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STAFF REPORT SUBSTANTIAL ISSUE & DE NOVO HEARING

Application Number: A-3-SCO-23-0042

Applicants: Emily Tzouanakis and Adeyemi Ajao

Appellants: Commissioners Caryl Hart and Linda Escalante

Local Government: Santa Cruz County

Local Decision: Santa Cruz County Coastal Development Permit Application Number 231230, approved by the Santa Cruz County Zoning Administrator on September 15, 2023.

Project Location: At the base of the coastal bluff and on the sandy beach seaward of 4790 Opal Cliff Drive (APN 033-132-12) within the unincorporated Live Oak area of Santa Cruz County.

Project Description: Augmentation of an existing seawall, including adding concrete slurry to fill a void space extending the seawall inland and upcoast, and adding a new seawall foundation extending the seawall below and seaward of its existing location.

Staff Recommendation: Substantial Issue Exists; Denial

IMPORTANT HEARING PROCEDURAL NOTE

Please note that at the hearing for this item the Commission will not take testimony on staff's substantial issue recommendation unless at least three Commissioners request it. Commissioners may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether or not to take such testimony. If the Commission does decide to take such testimony, then it is generally limited to three minutes total per side (although

the Commission's Chair has the discretion to modify those time limits). Only the Applicant, aggrieved persons, the local government, and their proxies/representatives are allowed to testify during this substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application, and it will then review that application immediately following that determination (unless postponed), at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

SUMMARY OF STAFF RECOMMENDATION

Santa Cruz County approved a coastal development permit (CDP) for the augmentation and reinforcement of an existing seawall at the base of the bluff and on the sandy beach fronting 4790 Opal Cliff Drive within the unincorporated Live Oak area of Santa Cruz County. Specifically, the County-approved project provides for the addition of concrete slurry to fill a void space (measuring approximately at least 15 feet wide by up to 7 feet tall by up to 9 feet deep into the bluff) extending the seawall inland and upcoast, and the addition of a new seawall foundation (measuring approximately 15 feet wide by at least 3 to 5 feet tall by at least 2 feet deep) extending the seawall below and seaward of its existing location.

The appeal contends that the County-approved CDP raises Coastal Act public access and LCP issues because: 1) the development constitutes shoreline armoring and it is not clear that such armoring is allowable based on the circumstances that apply; 2) the County's approval did not properly evaluate and/or mitigate impacts associated with the approved armoring, if it were to be approvable in the first place; and 3) the development appears to at least partially extend into the Commission's retained CDP jurisdiction, where the County has no legal authority to approve a CDP, but the County nonetheless approved a CDP for the whole project without addressing such jurisdictional issues. Following review of the local record, staff recommends that the Commission find that the County's approval of the project raises a substantial LCP and Coastal Act conformance issue with respect to the above issues, that the Commission take jurisdiction over the CDP application, and that the Commission deny that CDP application due to LCP and Coastal Act inconsistencies.

Primarily, it is unclear whether the subject residence onsite is allowed armoring in the first place, in that the County did not evaluate the LCP criteria for armoring projects: 1) that the residence is an existing structure; 2) that the residence is significantly threatened; and 3) that armoring exists up and downcoast of the site. Without such a determination, the County erred because it did not work through the LCP required analytic framework for shoreline armoring projects. In addition, in its approval, the County considered the project to be repair and maintenance of an existing seawall. However, the proposed project will expand the footprint and configuration of the existing armoring present at this site, and as such, does not constitute repair and maintenance to an existing seawall. Rather, repair and maintenance puts something back to a permitted and/or required state, and such activities do not extend to the expansion of the physical dimensions of a structure, as is the case with the augmentation proposed

here, where the proposed project would expand the armoring at the site, extending farther into the bluff and the bedrock below, the bluffs upcoast, and farther seaward than the existing seawall. Therefore, the project must be evaluated not as repair and maintenance, but as a shoreline armoring augmentation and replacement project. In that analysis, and based on available information, it appears that although a residence was present on the subject property as of January 1, 1977, there have been significant alterations to it since, and it is not clear that the residence constitutes an existing structure for LCP armoring purposes. It is also unclear whether the existing residence is significantly threatened, as also would be required under the LCP to consider such armoring. In addition, the upcoast property is unarmored, and under the LCP this fact alone does not allow approval of the project. In short, the County approval does not meet the basic LCP criteria for even considering armoring in the first place. And, because the Applicants have made it clear that they do not believe that these fundamental LCP criteria apply in this case, they have not provided the necessary information to make such applicable determinations.

Furthermore, the County-approved project was not selected as the least environmentally damaging feasible alternative based on an analysis of alternatives, as is required by the LCP. Rather, the County-approved project was the only proposed alternative considered, and the Applicants did not provide, nor did the County require, the LCP-required alternatives analysis. In addition, the Applicants did not provide, nor did the County require, any mitigation for the impacts of the project, even though the existing seawall appears to be leading to coastal resource impacts (as evidenced by the proposal to fill a void at the upcoast end of the seawall created in part by the subject seawall's effect of increasing erosion on the neighboring parcel), and appears to be occupying public recreational beach and shoreline space currently, and the County-approved project would appear to only exacerbate and increase such impacts, including by physically extending the seawall's configuration even further seaward out onto and further occupying the beach, none of which was analyzed nor mitigated. Finally, the Applicants did not provide, nor did the County require, the LCP-required construction and staging plan, and thus the full extent of potential construction impacts is unknown, which is disconcerting in this case as construction access to the site is quite constrained. Again, the Applicants have made it clear that they do not believe such information/materials are necessary, despite clear LCP requirements for same, and thus chose not to provide them.

Finally, the County approved a CDP for the entire project even though the proposed seawall augmentation appears to extend into the Commission's retained permitting jurisdiction, and these questions of jurisdiction have not been resolved. The LCP requires that applicants for any form of development in the coastal zone also concurrently apply to any other agencies which may have regulatory authority over the project. Despite this, the County's approval authorized the development in question without ascertaining the correct permitting authority for the entire project, leaving said jurisdictional issues unresolved.

In short, staff recommends that the Commission find that the County's action raises substantial Coastal Act and LCP conformance issues and that the Commission take jurisdiction over the CDP application. Due to the above conformance issues, particularly

with respect to LCP coastal hazards and Coastal Act public access inconsistencies, and permitting jurisdiction requirements, staff further recommends that the Commission, on de novo review, deny the CDP. To the extent that the Applicants believe that they can resolve all such inconsistencies, including though providing adequate information for all required analyses, and to the extent that the County believes that such a project might be able to be found LCP and Coastal Act consistent, the Applicants are welcome to reapply to the County for development shown to be in the County's CDP jurisdiction, and to the Commission for the portions of the development shown to be in the Commission's CDP jurisdiction. The motions and resolutions to implement the staff recommendation are found on page 6 below.

