, which limits through-lateral beach access from Privates/Key Beach to Trees Beach, as well as to the nearby beaches of Capitola, except during the

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<sup>6</sup> The seawall is located on State Lands (State Lands Commission Lease Number PRC 7971.1).

<sup>7</sup> The seawall and one of the seacave plugs were constructed in the mid-1990s pursuant to County-issued CDP 95-0621 in 1996 and Commission-issued CDP Waiver 3-97-034-DM in 1997 (where the Commission's authorization applied to the footing and seacave plug in its retained jurisdiction). A second seacave plug from 2016 is located between the seawall and the first seacave plug (i.e., in a portion of the former/eroded bedrock promontory "point"). At least a portion of the second seacave plug is located in the Commission's retained jurisdiction and is the subject of Commission Violation File No. V-3-16-0047 and subsequent litigation/settlement agreement between the Applicants and the Commission. Finally, in 2017 the County issued an emergency CDP (which was subsequently recognized by County-issued CDP 171261) for a third seacave plug (this time behind the vertical seawall) and the construction of a mid- and upper bluff shotcrete wall directly above the existing seawall.

lowest of tides.<sup>8</sup> In other words, this seawall essentially forms an artificial headland that occupies beach space and limits lateral beach access at this location.

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

### **C. SANTA CRUZ COUNTY APPROVAL**

On June 5, 2020, the Santa Cruz County Zoning Administrator approved a CDP for the project. The County's Final Local Action Notice for this CDP action was received in the Coastal Commission's Central Coast District Office on Tuesday, June 23, 2020 (see **Exhibit 3**). The Coastal Commission's ten-working-day appeal period for this action began on Wednesday, June 24, 2020 and concluded at 5pm on July 7, 2020. Two valid appeals were received during the appeal period (see **Exhibit 4**).

### **D. 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. (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 (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, within 300 feet of the inland extent of a beach, within 300 feet of the seaward face of a coastal bluff, and within an area that constitutes a sensitive coastal resource area under the LCP.

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

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<sup>8</sup> Other than at Privates/Key Beach, access to the beach areas at the base of Opal Cliffs is generally limited to lower tides; however, the subject site, due in part to the presence of the seawall, which has largely disrupted natural erosion processes since its installation in the 1990s, has an even smaller window of accessibility, and prevents through-lateral access between Privates/Key Beach and Trees Beach (and further down to Hooper beach in Capitola) except during the lowest of tides, which are generally limited to only a few times per month.



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 (with or without conditions) 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) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission were to approve a CDP following a de novo hearing.

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

## **E. SUMMARY OF APPEAL CONTENTIONS**

The Appellants contend that the County’s approval of the project raises questions of consistency with the Santa Cruz County certified Local Coastal Program (LCP) and the public access policies of the Coastal Act because: (1) the approved new residence relies on shoreline armoring to establish project and site stability, which is not allowed by the LCP; (2) the existing development that the armoring was authorized to protect is being demolished, and thus the armoring would protect new development as well as vacant lots, which is not allowed by the LCP; (3) the hazard setback line did not account for a recent bluff failure on the upcoast-most parcel; and (4) the existing armoring blocks lateral access and public beach use, inconsistent with LCP and Coastal Act public access provisions. One appeal also contends that the approved residence entails an approximately 8,200-square-foot structure, which would be the largest single-family residence on Opal Cliff Drive, raising LCP consistency questions related to public views, compatibility and community character, and that the shoreline armoring system raises additional public view and compatibility concerns. See **Exhibit 4** for the full text of the appeals and page 8 of **Exhibit 2** for photos of the recent bluff repair work.

## **F. SUBSTANTIAL ISSUE DETERMINATION**

### **Substantial Issue Background**

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (California Code of Regulations, Title 14,

Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a significant issue: (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. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, for the reasons discussed further below, the Commission determines that County's CDP decision on the proposed project raises a substantial issue.

