

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
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F11a

Prepared September 6, 2022 for September 9, 2022 Hearing

To: Commissioners and Interested Persons
From: Ryan Moroney, Central Coast District Supervisor
Subject: **Additional hearing materials for F11a**
CDP Number A-3-SCO-22-0033 (Hoyle SFD)

This package includes additional materials related to the above-referenced hearing item as follows:

Additional correspondence received in the time since the staff report was distributed

September 2, 2022

To: Donne Brownsey, Chair, California Coastal Commission
Cc: John Ainsworth, Executive Director, California Coastal Commission
Rainey Graeven, Coastal Program Analyst, California Coastal Commission

RE: Item F11a, New Opal Cliffs Residence, Appeal No. A-3-SCO-22-0033

Dear Chair Brownsey,

The Surfrider Foundation strongly supports the staff recommendation to find Substantial Issue with the proposed construction of a 3,400 square foot residence at 4630 Opal Cliff Drive in Santa Cruz. The Santa Cruz County approved permit would allow the new development to rely on a seawall and is therefore inconsistent with the Coastal Act.

The staff report numerates the straightforward reasons that this development is inconsistent with the County's LCP and the Coastal Act:

- (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, which is not allowed by the LCP; and
- (3) the armoring in question adversely affects public beach access, and its retention perpetuates such impacts, inconsistent with LCP and Coastal Act public access provisions.

The proposed development would demolish the existing residence under the red arrow in the California Coastal Records Project photo below and replace it with a new two-story residence and garage. The vertical seawall at the base of the bluffs fixes the back of the already narrow beach and the new residence would rely on shoreline armoring for its entire 75- to 100-year life span to ensure structural integrity.





The proposed development is adjacent to important coastal recreational opportunities including world class surf in an area known as Pleasure Point. These waves are some of the most popular in the County and accessible to surfers of a variety of skill levels. On a sunny day with small- to mid-size surf, hundreds of surfers can be found enjoying the ocean in this location.

The bluff erosion rate in this location should be about 1 foot per year, which means the wave and narrow beach could persist for many decades to come if the bluffs were allowed to erode and naturally replenish beach sediment even as sea levels rise. The only way the beach and waves stand a chance is if we allow this pattern of development to phase out and to restore the natural coastal processes.

If this development is approved, we will be sacrificing this beach and wave to at least another century of shoreline armoring which will erode the beach completely and drown the wave. The permitting decisions we make today will determine the future of the coast and the iconic waves at Pleasure Point. This portion of coast, and the recreational opportunities it provides, is worth fighting for. The State Legislature passed the Sea Level Rise Revolving Loan Pilot Program this year, which may be a pathway towards removing harmful development and seawalls to save our coast from rising seas. We urge you to keep fighting for a resilient coast.

Please concur with the staff recommendation to find Substantial Issue with the County approved permit at 4630 Opal Cliffs Drive.

Sincerely,

Mandy Sackett
California Policy Coordinator
Surfrider Foundation

Alli Webster
Chair
Santa Cruz County Chapter
Surfrider Foundation

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F11a

**A-3-SCO-22-0033 (HOYLE SFD)
SEPTEMBER 9, 2022 HEARING**

CORRESPONDENCE



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VIA FEDEX

August 8, 2022

Chair Donne Brownsey and Commissioners
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105

Re: Request to Dismiss Commission Appeal No. A-3-SCO-22-0033

Dear Chair Brownsey and Commissioners:

This law firm represents David and Sara Hoyle, the owners of 4630 Opal Cliff Drive, Santa Cruz, California, 95062, with respect to Coastal Commission Appeal No. A-3-SCO-22-0033. The Hoyle's request that the Coastal Commission dismiss this appeal as the appellants failed to comply with mandatory appeal requirements.

On or about July 8, 2022, the District Director and District Supervisor for the Central Coast District sent a Coastal Commissioner Appeal Form and Commission Notification of Appeal to David and Sara Hoyle. Both the Coastal Commissioner Appeal Form and Commission Notification of Appeal list "Sara and David Hoyle" as the "APPLICANTS" for "LOCAL PERMIT # 211298". The Coastal Commissioner Appeal Form states that the "Applicant's address" is "4630 Opal Cliff Drive, Santa Cruz", and that the appeal was filed on July 5, 2022. The Coastal Commissioner Appeal Form does not identify the address of the appellants, it does not identify the names and addresses of any persons who submitted written comments or who spoke and left their name at any public hearing on the project, and it does not identify the names and addresses or e-mail addresses of all other persons known by appellants to have an interest in the matter on appeal.