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EXHIBITS

- Exhibit 1 – Location Maps
- Exhibit 2 – Site Photos
- Exhibit 3 – County Final Local CDP Action Notice
- Exhibit 4 – County-Approved Project Plans
- Exhibit 5 – Commission Staff Comments to County prior to County CDP Action
- Exhibit 6 – Appeal Documents
- Exhibit 7 – Applicable LCP Provisions

1. MOTIONS AND RESOLUTIONS

A. 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 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-23-0042 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-23-0042 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 Santa Cruz County Local Coastal Program and/or the public access policies of the Coastal Act.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-SCO-23-0042 for the development proposed by the Applicants, and I recommend a no vote.*

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-SCO-23-0042 on the grounds that the development will not be in conformity with the Santa Cruz County Local Coastal Program and/or public access policies of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

2. FINDINGS AND DECLARATIONS

A. Project Location

The County-approved project is located at the toe of the bluff and on the sandy beach fronting 4790 Opal Cliff Drive (APN 033-132-12) in the unincorporated Live Oak area of Santa Cruz County (see location maps and site area photos in **Exhibits 1** and **2**). 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 located between the cities of Santa Cruz and Capitola. The Live Oak beach area is arguably the most popular coastal visitor destination in unincorporated Santa Cruz 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 the Capitola city limits. 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 upcoast of the subject site, where free beach access and a beach stairway are provided.¹ The next closest vertical accessways are located about a half-mile up and downcoast from the Park (at 41st Avenue upcoast² and Hooper Beach downcoast in Capitola³). 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 just upcoast of the subject site, some of which still stand today.

The beaches directly accessed through 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 sandy beach experience along Opal Cliffs during most tides. Immediately seaward of the project site is a sandy pocket beach, sometimes referred to as Trees Beach, but it is mostly inaccessible to the public other than at the lowest tides due to an armored promontory upcoast of the subject site, and another promontory at the base of Cliff Drive near Hooper Beach. In fact, and primarily as a result of shoreline armoring, the beaches along Opal Cliffs are either mostly inaccessible or submerged between the ocean and inland armoring otherwise during other than fairly low tides. Such 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 remaining beaches associated with this site, and the importance of

¹ 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). The County, working in conjunction with Commission staff, the Opal Cliffs Recreation District (which has since disbanded), and the Santa Cruz County Parks Department, approved a CDP in 2021 that rectified long-standing coastal access violations by authorizing free public park and beach access, new signage indicating the public access offerings, and a replacement fence/gate (i.e., removing the wrought-iron gates) at Opal Cliffs Park. The beach below is still known as Privates or Key Beach in reference to its (albeit unpermitted) history.

² Via a stairway at the overlook and surf spot known as "The Hook".

³ 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. The stairway is currently closed due to storm damage from January 2023.

careful consideration of coastal armoring projects, like this one. 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 and Trees Beach at this site provide for general sandy beach use.

B. Project Description, Background, and County Action

The County's approval authorized the augmentation and reinforcement of an existing seawall⁴ at the base of the bluff and on the sandy beach fronting 4790 Opal Cliff Drive. Specifically, the County-approved project provides for the addition of concrete slurry to fill a void space (measuring approximately 15 feet wide by up to 7 feet tall by up to 9 feet deep into the bluff) extending the seawall inland and upcoast,⁵ and the addition of a new seawall foundation (measuring approximately at least 15 feet wide by at least 3 to 5 feet tall by at least 2 feet deep)⁶ extending the seawall below and seaward of its existing location. See **Exhibits 3** and **4** for the County's final local action notice (which includes conditions of approval and required findings) and approved project plans, respectively.

As part of the Commission post-LCP certification monitoring program, Commission and County staff discussed this project multiple times prior to the County's approval. First, on April 13, 2023, County staff contacted Commission staff to inquire whether the project lies within the Coastal Commission's retained permitting jurisdiction due to its immediate shoreline position. In response, on April 25, 2023, upon a preliminary review of available information, Commission Technical Services staff advised the County that the project does in fact appear to be sited at least partially within the Commission's retained jurisdiction.⁷ Based on this preliminary determination, the County directed the Applicants to contact the Commission to apply for a CDP. Instead, the Applicants' legal representative contacted the County, rejecting Commission staff's preliminary jurisdictional determination, and County staff directed this correspondence to Commission staff. Subsequently, Commission staff informed the County that if the Applicants disagree with this determination, the Applicants should work with

⁴ The existing seawall onsite was authorized in 1993 and constructed thereafter under Santa Cruz County CDP 93-0245.

⁵ This void fill area appears to extend onto the upcoast neighboring property (APN 033-132-11) given the extent and profile of the void (see **Exhibit 2** for site photos), and it is unclear whether this neighboring property owner has consented or been considered as a co-applicant for the project. The Applicants' plans indicate that such permission is required for the project to proceed.

⁶ The dimensions are the noted dimensions as measured from the Applicants' plans, but those same plans indicate that the dimensions of this portion of the project may change, stating "Limits to be determined by project geotechnical engineer in the field." Thus, these dimensions are presumed to be at least what is shown on the plans, and the actual foundation expansion could be wider along shore, taller/deeper, or even farther out onto the beach, depending on decisions made in the field later.

⁷ This determination was made on the basis of the Applicants' mean high tide line survey in relation to the proposed seawall augmentation, the ambulatory and ephemeral nature of the beach sand elevation at the site, and the expected construction access and staging requirements based on the site's constraints, among other methods. Based on this preliminary determination, County staff indicated that "it seems appropriate for the County to reject this application at this time." However, as is evident by this appeal, the County ultimately continued to process the CDP application.

Commission Technical Services staff directly to resolve the issue. To date, there has been no effort made on behalf of the Applicants to address this outstanding jurisdiction question with Commission staff. See **Exhibit 5** for the relevant correspondence on this point.

Subsequently, roughly two months later, Commission staff received a request from the County to provide comments on the pending County CDP application for the proposed project, through the regular process the County employs for receiving other agencies' comments on CDP applications. As part of this coordination, Commission and County planning staff met at the beach seaward of the proposed project, where Commission staff informed County staff that the proposed project appeared to raise substantial LCP and Coastal Act conformance issues, and that the issues of jurisdiction were not yet resolved.