### **1. Coastal Hazards**

The Appellants contend that the approved project is inconsistent with the coastal hazard provisions of the LCP, including with respect to the siting of the approved residence. The LCP's coastal hazards provisions (see **Exhibit 5**) require that new development proposed within areas subject to coastal hazards, such as this site, be sited and designed for stability and structural integrity without reliance on shoreline armoring as measured against at least a 100-year period.<sup>9</sup> Further, the LCP only allows shoreline armoring "to protect existing structures from a significant threat" (LUP Policy 6.2.16). Thus, the LCP has a two-part minimum 100-year stability requirement: first, there must be a portion of the site in question sufficient to accommodate the proposed development that will be stable for at least 100 years in a pre-development (i.e., a no project) scenario, and without reliance on structural development and/or armoring to achieve that safe siting; and second, any development then introduced onto the site must also be stable for its lifetime, evaluated analytically for at least 100 years, and without reliance on extraordinary engineering measures and/or armoring.

In this case, the Applicants' Geologic Investigation<sup>10</sup> states that "The position of the 100-year blufftop is predicated on the assumption that the seawall system will be maintained for the lifetime of the development," and accounts for erosion of the unarmored portions of the bluff based on an assumed 0.3 foot/year erosion rate,<sup>11</sup> which the Investigation

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<sup>9</sup> See, for example, LUP Policy 6.2.15, that requires that development not be dependent on any shoreline or coastal bluff protection structures, and IP Section 16.10.070(H)(1)(c) that requires that the 100 years of stability be established through the use of appropriate setbacks and siting, and without reliance on any proposed engineering measures "such as shoreline protection structures, retaining walls, or deep piers".

<sup>10</sup> "Geologic Investigation" by Greg Easton dated January 25, 2017 and updated December 6, 2019. See Appendix A.

<sup>11</sup> In addition, the Geologic Investigation accounted for potential increases in erosion due to sea level rise by applying a 25% multiplier. The Commission notes that Commission's Sea Level Rise Policy

estimated to be the average annual erosion rate since 1997 when the armoring was installed. The Investigation does not use an estimated erosion rate based on periods when the armoring was not present (estimated by the Applicant's consultants to be 0.88 feet/year (measured from 1928 to 1996) or 0.98 feet/year (measured from 1950 to 1996)),<sup>12</sup> nor do they assume an analytic scenario where no armoring is present to develop the LCP required setback. Rather, the Applicant's consultants relied on armoring to develop the setback line, including based on assumptions that the armoring will be "maintained," including through improvements, enhancements, and/or augmentations to provide for its continued function.<sup>13</sup> And, in fact, the armoring is deteriorating and the bluff is continuing to erode in ways that are precipitating proposed armoring projects at the site, including the recent augmentation authorized by the County in 2018 (for upper bluff shotcrete and 27 cubic yards of fill behind the seawall), as well as an unfiled CDP application pending at the Commission for a new foundation/cut-off wall for the upcoast portion of the seawall.<sup>14</sup>

Although the approved house and pool are ultimately sited landward of the Applicant's identified 100-year erosion line,<sup>15</sup> albeit seaward of the existing house setback (deemed insufficient to protect that house from erosion in such a way that allowed armoring of the site in the past), that setback was derived based on the continued existence and maintenance of the armoring fronting the site. In other words, the new development

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Guidance (2018) anticipates between 4.2 feet (low-risk aversion scenario) and 8.6 feet (medium-high risk aversion) of sea level rise by 2120, and it is not at all clear that such multiplier, even if the other aspects of the setback methodology were sound, which they are not, can appropriately capture the effect of sea level rise as it is expected to affect this site.

<sup>12</sup> In addition, the Applicants' 100-year setback line was established prior to an upper bluff failure in 2017 along the project site's upcoast-most parcel and the neighboring upcoast property (i.e., 4640 Opal Cliff Drive), and was not modified in the 2019 Geologic Investigation update to reflect this bluff failure.

<sup>13</sup> In fact, the Applicants' Geologic Investigation identifies that additional armoring augmentation is going to be required to continue to provide the protection needed for the new residence in the near term due to armoring deterioration, stating that "Portions of the seawall are undermined, and the recently constructed seawall plug lacks a reinforced footing and protective facing. However, we understand that plans to implement these essential maintenance items have been developed in accordance with the seawall maintenance agreement and permission to perform the maintenance is pending."