Under section 30620.6 of the Coastal Act, the Commission is required to adopt public notice and appeal procedures for the review of development projects appealable pursuant to Section 30603 and 30715. The Notification of Appeal states that the appeal in the instant case was taken pursuant to "Sections 30603 and 30625."

As required under section 30620.6 of the Coastal Act, the Commission has established mandatory appeal procedures. These provisions "constitute minimum standards of notice and hearing requirements for local governments and the Commission in reviewing development projects after certification of a local coastal program." (Cal. Code Regs., tit. 14, § 13560.) The appeal procedures require the appeal to contain ten separate items, at a minimum, including "(1) the name and address of the permit applicant and appellant; . . . (5) the names and addresses of

all persons who submitted written comments or who spoke and left his or her name at any public hearing on the project, where such information is available; [and] (6) the names and addresses or e-mail addresses of all other persons known by the appellant to have an interests in the matter on appeal” (Cal. Code Regs., tit. 14, § 13111, subd. (a).) The appeal must also be submitted “no later than 5:00 p.m. on the tenth (10th) working day after receipt of the notice specified in Section 13110 by the executive director.” (Cal. Code Regs., tit. 14, § 13111, subd. (c).) As demonstrated by the Coastal Commissioner Appeal Form, however, the appeal failed to comply with these mandatory requirements. The appeal did not include “the name and address of the permit applicant and appellant.” The permit applicant in this case is “Matson Britton Architects,” not “Sara and David Hoyle.” The appeal did not include the address for Matson Britton Architects. The appeal did not include the address for the appellants. The appeal did not identify the names and addresses of any persons who submitted written comments or who spoke and left their name at any public hearing on the project, and it did not identify the names and addresses or e-mail addresses of all other persons known by appellants to have an interest in the matter on appeal.

As such, Coastal Commission Appeal No. A-3-SCO-22-0033 must be dismissed, as the ten working day appeal period has elapsed and no timely and valid appeal was filed, thus rendering the approval by the County of Santa Cruz effective and final. (Cal. Code Regs., tit. 14, § 13112 [stating that it is only after “receipt in the commission office of a **timely valid appeal** by a qualified appellant” that the appeal process will commence], emphasis added; Pub. Resources Code, § 30603, subd. (c) [“Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government’s final action, unless an appeal is submitted within that time.”]; Cal. Code Regs., tit. 14, § 13572, subd. (a) [stating that a “local government’s final decision on an application for an appealable development shall become effective after the ten (10) working day appeal period to the Commission has expired unless . . . an appeal is filed **in accordance with Section 13111**”], emphasis added.)¹


Moreover, dismissal in this instance is compelled by due process and analogous case law. (See *Hall v. Chamberlain* (1948) 31 Cal.2d 673, 677 [finding “failure to comply with the statute in regard to notice is fatal”]; *Livingston v. Sanchez* (E.D. Cal. Aug. 9, 2012) 2012 U.S. Dist. LEXIS 112897, at p. *10-12 [failure to strictly comply with notice requirements in Government Tort Claims Act is “fatal”]; *Save Lafayette Trees v. City of Lafayette* (2019) 32 Cal.App.5th 148, 155-159 [dismissing challenges under planning and zoning law because of failure to timely comply with notice requirements – service of process].)

Thank you very much for your prompt attention to this matter. Please also note that this significant procedural objection is not to be construed as a waiver of any rights to respond to the

¹ Moreover, it is not clear that even the materially deficient and inadequate appeal filed on July 5, 2022 was timely filed. The appeal states that the County of Santa Cruz approved the project on June 3, 2022. Thus, the Coastal Commissioner Appeal form was filed the 20th working day after the County of Santa Cruz’s decision.

substance of the Commission's claims, whether on the matter of substantial issue, or on the merits of the appeal.

Very truly yours,



John J. Flynn III
Nossaman LLP

CC: David and Sara Hoyle, Property Owners (via email)
CC: Matson Britton Architects, Applicant (via email)
CC: Dan Carl, District Director (via email only)
CC: Rainey Graeven, District Supervisor (via email only)

JJF:bzr