Following this meeting, Commission staff submitted comments on the proposed CDP application (see correspondence dated July 12, 2023 in **Exhibit 5**), noting for the County again the unresolved jurisdictional questions, and noting again what appeared to be LCP and Coastal Act inconsistencies with the proposed project, including related to underlying informational and analytical requirements associated with considering coastal armoring project such as this, as well as with respect to the need for a thorough evaluation of alternatives if the proper application materials were to show that some form of armoring project was appropriately considered under the LCP, and a clear evaluation of impacts, including mitigation for unavoidable impacts if an armoring project was otherwise proven to be approvable under the LCP and the Coastal Act. Despite such guidance, County staff accepted the application without the advised informational and analytical steps being completed, and ultimately County staff recommended that the project be approved by the County Zoning Administrator. Prior to Zoning Administrator action, Commission staff again submitted comments on the CDP application for the proposed project (see letter September 14, 2023 in **Exhibit 5**), providing further detail on the apparent LCP and Coastal Act inconsistencies. Notwithstanding this clear record of Commission staff providing guidance to the County as to LCP and Coastal Act requirements, including related to fundamental LCP informational and analytical steps and requirements associated with considering shoreline armoring, and including related to CDP jurisdiction, such recommendations were ultimately ignored by the County, and the Zoning Administrator approved the CDP application on September 15, 2023.

The County's Final Local Action Notice for its CDP approval action was received in the Coastal Commission's Central Coast District Office on Wednesday, October 4, 2023 (see **Exhibit 3**). The Coastal Commission's ten-working-day appeal period for this action began on Thursday, October 5, 2023 and concluded at 5pm on October 18, 2023. One valid appeal was received during the appeal period (see **Exhibit 6**).

C. 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. 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. This County CDP decision is appealable to the Commission because the project site is located between the first public road and the sea, and within 300 feet of the inland extent of the beach and the seaward face of the coastal bluff.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., such appeals are only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49-working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline.

The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination.⁸ At this stage, the Commission may only consider issues brought up by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and,

⁸ 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 substantial issue..." (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 the Coastal Act's public access provisions; (2) the extent and scope of the development; (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.

if no such hearing is requested, a substantial issue is automatically found. In both cases, when the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances, such as apply in this case, the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

D. Summary of Appeal Contentions

The appeal contends that the County-approved CDP raises Coastal Act public access and LCP issues: 1) the development constitutes shoreline armoring and it is not clear that such armoring is allowable based on the circumstances that apply; 2) the County's approval did not properly evaluate and/or mitigate impacts associated with the approved armoring, if it were to be approvable in the first place; and 3) the development appears to at least partially extend into the Commission's retained CDP jurisdiction, where the County has no legal authority to approve a CDP, but the County nonetheless approved a CDP for the whole project without addressing such jurisdictional issues. See **Exhibit 6** for the full appeal documents.

E. Substantial Issue Determination

1. Shoreline Armoring

Applicable LCP Provisions

The appeal contends that the approved project raises LCP coastal hazards consistency issues related to shoreline armoring, in that the proposed armoring augmentation does not appear to meet the criteria for considering, let alone allowing, shoreline armoring. Applicable LCP provisions include:⁹

⁹ See also **Exhibit 7**.

LUP Policy 6.2.16: Structural Shoreline Protection Measures. *Limit structural shoreline protection measures to structures which protect existing structures from a significant threat, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal dependent uses. Require any application for shoreline protection measures to include a thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure, protection of the upper bluff or area immediately adjacent to the threatened structure, engineered shoreline protection such as beach nourishment, revetments, or vertical walls. Permit structural protection measures only if non-structural measures (e.g., building relocation or change in design) are infeasible from an engineering standpoint or not economically viable. The protection structure must not reduce or restrict public beach access, adversely affect shoreline processes and sand supply, increase erosion on adjacent properties, or cause harmful impacts on wildlife and fish habitats or archaeological or paleontological resources. The protection structure must be placed as close as possible to the development requiring protection and must be designed to minimize adverse impacts to recreation and to minimize visual intrusion. Shoreline protection structures shall be designed to meet approved engineering standards for the site as determined through the environmental review process. Detailed technical studies shall be required to accurately define oceanographic conditions affecting the site. All shoreline protective structures shall incorporate permanent survey monuments for future use in establishing a survey monument network along the coast for use in monitoring seaward encroachment or slumping of revetments or erosion trends. No approval shall be given for shoreline protective structures that do not include permanent monitoring and maintenance programs. Such programs shall include a report to the County every five years or less, as determined by a qualified professional, after construction of the structure, detailing the condition of the structure and listing any recommended maintenance work. Maintenance programs shall be recorded and shall allow for County removal or repair of a shoreline protective structure, at the owner's expense, if its condition creates a public nuisance or if necessary to protect the public health and safety (emphasis added).*

LUP Policy 7.7.10: Protecting Existing Beach Access. *Protect existing pedestrian, and, where appropriate, equestrian and bicycle access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established through judicial determination of prescriptive rights, and acquisition through appropriate legal proceedings. Protect such beach access through permit conditions such as easement dedication or continued maintenance as an accessway by a private group, subject to policy 7.6.2.*

LUP Policy 7.7.12: Lateral Access. *Determine whether new development would interfere with or otherwise adversely affect public lateral access along beaches. If such impact will occur, the County will obtain dedication of lateral access along the beach to the first line of terrestrial vegetation to the base of the bluffs, where present, or to the base of any seawall; and the dedication of lateral access along*

bluff tops where pedestrian and/or bicycle trails can be provided and where environmental and use conflict issues can be mitigated. Unrestricted lateral access to North Coast beaches shall be provided where environmental and public safety concerns can be mitigated. All dedications required shall comply with policy 7.6.2 and the other policies of this chapter.

IP Section 16.10.070(H): Permit Conditions for Shoreline Protection

Structures. *Shoreline protection structures shall be governed by the following:*

(a) Shoreline protection structures shall only be allowed on parcels where both adjacent parcels are already similarly protected, or where necessary to protect existing structures from a significant threat, or on vacant parcels which, through lack of protection threaten adjacent developed lots, or to protect public works, public beaches, and coastal dependent uses.

(b) Seawalls, specifically, shall only be considered where there is a significant threat to an existing structure and both adjacent parcels are already similarly protected.

(c) Application for shoreline protective structures shall include thorough analysis of all reasonable alternatives to such structures, including but not limited to relocation or partial removal of the threatened structure, protection of only the upper bluff area or the area immediately adjacent to the threatened structure, beach nourishment, and vertical walls. Structural protection measures on the bluff and beach shall only be permitted where nonstructural measures, such as relocating the structure or changing the design, are infeasible from an engineering standpoint or are not economically viable.

(d) Shoreline protection structures shall be placed as close as possible to the development or structure requiring protection.

(e) Shoreline protection structures shall not reduce or restrict public beach access, adversely affect shoreline processes and sand supply, adversely impact recreational resources, increase erosion on adjacent property, create a significant visual intrusion, or cause harmful impacts to wildlife or fish habitat, archaeological or paleontological resources. Shoreline protection structures shall minimize visual impact by employing materials that blend with the color of natural materials in the area.