<sup>14</sup> In CDP Application 3-18-0742, the Applicants proposed a cutoff wall to prevent additional undercutting of the seawall. However, Commission staff has indicated to the Applicants that if the application were to be filed and if the Applicants were to pursue the proposed project, the only way staff could recommend approval of such a seawall augmentation is if the house constitutes an existing structure and in danger of erosion for the purposes of Coastal Act Section 30235 (part of the filing questions) and if such an application can meet other Coastal Act tests, including ensuring removal of the armoring if the house were to be removed/replaced. It is staff's understanding that the Applicants do not intend to submit materials to allow for that application to be filed and considered until after this appeal process is complete, and may withdraw that application in any case.

<sup>15</sup> The pool would be 75 feet long, 12 feet wide, and 4 feet deep, which also raises questions regarding conformance with the LCP's landform alteration policies, and broader questions whether such excavation and subsurface development is appropriate on an eroding coastal blufftop under the LCP's coastal hazards policies. Similar questions also extend to the subterranean basement/mechanical equipment area.

proposed requires shoreline armoring to meet its LCP setback requirements, which is not allowed by the LCP. And the project creates two vacant lots that would also be protected by shoreline armoring, which is also not allowed by the LCP. The LCP only allows armoring to protect existing structures and not new development or vacant lots, as would be the result under the County-approved project.

For all of the above reasons, the County's approval raises a substantial LCP conformance issue with respect to coastal hazards.

## **2. Public Access/Recreation**

The Appellants contend that the approved project's reliance on armoring when such armoring is not allowed under the LCP means that the armoring will remain and will continue to significantly adversely impact public access, particularly related to the beach, inconsistent with both the LCP and the Coastal Act. Specifically, they contend that the County's approval allows the existing armoring to remain even though the existing house (for which the armoring was previously authorized because it was deemed both an existing structure and in danger from erosion) would be demolished and replaced with a new house, and that the armoring will thus be protecting new development and two new vacant lots inconsistent with the LCP, and that the continued presence of this armoring will lead to ongoing and worsening public access impacts along the stretch of beach seaward of the project site.

With respect to public access, the California Constitution mandates the protection and enhancement of public access to and along California's coastline. The Coastal Act redoubles these protections, including mandating that public recreational access opportunities to and along the California coastline be maximized (see Coastal Act Section 30210 in **Exhibit 5**). Coastal Act Section 30210's direction to maximize access represents a different threshold than to simply provide or protect such access, and it is therefore fundamentally different from other like provisions in this respect. Under Section 30210, the Legislature has declared that it is not enough to simply provide public access to and along the coast, and it is not enough to simply protect public access, rather such public access must also be maximized. This terminology distinguishes the Coastal Act and provides fundamental direction to projects along the California coast that raise public access issues.

The County's LCP also provides protection for public beach access and recreation (LUP Policy 7.7.10), including by: prohibiting non-recreational structures and incompatible uses on beaches (LUP Policy 7.7.4), encouraging access and connections between parks (LUP Policy 7.7.6), and requiring lateral access dedications where new development may affect public lateral access along beaches (LUP Policy 7.7.12). Other relevant Coastal Act provisions require that development not interfere with existing access (Section 30211); require access to be provided in new development projects (Section 30212); require that lower cost recreational uses and areas be protected and provided (Section 30213); require coastal areas suited for water recreational activities to be protected for that purpose (Section 30220); require oceanfront land to be protected

for recreational uses (Section 30221); and require that upland areas be protected for coastal recreational uses (Section 30223). See **Exhibit 5** for the cited Coastal Act and LCP policies.

As described previously, the armoring in question is extensive, occupies substantial public beach space, blocks lateral access between Privates/Key Beach and Trees Beach (as well as Hooper Beach and other beaches extending towards Capitola), and has a significant adverse effect on public access. The County failed to analyze these problems with the armoring, despite it being a required element of the proposed new residential project, and despite such armoring not being allowed under the LCP to protect new development or vacant lots, both of which apply to the County's approval. In addition, such coastal resource impacts due to the armoring are only expected to increase over time, and will only be further exacerbated as the severity and effects of sea level rise become more apparent.

For these reasons, the County-approved project also raises a substantial issue with respect to the approved project's conformance with the above-cited Coastal Act and LCP public access and recreation policies.