(f) All protection structures shall meet approved engineering standards as determined through environmental review.

(g) All shoreline protection structures shall include a permanent, County approved, monitoring and maintenance program.

(h) Applications for shoreline protection structures shall include a construction and staging plan that minimizes disturbance to the beach, specifies the access and staging areas, and includes a construction

schedule that limits presence on the beach, as much as possible, to periods of low visitor demand. The plan for repair projects shall include recovery of rock and other material that has been dislodged onto the beach.

(i) All other required local, State and Federal permits shall be obtained. (emphasis added).

Thus, as applicable here, the LCP limits consideration of shoreline armoring to cases where existing structures are significantly threatened, and, for proposed seawall applications, as is the case here, where adjacent parcels are already armored by seawalls. There is thus a three-tiered set of criteria that must be evaluated in order to allow consideration of the proposed armoring in this case. First, there must be an existing structure (i.e., a structure that was developed prior to the implementation of the Coastal Act on January 1, 1977 that has not been substantially redeveloped since).¹⁰ Second, if such structure is present, it must be significantly threatened (generally interpreted to mean it would be unsafe to occupy within the next 2-3 storm seasons).¹¹ And third, sites both up and downcoast must also be armored with seawalls. In other words, all three criteria must be met to allow for armoring to be considered pursuant to the LCP.

Then, if such LCP tests are met, there are further requirements that must be met to allow for armoring to be approved. At a minimum, the LCP only allows armoring when it is shown to be the least environmentally damaging feasible alternative to protect the existing endangered structure, based on an analysis of alternatives (which is a required

¹⁰ As described in the Commission's 2015 Sea Level Rise Policy Guidance, the Commission interprets the term "existing structures" in Coastal Act Section 30235 (see **Exhibit 7** for the full text of Coastal Act Section 30235) as meaning structures that were in existence on January 1, 1977, the effective date of the Coastal Act, and that have not been redeveloped since in way that would require them to be reevaluated against the Coastal Act/LCPs as if new. In other words, Section 30235's directive to permit shoreline armoring for structures in certain circumstances applies to development that lawfully existed as of January 1, 1977, and that has not subsequently been redeveloped (i.e., where changes to it since 1977 have been extensive enough that it is considered a replacement structure required to conform to applicable Coastal Act and LCP provisions). This interpretation is the most reasonable way to construe and harmonize Coastal Act Sections 30235 and 30253 (again, see **Exhibit 7**), which together evince a broad legislative intent to allow armoring for development that existed when the Coastal Act was passed, when such development is in danger from erosion, but to avoid such armoring for development constructed consistent with the Act, which does not allow shoreline altering armoring development to support same. This interpretation, which narrowly allows protection for development that predates the Coastal Act, is also supported by the Commission's duty to protect public trust resources and interpret the Coastal Act in a liberal manner to accomplish its purposes.

¹¹ Lacking a Coastal Act definition, the Commission has in the past evaluated the immediacy of any threat in order to make a determination as to whether an existing structure is "in danger" for the purposes of Coastal Act Section 30235 and related LCP section considerations. While each case is evaluated based upon its own particular set of facts, the Commission has in the past interpreted "in danger" to mean that an existing structure would be unsafe to use/occupy within the next two or three storm season cycles (generally, the next few years) if nothing were to be done (i.e., in the no project alternative). See, for example, CDP A-3-SCO-07-095/3-07-019 3-07-019 (Pleasure Point seawall); CDP 3-09-025 (Pebble Beach Company Beach Club seawall); CDP 3-09-042 (O'Neill seawall); CDP 2-10-039 (Lands End seawall); CDP 3-14-0488 (Iceplant LLC seawall); and CDP 2-17-0702 (Sharp Park Golf Course revetment).

CDP application item; see IP Section 16.10.070(H)(3)(c)). Additionally, the LCP requires that armoring that is considered in such an analysis not reduce or restrict public recreational access, adversely affect natural shoreline processes or sand supply, increase erosion of adjacent properties, create a significant visual intrusion or impact visual resources, or cause harmful impacts to wildlife, fish habitat, or archaeological/paleontological resources, among other things. And, because armoring construction itself tends to be difficult, and subject to its own shoreline access and other constraints, the LCP requires a thorough construction plan that minimizes beach and related impacts, which is also a CDP application filing requirement.

Analysis

At a basic level, the County mischaracterized the proposed project as a repair and maintenance project, and it appears that this analytical decision resulted in a domino effect where the County chose not to evaluate the project pursuant to the LCP criteria above.¹² However, the proposed project will expand the footprint and configuration of the existing armoring present at this site, and as such, does not constitute repair and maintenance to an existing seawall. Rather, repair and maintenance puts something back to a permitted and/or required state, and such activities do not extend to the expansion of the physical dimensions of a structure, as is the case with the augmentation proposed here, where the proposed project would expand the armoring at the site, extending farther into the bluff and the bedrock below, farther upcoast, and farther seaward than the existing seawall. In other words, the project is not simply repairing/maintaining the seawall within its original permitted configuration, rather it is a proposal to augment the seawall in such a way that it would become a different armoring structure altogether, and such armoring structure must be evaluated for LCP consistency.¹³

However, neither the application materials for the County-approved CDP nor the County staff report prepared for the Zoning Administrator hearing for the project evaluate the proposed project with respect to these required LCP criteria for shoreline armoring projects. And in terms of the three tests for allowing consideration of shoreline armoring in the first place, it is not clear that the first two criteria are met, and the third is simply not met based on clear site-related facts. With respect to the latter, the upcoast site is not armored with a seawall, and thus the project clearly cannot meet that LCP test (IP Section 16.10.070(H)(3)(b)). As to the first two tests, based on available information, it appears that although a residence was present on the subject property as of January 1,

¹² And, to be clear, the LCP policies above do not somehow absolve the County from properly evaluating a repair and maintenance armoring project either.

¹³ It is noted that the Applicants maintain that the proposed project is repair and maintenance, and argue that the Commission can point to no Coastal Act basis for determining it not to be. While it is true that the Coastal Act and LCP do not define repair and maintenance, it has historically been the Commission's interpretation under the Coastal Program that repair and maintenance does not extend to the augmentation of armoring (and, in fact, at times projects that do not result in changes are also not repair and maintenance (see CCR Section 13252) (see, for example, CDPs 3-16-0446 (Rockview Seawall), 3-19-0020 (San Simeon CSD ATF Armoring and WWTP Improvements), and 3-23-0014 (Grossman Armoring)).

1977, it also appears that there have been significant alterations to it since,¹⁴ and it is not clear that the residence has not been redeveloped (as would be required to meet this LCP armoring test). In addition, the County did not evaluate the question of whether the residence, if it meets the ‘existing’ test, is significantly threatened. While it may be inferred that blufftop development in general is all subject to a degree of threat, CDP applicants, like these Applicants, are required to demonstrate that there is a significant threat to same in their specific case. Thus, it is unclear if the second test to allow consideration of armoring is met either.¹⁵

In addition, even had the three required LCP tests been met to allow for armoring to be considered, which they were not (and cannot, solely based on the adjacent armoring criterion alone, see IP Section 16.10.070(H)(3)(b)), the County conducted no alternatives analysis (and the Applicants submitted no such analysis) even though such analysis is explicitly required (see LUP Policy 6.2.16 and IP Section 16.10.070(H)(3)(c)). Put another way, the County-approved project was not selected as the least environmentally damaging feasible alternative based on an analysis of alternatives, including non-structural measures such as relocation or partial removal of the threatened structure (which are considered the primary method of addressing coastal hazards, as stated clearly in LUP Policy 6.2.16 and IP Section 16.10.070(H)(3)(c)). Rather, the County-approved project was the only alternative considered, which is clearly inconsistent with the LCP.

Furthermore, even had the three required LCP tests been met, and even had the LCP-required thorough evaluation of alternatives determined that the proposed project was the least environmentally damaging feasible alternative, the County did not evaluate the project in relation to its coastal resource impacts otherwise, even though the LCP clearly requires same (see LUP Policy 6.2.16 and IP Sections 16.10.070(H)(3)(c), 16.10.070(H)(3)(e), and 16.10.070(H)(3)(h)). Thus, the County did not identify potential impacts, did not identify ways to avoid such impacts, did not require such impact avoidance, and, where unavoidable, did not require any mitigation for such impacts. All of this is despite the fact that the existing seawall appears to be leading to coastal resource impacts,¹⁶ including that it appears to be occupying public recreational beach

¹⁴ Including what appear to be substantial remodels for which County permits (non-CDPs) were issued in 1998 and 2005 that, at the very least, appear to have entailed work to the structural elements of the roof, interior walls, and foundation. Based on available information, it appears that CDPs would likely have been required for such work as well, and the absence of required CDPs would make such development unpermitted and an LCP violation. It is noted that the LCP does not allow approval of CDPs for sites with such violations unless such violations are cured through such action (see IP Section 13.20.170).

¹⁵ On this point, the project plans (“Seawall Repair Plan, 4790 Opal Cliff Drive, Santa Cruz, CA 95062, APN 033-132-12” prepared by RI Engineering in February 2023) depict the 100-year bluff retreat line for the most part entirely seaward of the residence onsite (although it is unclear whether this determination countenanced the existing armoring onsite, which the Commission has previously found to be an LCP and Coastal Act inconsistent method for determining the 100-year setback line). In other words, it would appear that the residence is not in danger due to erosion in that it is almost entirely landward of the expected 100-year bluff retreat profile, based on the Applicants’ own plans.

¹⁶ Armoring generally has significant adverse impacts on the coastal resources protected by Chapter 3 of the Coastal Act and related LCP provisions, leading to unavoidable impacts on natural landforms, public recreational access, natural processes (which also significantly impacts public recreational access) and

and shoreline space currently. The County-approved project would appear to only exacerbate and increase such impacts, including through its overall augmentation and increase in size and scale, but also specifically by physically extending the seawall's configuration even further seaward out onto the beach,¹⁷ which is prohibited by the LCP and would require denial just for this reason alone (see LUP Policy 6.2.16 and IP Section 16.10.070(H)(e), stating that "shoreline protection structures shall not reduce or restrict public beach access"). The County's approval simply lacks the impact analysis and mitigation that is required by the LCP.

Finally, the Applicants did not provide, nor did the County require, the LCP-required construction and staging plan, and thus the full extent of impacts from construction were likewise not properly evaluated. This evaluation is important under the LCP in its own right, including because armoring construction tends to be difficult, taking place in a constrained and dynamic environment, and that is especially the case here where access to the site is limited, especially for large equipment, where such access itself is likely to have its own significant issues and impacts that needs to be addressed.

For all of these reasons, the County-approved project raises a substantial LCP conformance issue with respect to shoreline armoring requirements.

2. CDP Jurisdiction

Applicable LCP Provisions

The appeal contends that the County-approved project appears to extend into the Commission's retained permitting jurisdiction, and that the County cannot legally approve a CDP within the Commission's CDP jurisdiction. Applicable LCP provisions include:

IP Section 13.20.050: Project requiring coastal development permit approval. *Any person or other party wishing to undertake any development in the Coastal Zone shall obtain a coastal development permit from the County (or potentially the California Coastal Commission, if on appeal) in accordance with the provisions of this chapter, except if (1) a coastal development permit is also required from the California Coastal Commission and the parties have agreed to have the application processed through the consolidated coastal development*

public views. See, for example, Commission findings in LCP amendments LCP-3-SCO-20-0066-2 (Santa Cruz County Hazards Update) and LCP-3-MRB-21-0047-1 (Morro Bay Land Use Plan Update), and in CDPs A-3-SCO-07-095/3-07-019 3-07-019 (Pleasure Point Seawall), 3-09-025 (Pebble Beach Company Beach Club Seawall), 3-09-042 (O'Neill Seawall), 2-10-039 (Lands End Seawall), 3-14-0488 (Iceplant LLC Seawall), 3-16-0345 (Honjo Armoring), 3-16-0446 (Rockview Seawall), and 2-17-0702 (Sharp Park Golf Course).

¹⁷ The project plans for the proposed seawall augmentation do not specify the exact dimensions of the proposed new seawall foundation, to be sited seaward of the existing wall, but it appears it would encroach upon at least 30 square feet of beach area in addition to the beach area already impacted and removed from the public's benefit by the existing seawall, which already measures approximately 480-540 square feet of beach area. And, given the fact that the plans indicate that the seawall foundation augmentation could be modified, depending on decisions to be made later during construction, the additional 30 square feet of encroachment should be considered a minimum, and it could be more.

permit process or (2) the development qualifies for a coastal development permit exemption ([IP Sections] 13.20.060 et seq.), or exclusion ([IP Sections] 13.20.070 et seq.). The coastal development permit shall be in addition to any other approval or permit required by law and shall be obtained prior to commencement of the development activity. Provision for challenges to the County's determination of the applicable coastal development review and permit procedures is contained in [IP Section] 13.20.080.