### **3. Public Views and Character**

In terms of public views and community character, the appeals together contend that retention of the existing armoring system (including the vertical seawall and various seacave plugs) negatively impacts the public viewshed due to extensive concrete, rebar, plastic, and other materials immediately visible from the beach area seaward of the project site. They further contend that the County-approved project would allow for the largest house in Opal Cliffs, that the new house and related development would adversely affect public views (including views of the ocean and the horizon as seen from Opal Cliff Drive), and that the County-approved project is generally incompatible with the scale of surrounding residential development.

The LCP requires that public views and visual resources be protected and enhanced, and that new development be visually compatible with the surrounding area, including with respect to size, bulk, and design. Specifically, LUP Objective 5.10a requires public views to be identified, protected, and restored; and LUP Objective 5.10b requires that new development be appropriately sited, designed and constructed in order to ensure that public views are not adversely impacted. In addition, LUP Policy 5.10.6 requires that public ocean vistas be retained to the maximum extent feasible; LUP Policy 5.10.7 prohibits the placement of new permanent structures that would be visible from the beach (except where allowed on existing parcels of record, or for allowable shoreline armoring or public access provided it is compatible with the existing pattern of development, and if the shoreline armoring/access structures use natural materials). Finally, the LCP's required CDP findings require that development be visually compatible with the surrounding neighborhood; that structures emphasize a compatible community aesthetic as opposed to maximum-size/bulky designs; that varied architectural elements and landscaping be employed to further reduce impacts; and that

development be sited and designed such that it does not block or adversely impact public views or scenic character (see IP Section 13.20.130(B)). See **Exhibit 5** for the above-cited LCP provisions.

The size and scale of the County-approved residential development are substantial, at two stories and with an approximately 6,700 square-foot residence with approximately 1,500 square feet of attached and detached garages, totaling approximately 8,200 square feet of residential development.<sup>16</sup> The project also includes substantial related development (e.g., fences, etc., but also the retention of the aforementioned armoring). And although the County recognized that the existing to-be-demolished development offers brief glimpses of the ocean/horizon, the County did not require that those views/glimpses be protected or restrict development on the blufftop there in such a way as to create new public views. Rather, the County-approved project would demolish the existing single-story residence that provides such public views and replace it with a two-story residence that eliminates those views.<sup>17</sup>

In short, the County's approval raises questions as to whether it adequately protects public views and character, and also raises a substantial issue for this reason as well.

#### **4. The "Five Substantial Issue" Factors**

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP (and Coastal Act, as applicable) conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable, such as in this case) 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. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project does raise a substantial issue of Coastal Act public access and LCP conformance. In terms of factual and legal support, valid questions are raised regarding the County's interpretations of the LCP's coastal hazards

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<sup>16</sup> In addition, the project includes almost 500 square feet of sub-floor/basement space to accommodate mechanical equipment. Although part of the project, this space ranges from 2.5 to 6.5 feet in height, and hasn't been counted here as part of the overall square footage. If it were, the project would be closer to almost 9,000 square feet of proposed new residential development.

<sup>17</sup> It is also reasonably foreseeable that the two vacant lots created will be developed in the future, either by the Applicants or their heirs or sold to then be developed.

provisions. In particular, the LCP requires that new development proposed within areas subject to coastal hazards be sited and designed for stability and structural integrity without reliance on shoreline armoring as measured against at least a 100-year period. Here, the County-approved project's 100-year setback line would actually be located seaward of the existing to-be-demolished residence, and was derived based on the continued existence and maintenance of the armoring fronting the site. In other words, the new development proposed requires shoreline armoring to meet its LCP setback requirements, which is not allowed by the LCP. And the project creates two vacant lots that would also be protected by shoreline armoring, which is also not allowed by the LCP. Additionally, the County did not consider a recent bluff failure for the purpose of establishing the LCP-required 100-year setback line.

With respect to public access and recreation, the armoring in question is extensive, occupies substantial public beach space, blocks lateral access between Privates/Key Beach and Trees Beach (as well as Hooper Beach and other beaches extending towards Capitola), and has a significant adverse effect on public access. However, the County did not consider or analyze the problems associated with the armoring, despite it being a required element of the proposed new residential project, and despite such armoring not being allowed under the LCP to protect new development or vacant lots, both of which are the case in the County's approval. In addition, such coastal resource impacts due to the armoring are only expected to increase over time, and will only be further exacerbated as the severity and effects of sea level rise become more apparent.

With respect to public views and character, the LCP requires that such resources be protected and enhanced, and that new development be visually compatible with the surrounding area. The size and scale of the County-approved residence, which would be substantially larger than other residences in the area, as well as related development (e.g., fences, etc., but also including retention of the aforementioned armoring), raise questions as to whether the County's approval adequately protects public views and character, including because existing public views would be eliminated. Further, the County did not restrict development on the new vacant lots created in such a way as to ensure that the outer lots would remain open for public views. Rather, it is reasonably foreseeable that the Applicants, or their heirs, will either develop these lots, or sell them for others to pursue development.

In terms of the extent and scope of development, the new house would be one of the largest—if not the largest—in Opal Cliffs, and it is not sited and designed to avoid the need for coastal armoring as required by the LCP. On the contrary, it relies on existing armoring, which itself is one of the largest, if not the largest, impediments to public beach access along this entire stretch of coast, both of which argue for substantial issue.

In terms of potential precedential and prejudicial impact, the approved project could impact future County interpretations of its LCP with respect to shoreline armoring and redevelopment and how armoring is and is not allowed in such contexts, particularly as it relates to developing required 100-year setbacks. The approved project also has the

potential to prejudice the County's ongoing efforts to update the coastal hazards components of its LCP for the same reasons, all of which needs to be understood in light of best available science and understandings associated with anticipated sea level rise and increased storm frequency scenarios.

In terms of the significance of the coastal resources involved, projects that have the potential to adversely affect finite and irreplaceable bluff, shoreline, and beach areas, such as this project, affect significant coastal resources. The significant coastal resources at play in this project again argue for a substantial issue finding.

Finally, in terms of whether the appeal raises only local issues as opposed to regional or statewide issues, the use of armoring to protect new development and vacant lots, including notwithstanding its coastal resource impacts, raises issues of statewide significance. Taken together, the County-approved CDP for the project does not adequately address Coastal Act public access and LCP coastal resource protection issues, and the five factors, individually, and on the whole, support a finding of substantial issue as to conformity with the Coastal Act and the certified LCP.

For the reasons stated herein, the Commission finds that Appeal Number A-3-SCO-20-0027 raises substantial Coastal Act and LCP conformance issues in terms of coastal hazards, public access, and public views/character. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the certified Santa Cruz County LCP and the public access/recreation policies of the Coastal Act, and takes jurisdiction over the CDP application for the proposed project.

#### **5. Information Needed for De Novo Review of Application**

Prior to bringing this matter back for Coastal Commission de novo review, the Applicants will need to provide additional information necessary to evaluate the project for consistency with the LCP and the public access and recreation policies of the Coastal Act. Absent information regarding alternative siting and design, the Commission will not be in a position to evaluate the proposed project against these requirements, and does not intend to schedule a hearing until the County and/or the Applicants have developed and provided further information to bridge the analytic gaps that are currently present and associated with the proposed project. Such information includes the following:

- A geotechnical report based on best available science and information that identifies the required 100-year setback without reliance on shoreline armoring, including when evaluated based on the removal of the existing armoring fronting the site.
- Visual simulations of both the proposed project as well as a version of the proposed project located inland of the 100-year setback line identified in the new geotechnical report (see above) as seen from enough representative locations along Opal Cliff Drive, the stairway at Opal Cliffs Park, Private/Key Beach, and Trees Beach to allow for full identification of all effects of the project on public views from these locations.



**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS<sup>18</sup>**

- Amended Monitoring and Maintenance Agreement for County CDP 95-0621
- Applicants' Geologic Investigation, by Greg Easton, dated January 25, 2017 and dated updated December 6, 2019
- State Lands Commission Lease Number PRC 7971.1
- Commission CDP Waiver File 3-97-034-DM

**APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS**

- Santa Cruz County Planning Department
- California State Lands Commission
- Surfrider Foundation

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<sup>18</sup> These documents are available for review in the Commission's Central Coast District office.