IP Section 16.10.070(H): Permit Conditions for Shoreline Protection Structures. *Shoreline protection structures shall be governed by the following:
... (i) All other required local, State and Federal permits shall be obtained.*

Analysis

As described earlier, and going back to April of this year, Commission staff informed County staff that it appeared that the project was located at least in part in the Commission's retained CDP jurisdiction, but neither the Applicants nor the County ultimately took any actions to resolve permitting jurisdiction questions. For context, one of the ways that the boundary of state tidelands is determined is through locating the "mean high tide line", or MHTL. The mean high tide line is an ambulatory boundary defined as the intersection of the mean high water datum, an elevation determined at tide stations by the National Oceanic and Atmospheric Administration (NOAA), with the land. As the land changes, which happens nearly constantly at dynamic sandy beaches, the location of the MHTL changes. Although there are other criteria that apply to CDP jurisdiction boundary determinations, the MHTL is one of the arbiters for determining the location of the Commission's retained CDP jurisdiction (which for this criterion extends seaward of the identified MHTL). While simple conceptually, the reality on the California shoreline is that that intersection of the mean high tide elevation with land is actually quite complex, including at this site. Namely, the beach setting at the project site is dynamic, and the sand elevation is ambulatory in nature, which means that the point at which the mean high tide elevation intersects land is ambulatory as well.

In this case, the proposed project would extend the shoreline armoring both farther seaward and to a lower depth, but the Applicants estimate that the proposed seawall augmentation is located all inland of the Applicants' estimated MHTL. Based on this conclusion, the Applicants assert that the proposed project is all subject to the County's CDP jurisdiction. However, there are several reasons why such a conclusion is not warranted.

First, although applicants oftentimes do depict MHTLs in relation to their proposed development on project plans, as is the case in this application, such depictions are not determinative in the State of California. Rather, the SLC is the official arbiter of the MHTL, and only a SLC determination would be definitive. Further, in this case, it is unclear whether the Applicants have even coordinated with the SLC, or adhered to SLC standards in preparing their MHTL survey for the project.

Second, the mean high tide elevation used for MHTL purposes by the Applicants is internally inconsistent (on their plans). Specifically, sheet C-2 of the Applicants' plans

identifies the mean high tide elevation at +4.84 feet NAVD88,¹⁸ whereas sheet C-3 shows such elevation at +4.77 feet NAVD88. The use of such differing numbers means that the MHTL is depicted at different locations on different plan sheets. Moreover, it is not clear from the plans how the mean high tide elevation was determined including whether the elevation was determined using the mean high water datum from a nearby NOAA tide station or interpolated between tide stations. These discrepancies reduce the usefulness and potential veracity of the Applicants' estimates.

Third, the project plans do not actually specify the exact dimensions of the extended seawall foundation; rather, the Applicants' plans indicate that such foundation would measure approximately 15 feet wide by at least 3 to 5 feet tall by at least 2 feet deep, where those dimensions might be altered as a result of decisions to be made later in the filed during construction.¹⁹ As a result, it is not clear how far along shore, or deeper, or farther seaward that the project would ultimately extend. In all cases, increases in any of these dimensions means that the work is only more likely to be located in the Commission's retained CDP jurisdiction than its minimum depiction on the project plans.

Fourth, the Applicants' MHTL depiction in this case is based on a survey that is nearly four years old, and certainly not something rooted to more current facts on the ground. It is also only a snapshot in time, where the elevation of the sand on that day was used to locate the MHTL. However, beach sand elevations are constantly changing, and they may be higher or lower as a result of a series of natural factors during any given hour, day, week, or month of the year. In other words, beach elevations are the opposite of static. As a result, a 'snapshot' such as this is simply that, and not necessarily determinative of the true location of the MHTL. For this reason, in some cases applicants (and the Commission) look to the point at which the mean high tide elevation intersects solid substrate (e.g., rocky shoreline, such as the bedrock located at the base of the bluff here), and not something transitory, such as sand. As applied to this case, it would appear that the intersection of the mean high water elevation with bedrock would be farther inland than the Applicants' MHTL, although the exact depth of bedrock at the site is currently undetermined (including as stated by the Applicants' geotechnical report for the project, and as it is not depicted on the Applicants' plans).²⁰ In any case, this further indicates that the proposed work likely falls at least partially within the Commission's retained CDP jurisdiction. Which is even more the case when the above-referenced foundation expansion's dimensions could be even larger, depending on later determinations by the Applicants.

Finally, as noted above, the Applicants did not provide the LCP-required construction access and staging plan for the proposed project, despite being an LCP requirement for all shoreline armoring projects. Armoring construction of the type proposed will likely

¹⁸ NAVD88 refers to the North American Vertical Datum of 1988, which is the official geodetic vertical datum for the United States.

¹⁹ In fact, sheet C-2 of the project plans state that "limits to be determined by project geotechnical engineer in the field", in reference to the keyway in general, suggested that these dimensions (keyway length, encroachment seaward on the beach, height, etc.) are subject to change.

²⁰ Importantly, the project plans only depict sand elevations at the site, giving further credence to the uncertainty about the depth of the bedrock at this location.

require workers, equipment, and materials to be located on the beach seaward of the expanded armoring (e.g., to excavate, to construct forms, to install rebar, to place concrete, etc.). In other words, such construction activities as a general rule do not take place suspended in the air, but rather require a physical location on the ground, which in this case would be the beach seaward of the existing armoring. Given that even the Applicants' depictions of the MHTL show this area to be at least partially in the Commission's retained jurisdiction, it seems clear that such construction development itself would require a CDP from the Commission, at the least. In addition, should construction access be from up or downcoast, necessitating workers, equipment and/or materials to be brought to the site along the shoreline, it is entirely likely that such access would traverse the Commission's retained CDP jurisdiction as well. Again, because the Applicants did not provide the LCP-required construction plan, it is not clear to what degree such construction activities would be so implicated by the Commission's jurisdiction, but it seems clear that much if not all of such activities in the shoreline area would. On this point, although the County's approval does indicate that all construction access is to be accomplished from the blufftop portion of the Applicants' property (see **Exhibit 3** for the County CDP conditions of approval), such access is unlikely to eliminate the need for construction workers, equipment, and materials on the beach, for the reasons articulated above.²¹ Again, without the LCP-required construction access and staging plan, it is difficult to say with certainty, but the realities of armoring construction on the coast would suggest that project construction will implicate the Commission's CDP jurisdiction area.

The LCP sections referenced above, and the Coastal Act, require the Applicants to obtain a CDP for development in the Commission's retained CDP jurisdiction, and it appears clear that at least a portion of the proposed development is located in that jurisdiction. The County does not have the legal authority to approve a CDP for development in the Commission's CDP jurisdiction, and the fact that the County appears to have done just that also raises a substantial LCP conformance issue.²²

3. Substantial Issue Determination Conclusion

When considering a project that has been appealed to it, the Commission must first determine whether the project approval raises a substantial issue of Coastal Act public access and LCP conformity such that the Commission should assert jurisdiction over the CDP application for such development and conduct its own de novo review thereof. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and/or Coastal Act conformance. Section 13115(c) of the Commission regulations provides that the Commission may consider the following

²¹ Additionally, sheet C-2 of the project plans state the need for a construction easement from the upcoast neighboring property owner (APN 033-132-11), indicating the likelihood that construction materials, workers, and equipment would be operating on the beach itself, rather than originating entirely from the blufftop of the Applicants' property. Relatedly, it is unclear whether the upcoast neighboring property owner has provided consent for such construction on their property.

²² And, to be clear, even if the proposed project were to be located entirely within the County's CDP jurisdiction (which does not appear to be the case, as described), the shoreline armoring substantial issues identified above by themselves are sufficient for the Commission to find that the County's CDP decision raises substantial LCP and Coastal Act conformance issues in this case.

five factors when determining if a local action raises a substantial 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; 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 interpretations 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 find substantial issues for other reasons. In this case, these five factors, considered together, support a conclusion that the County's approval of CDP for this project does raise substantial LCP and Coastal Act conformance issues.

Regarding the first factor, there are several key issues with the factual and legal support for the County's decision with respect to LCP consistency. As discussed in detail above, the required LCP evaluations associated with armoring were essentially absent from the County's approval, and where discussed did not adequately address said requirements. At a fundamental level, the County did not evaluate the basic LCP (and Coastal Act, from which the LCP derives its regulatory authority) requirements to determine whether the proposed armoring met the LCP tests that would allow for it to be considered in this case, and similarly did not evaluate (nor even require of the Applicant, although it is an LCP application requirement) alternatives, impacts, and mitigation strategies to offset impacts, including related to construction. Further, although clearly informed that it was necessary to first resolve the CDP permitting jurisdictional boundary before proceeding with an application, the County did not do so, and purported to approve a CDP for the project notwithstanding that it appears that at least some of it is located in the Commission's CDP jurisdiction. As a result, a project was approved for major shoreline armoring augmentation and seaward expansion in a popular public recreational space for which there is a lack of factual and legal support to demonstrate that said project can even be found LCP and Coastal Act consistent in terms of allowing armoring; mitigating for the impacts of armoring; and whether the County even had the legal authority to issue a CDP for the entire project. On the contrary, the available facts and evidence suggest that LCP requirements have not been met, thus requiring that the Commission find that the project raises a substantial issue of conformance with the LCP.

Regarding the second factor, the extent and scope of the development as approved by the County supports a finding of substantial issue because the County-approved project would augment existing shoreline armoring (and also extend its lifetime) that already encroaches on a sandy beach space that is used by the public and that is already severely impacted by spatial, temporal, and tidal constraints. The County's approval exacerbates all of those impacts, and this outcome raises a substantial issue.

Regarding the third factor, the proposed project affects core coastal resources in terms of natural landforms, public access and recreation, shoreline processes, sand supply, public views, and coastal hazard mitigation, all of which go unaddressed by the County's approval. Thus, the third factor also supports a finding of substantial issue.

Regarding the fourth factor, although any one case is decided on its specific facts and its specific merits, there is the potential that the County (and/or potential future

applicants) might see the County's action as precedential, which, if it were, would be extremely problematic. Here, the proposed project raises important coastal resource protection concerns on which the County did not properly evaluate nor conclude consistent with the requirements of the LCP and the Coastal Act. And this is for allowing and mitigating the impacts of shoreline armoring, arguably one of the most important issues facing Santa Cruz County in light of sea level rise and more severe tide and wave events from a changing climate. The fourth factor supports a finding of substantial issue.

Finally, with respect to the fifth factor, the project raises issues of regional and statewide significance because concerns regarding the impacts of shoreline armoring on coastal resources are much broader than just this site, or even Santa Cruz County alone. In fact, the question of how coastal communities throughout the coastal zone adapt to sea level rise and coastal hazards, including as it relates to armoring decisions, is one of the most important coastal zone issues facing the State of California. The fifth factor also supports a finding of substantial issue.

For the reasons stated herein, the Commission finds that the County's approval of a CDP for the proposed project raises a substantial LCP conformance issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and therefore the Commission takes jurisdiction over the CDP application for the proposed project.

F. De Novo Coastal Development Permit Determination

The standard of review for this CDP determination is the Santa Cruz County certified LCP and, because the project is located between the sea and the first public road paralleling the sea, the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference.

As indicated above, the LCP limits consideration of shoreline armoring to cases where existing structures are significantly threatened, and, for proposed seawall applications, as is the case here, where adjacent parcels are already armored by seawalls (see LUP Policy 6.2.16 and IP Section 16.10.070(H)(3)(b)). There is thus a three-tiered set of criteria that must be evaluated in order to allow consideration of the proposed armoring in this case. First, there must be an existing structure (i.e., a structure that was developed prior to the implementation of the Coastal Act on January 1, 1977 that has not been substantially redeveloped since). Second, if such structure is present, it must be significantly threatened (generally interpreted to mean it would be unsafe to occupy within the next 2-3 storm seasons). And third, sites both up and downcoast must also be armored with seawalls. In other words, all three criteria must be met to allow for armoring to be considered pursuant to the LCP.

Then, if such LCP tests are met, there are further requirements that must be met to allow for armoring to be approved. At a minimum, the LCP only allows armoring when it is shown to be the least environmentally damaging feasible alternative to protect the existing endangered structure, based on an analysis of alternatives (which is a required CDP application item; see IP Section 16.10.070(H)(3)(c)). Additionally, the LCP requires that armoring that is considered in such an analysis not reduce or restrict public

recreational access, adversely affect natural shoreline processes or sand supply, increase erosion of adjacent properties, create a significant visual intrusion or impact visual resources, or cause harmful impacts to wildlife, fish habitat, or archaeological/paleontological resources, among other things. And, because armoring construction itself tends to be difficult, and subject to its own shoreline access and other constraints, the LCP requires a thorough construction plan that minimizes beach and related impacts, which is also a CDP application filing requirement.

In this case, the Applicants have not shown that they meet any of the three tests that would allow armoring to be considered under the LCP. In terms of the first test, the Applicants have not provided any development and permit history for the subject property. However, based on available information, it appears that a residence was present on the subject property as of January 1, 1977, but there have been significant alterations to it since, specifically work undertaken in 1998 and 2005 for which no CDP was issued,²³ that included new structural supports at the carport, foundation work at the dining room and living room, and other work on shear walls, at a minimum. In short, the application materials do not clearly identify whether the residential structure onsite is an existing structure as that term is understood in the armoring context, which is a prerequisite to considering armoring. And, in fact, available evidence suggests the opposite. Based on available information, the project does not meet the first LCP test.

In terms of the second test, the application materials in no way demonstrate that the residence is significantly threatened. Importantly, because the Applicants insist that the proposed shoreline armoring augmentation and expansion should be considered repair and maintenance, which it is not as explained earlier, they have asserted that providing such information is irrelevant in this case.²⁴ Not only is this inaccurate, but the Applicants refusal to provide such information means that there is no evidence to suggest that the residence – even if it could be considered an existing structure – is significantly threatened. While it may be inferred that blufftop development in general is all subject to a degree of threat, the record does not suggest that there is a significant threat in this specific case. Based on available information,²⁵ the project does not meet the second LCP test.

²³ The County's records show that building permits were obtained for such development, but no CDPs. Based on available information, it appears that CDPs would likely have been required for such work as well, and the absence of required CDPs would make such development unpermitted and an LCP violation. It is noted that the LCP does not allow approval of CDPs for sites with such violations unless such violations are cured through such action (see IP Section 13.20.170). If, as it appears, violations are not being cured, the LCP would require denial of the proposed project for this reason alone.

²⁴ Commission staff met with the Applicants' representatives on October 10, 2023, after the County approved a CDP for the project, to discuss the identified LCP and Coastal Act consistency issues. The Applicants' representatives made it clear that they do not believe that they are required to provide any such information, and have declined to do so. To be clear in any case, the LCP policies do not somehow absolve the Applicants from providing such information even if it were a repair and maintenance armoring project.

²⁵ Including that the Applicants' plans depict the 100-year bluff retreat line for the most part entirely seaward of the residence onsite, as described earlier.

As to the third test, the upcoast site is not armored with a seawall, and thus the project clearly cannot meet that LCP test (IP Section 16.10.070(H)(3)(b)). In short, the proposed project fails all three LCP tests to allow for armoring to be considered, suggesting that the project must be denied.

In addition, even had the three required LCP tests been met to allow for armoring to be considered, the Applicants did not submit the LCP-required alternatives analysis, and thus there is no basis on which to determine the least environmentally damaging feasible alternative, including non-structural measures such as relocation or partial removal of the threatened structure (which are considered the primary method of addressing coastal hazards, as stated clearly in LUP Policy 6.2.16 and IP Section 16.10.070(H)(3)(c)), as no alternatives have been provided nor analyzed. The lack of alternatives analysis also suggests that the application be denied.

Furthermore, even had the three required LCP tests been met, and even had the LCP-required thorough evaluation of alternatives determined that the proposed project was the least environmentally damaging feasible alternative, as detailed above, the existing seawall appears to be leading to coastal resource impacts, including that it occupies public recreational beach and shoreline space currently, and the proposed project would appear to only exacerbate and increase such impacts, including through its overall augmentation and increase in size and scale, but also specifically by physically extending the seawall's configuration even farther seaward out onto the beach, an outcome that is prohibited by the LCP and would require denial for this reason alone (see LUP Policy 6.2.16 and IP Section 16.10.070(H)(3)(e), stating that "shoreline protection structures shall not reduce or restrict public beach access").

Finally, the Applicants did not provide the LCP-required construction and staging plan, and thus the full extent of impacts from construction are likewise not properly known. This evaluation is important under the LCP in its own right, including because armoring construction tends to be difficult, taking place in a constrained and dynamic environment, and that is especially the case here where access to the site is limited, especially for large equipment, where such access itself is likely to have its own significant issues and impacts that would need to be addressed.

Separately, with respect to the substantial LCP conformance issues regarding CDP jurisdiction (as described above), these are immaterial at this juncture. Even if the proposed project can be properly found to be located entirely within the County's CDP jurisdiction upon proper resolution of these CDP jurisdiction issues, the Commission took jurisdiction over the project upon finding a substantial conformance issue with the County's approval with respect to LCP/Coastal Act shoreline armoring and public access provisions.

In sum, the Applicants propose to augment and expand an existing seawall at the toe of the bluff and on the sandy beach, but they have not first demonstrated that the proposed project meets the basic LCP requirements for considering and allowing shoreline armoring. In fact, available evidence suggests just the opposite, namely that the project as currently proposed and supported by its application materials cannot actually meet these fundamental LCP tests. For these reasons, as further detailed in the

analysis above, the Commission finds that the proposed project is inconsistent with the LCP's shoreline armoring requirements, and inconsistent with the Coastal Act's public access and recreation requirements, and must be denied.

Although the Commission could attempt to craft terms and conditions to modify the project in order to create a Coastal Act/LCP-consistent project, the Commission is under no obligation to do so.²⁶ And in this case, there are no project modifications that could correct the LCP and Coastal Act inconsistencies identified, including because the LCP does not even allow consideration of armoring in a case that presents the facts that are presented here. And, as already stated herein, the Applicants have indicated that they are unwilling to provide the type of information required by the LCP for shoreline armoring applications like this, and are unwilling to comply with the basic LCP requirements associated with all shoreline armoring projects in Santa Cruz County because they assert that they are not subject to same. In such a circumstance, the Commission denies the Applicants' CDP application. To the extent that the Applicants believe that they can resolve all such inconsistencies, including though providing adequate information for all required analyses, and to the extent that the County believes that such a project might be able to be found LCP and Coastal Act consistent, the Applicants are welcome to reapply to the County for development shown to be in the County's CDP jurisdiction, and to the Commission for the portions of the development shown to be in the Commission's CDP jurisdiction.

G. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(a) prohibits a proposed development from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the development may have on the environment. The Commission's review, analysis, and decision-making process for CDPs and CDP amendments has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)).

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves.

Accordingly, the Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the

²⁶ This long-standing legal principle has been affirmed by multiple courts to directly apply to the Coastal Commission (see, for example, *LT-WR, L.L.C. v. California Coastal Comm'n* (2007) 152 Cal.App.4th 770, 801, citing *Bel Mar Estates v. California Coastal Commission* (1981), 115 Cal.App.3d 936, 942; *Reddell v. California Coastal Commission*, 180 Cal.App.4th 956, 180 Cal.Rptr.3d 383, 395 (2009), rev. denied (Mar. 24, 2010), citing *LT-WR & Bel Mar*; and *Kalnel Gardens, LLC v. City of Los Angeles* (2016) ("As the City points out, under Kalnel's reasoning the City was obligated to propose architectural design changes to the proposed project, a task beyond the reach of planning commissioners or City Council members.")).

project was approved as proposed. Accordingly, the Commission's denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

3. APPENDICES

A. Substantive File Documents²⁷

- Santa Cruz County CDP 93-0245

B. Staff Contact with Agencies and Groups

- Santa Cruz County Community Development and Infrastructure Department

²⁷ These documents are available for review from the Commission's Central Coast District office.